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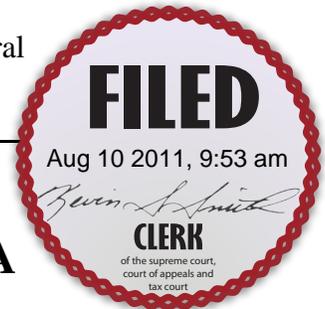
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**IN THE
COURT OF APPEALS OF INDIANA**

YASMIN WILSON,)

Appellant-Defendant,)

vs.)

No. 49A05-1012-CR-761

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-1005-CM-41381

August 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Yasmin Wilson (“Wilson”) was convicted of Carrying a Handgun without a License, as a Class A misdemeanor.¹ He now challenges his conviction.

We affirm.

Issues

Wilson raises two issues for our review, which we reframe as:

- I. Whether evidence should have been excluded because the investigative stop which led to discovery of the handgun on Wilson’s person was not supported by reasonable suspicion under the Fourth Amendment to the United States Constitution; and
- II. Whether evidence should have been excluded because the investigative stop was not permissible under Article 1, Section 11 of the Indiana Constitution.

Facts and Procedural History

On May 24, 2010, Indianapolis Metropolitan Police Department Officers Nathan Challis (“Officer Challis”) and Kevin Brown (“Officer Brown”) received dispatch instructions to respond to a call reporting that gunshots had been fired at Covington Square Apartments in Indianapolis. Three individuals were described by the caller, property manager Melissa Phelps, and reported to the officers.

Upon reaching the entrance to the apartment complex, Officer Challis found two men on foot—Wilson and another individual—matching two of the three descriptions provided by dispatch. Officer Challis initiated an investigative stop, told the men to place their hands on

¹ See Ind. Code §35-41-2-1(a).

his car, and performed a pat-down search for officer safety.

Officer Challis's pat-down of Wilson disclosed a .380 handgun in the front right pocket of Wilson's denim shorts. Officer Challis handcuffed Wilson and asked him whether he had a permit for the gun; Wilson stated that he had no permit. After verifying this information through a computer database, Officer Challis arrested Wilson.

On May 27, 2010, the State charged Wilson with one count of Carrying a Handgun without a License, as a Class A misdemeanor. On September 28, 2010, Wilson filed a motion to suppress evidence, arguing that the handgun was seized as the result of an illegal search. After a hearing on the motion and briefing from Wilson and the State, the trial court denied Wilson's motion to suppress.

A bench trial was held on November 23, 2010, during which Wilson timely and repeatedly objected to the admission of the pistol into evidence. The trial court denied his objection, and found Wilson guilty as charged. The trial court entered judgment that day and sentenced Wilson to 365 days imprisonment with thirty-eight days executed, thirty days of which were to be served through Community Corrections; 327 days suspended; and 180 days probation.

This appeal followed.

Discussion and Decision

Standard of Review

Wilson contends that the investigative stop Officer Challis conducted and the ensuing pat-down were contrary to his rights under both the United States and Indiana Constitutions,

and thus that the trial court should not have admitted into evidence the handgun uncovered by the search. Where a defendant appeals from the trial court's denial of a motion to suppress evidence and timely-objectioned-to subsequent admission of evidence, we review the admission of evidence for an abuse of discretion. Segar v. State, 937 N.E.2d 917, 921 (Ind. Ct. App. 2010). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), reh'g denied. We do not reweigh evidence and consider conflicting evidence in a light most favorable to the trial court's ruling, Segar, 937 N.E.2d at 921, "consider[ing] afresh any legal question of the constitutionality of a search or seizure." Meredith v. State, 906 N.E.2d 867, 869 (Ind. 2009).

Whether the Investigative Stop and Ensuing Pat-Down Search Violated Wilson's Fourth Amendment Rights

Wilson first contends that the investigative stop and pat-down search were contrary to his rights under the Fourth Amendment to the United States Constitution. The Fourth Amendment protects individuals against unreasonable searches and seizures, but permits a police officer to conduct an investigatory stop when the officer "has a reasonably articulable suspicion of criminal activity." Sellmer v. State, 842 N.E.2d 358, 360 (Ind. 2006). Reasonable suspicion is an abstract concept not readily subjected to many bright-line rules, and thus the Supreme Court has directed courts to look to the totality of the circumstances to determine whether officers have a particularized and objective basis to suspect wrongdoing. Id. at 360-61 (quoting State v. Bullington, 802 N.E.2d 435, 438 (Ind. 2004)).

