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FILED
Aug 03 2011, 9:12 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

DAVID W. GLASGOW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A05-1012-CR-817
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0911-FD-1062

AUGUST 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant David W. Glasgow appeals his conviction of possession of marijuana, a Class D felony. Ind. Code § 35-48-4-11(1) (1983). We affirm.

ISSUE

Glasgow raises one issue, which we restate as: whether the trial court erred by admitting evidence obtained from a traffic stop.

FACTS AND PROCEDURAL HISTORY

On the evening of November 22, 2009, Deputy Paul Cherry of the Howard County Sheriff's Department was on patrol. He saw a red Dodge Caravan van drive by, dragging a rope behind it. The record does not disclose the precise length of the rope, but Cherry described it as "long" and was concerned that the "rope could have caused an accident, could have wrapped itself around something when the vehicle turned the corner." Tr. pp. 14, 15. Cherry activated his overhead lights to signal the van to stop. The van slowed down but then accelerated, and Cherry activated his siren and focused a spotlight on the driver's area of the van. As Cherry watched, he saw the driver throw "loose material" out of a window. Tr. p. 16. Shortly thereafter, the van came to a stop, and Cherry parked behind it. Cherry got out of his car, and as he approached the van he noted that the driver, later identified as Glasgow, was moving around, reaching over to the right side of the van. Cherry spoke with Glasgow, and he saw Glasgow repeatedly reach down the right side of his seat. At that point, Cherry removed Glasgow from the van and placed him in handcuffs. Cherry also patted Glasgow down, and as he did so he saw a plastic

baggie hanging out of Glasgow's pocket. The baggie contained a green substance that was later identified as marijuana.

The State charged Glasgow with possession of marijuana as a Class D felony. During trial, Glasgow moved to suppress all evidence against him, and the trial court denied his motion. The jury found Glasgow guilty as charged, and he now appeals.

DISCUSSION AND DECISION

Glasgow contends that Cherry's stop of his vehicle was unlawful pursuant to the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution because Cherry had no reason to stop him.

I. FOURTH AMENDMENT SEARCH AND SEIZURE CLAIM

In *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968), the United States Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when, based on a totality of the circumstances, the officer has a reasonable, articulable suspicion that criminal activity is afoot. We review trial court determinations of reasonable suspicion de novo. *Armfield v. State*, 918 N.E.2d 316, 319 (Ind. 2009). Whether a particular fact situation justifies an investigatory stop is determined on a case by case basis. *Baran v. State*, 639 N.E.2d 642, 644 (Ind. 1994). On review, we consider whether the facts known by the police at the time of the stop were sufficient for a person of reasonable caution to believe that an investigation was appropriate. *Sowell v. State*, 784 N.E.2d 980, 983 (Ind. Ct. App. 2003).

Glasgow argues that Cherry did not have sufficient reasonable suspicion of criminal activity to stop him. We disagree. Cherry asserted that the rope trailing behind

Glasgow's van had the potential to cause an accident or wrap around something if the van turned a corner. Based on this threat to other drivers and the potential to interfere with traffic, a person of reasonable caution could conclude that an investigation was appropriate. *See Sell v. State*, 496 N.E.2d 799, 800-01 (Ind. Ct. App. 1986) (concluding that an officer had reasonable suspicion to stop a driver going twenty miles below the speed limit because the driver was backing up traffic and blocking the road); Indiana Code § 35-42-2-4 (1988) (defining the offense of obstruction of traffic).

Glasgow points to testimony by Cherry that the rope hanging from Glasgow's van could have, in Cherry's opinion, violated the "leaky load" statute. Indiana Code section 9-20-18-14 (1991) prohibits the operation of a vehicle with insufficiently secured cargo. Glasgow contends that a rope is not included among the objects discussed by that statute, so the statute does not provide reasonable suspicion to support Cherry's stop of Glasgow. We have concluded that Cherry had reasonable suspicion to stop Glasgow due to the danger the rope posed to other drivers and the potential obstruction of traffic. Therefore, we do not address Indiana Code section 9-20-18-14. Glasgow does not challenge any other actions by Cherry following the stop of Glasgow's vehicle. We conclude that Cherry's stop of Glasgow did not violate Glasgow's rights under the Fourth Amendment.

II. ARTICLE I, SECTION 11 SEARCH AND SEIZURE CLAIM

Although the search and seizure provision found in Article I, Section 11 of the Indiana Constitution tracks the Fourth Amendment verbatim, our jurisprudence has focused on whether the actions of the government were "reasonable" under the "totality of the circumstances." *Shotts v. State*, 925 N.E.2d 719, 726 (Ind. 2010) (quoting

Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005)). The Indiana provision in some cases confers greater protections to individual rights than the Fourth Amendment affords. *Shotts*, 925 N.E.2d at 726. In *Litchfield*, our Supreme Court summarized the relevant factors in assessing the reasonableness of a seizure as turning on a balance of: "1) the degree of concern, suspicion, or knowledge that a violation had occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Shotts*, 925 N.E.2d at 726 (quoting *Litchfield*, 824 N.E.2d at 361).

Here, Glasgow argues that the stop was unreasonable and violated Section 11 because he did not violate Indiana Code section 9-20-18-14. We determine that the stop was constitutionally permissible, but on different grounds than the "leaky load" statute. Cherry had a concern or suspicion that a violation threatening public safety had occurred, because the rope trailing behind Glasgow's van could have caused an accident. Furthermore, the degree of intrusion was minimal, because it would not have taken long for Cherry to stop Glasgow and bring the rope to his attention. Glasgow extended the duration of the stop, and Cherry's scrutiny of the van, by failing to stop the van immediately, by throwing loose material out the driver's side window prior to stopping, and by repeatedly reaching down the right side of his seat while talking with Cherry. Finally, the extent of law enforcement needs was high because Cherry needed to stop the vehicle as soon as possible to prevent accidents and did not have time to seek a warrant. Under these circumstances, the stop was reasonable and did not violate Glasgow's rights under Article I, Section 11 of the Indiana Constitution. *See T.D. v. State*, 873 N.E.2d

184, 186-87 (Ind. Ct. App. 2007) (determining that an officer's stop of a vehicle did not violate the Indiana Constitution because the officer noted that the windshield was cracked, which required a closer inspection to determine whether the vehicle was being operated in an unsafe condition).

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

RILEY, J., and BROWN, J., concur.