The picture becomes more complicated when police officers act on tips from informants. Where a tip comes “from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated,” it is possible for police to assess the reliability of the tip and the informant. Florida v. J.L., 529 U.S. 266, 270 (2000). Where, however, a tip comes from an anonymous informant, it must be suitably corroborated by “sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.” Id. (quoting Alabama v. White, 496 U.S. 325, 329 (1990)). Thus, an anonymous tip must meet two conditions in order to give rise to reasonable suspicion that makes permissible an investigatory stop:

First, significant aspects of the tip must be corroborated by the police . . . more than details regarding facts easily obtainable by the general public to verify its credibility. Second, an anonymous tip . . . must also demonstrate an intimate familiarity with the suspect’s affairs and be able to predict future behavior.

Sellmer, 842 N.E.2d at 361.

The evidence presented at the hearing on the motion to suppress revealed that the tip was called in to police by Melissa Phelps, the property manager for Covington Square Apartments who had been informed of events by an unidentified resident who called her. That resident indicated that she heard a gunshot and stated that there were three black males at the scene. One of these was dressed in blue shorts and a red tee shirt, one wore blue shorts and a white tee shirt, and one wore denim or jean shorts and a gray tank top. When Officer Challis arrived at the apartment complex, he encountered two men—Wilson and one other individual. Wilson, a black male, was wearing denim shorts and a gray tank top; the other

man was wearing blue shorts and a white tee shirt. Officer Challis testified that he saw no furtive or unusual behavior from either man when he initiated the investigative stop. The pat-down came as a result of Officer Challis's compliance with standard procedures for officer safety.

Directing our attention to Sellmer, Wilson argues that the information conveyed by the caller combined with Officer Challis's observations do not rise to the level of the reasonable suspicion required to permit an investigative stop and lack indicia of reliability. In particular, Wilson argues that the information known about him—that he was a black man wearing denim shorts and a gray tank top—is no more information than would be known to the general public, and that there was no information from the caller that demonstrated familiarity with his intimate affairs or would tend to provide information about future conduct. We cannot agree.

First, we do not think that the descriptions used by Officer Challis in deciding to stop Wilson and the other man were the product of an anonymous tip. The descriptions of the three men came from Phelps, who identified herself and was available for police to interview. Phelps received the descriptions from an apartment resident who informed her of the incident ““out of the spirit of good citizenship.”” Kellems v. State, 842 N.E.2d 352, 356 (Ind. 2006) (quoting Pawloski v. State, 269 Ind. 350, 380 N.E.2d 1230, 1232-33 (1978)), rev'd on reh'g on other grounds, 849 N.E.2d 1110. That is, Phelps, not the unnamed resident, is the informant, and her interests in providing reliable information are evident as manager of the Covington Square Apartments.

Moreover, even if the tip were anonymous, there is a greater amount of particularized information indicating the reliability of the information Phelps provided than existed in Florida v. J.L., Sellmer, and this court’s recent opinion in Segar. Phelps gave descriptions of not one but three individuals who were together when one or more of them reportedly discharged a firearm. Officer Challis did not stop one individual who fit one of the three descriptions given, but two individuals, each meeting one of the three descriptions—Wilson in jean shorts and a grey tank top, and the other man in blue shorts and a red tee shirt. Thus the descriptions given were more precise than in Segar, where a white male in a dark shirt or coat was described by the caller, 937 N.E.2d at 922, and greater in number and more easily prone to verification by police than in Florida v. J.L., 529 U.S. at 271 (holding no reasonable suspicion when an anonymous caller alerted police to a single suspect described as a “young black male wearing a plaid shirt at the bus stop” whom the caller claimed was concealing a weapon). That is, the descriptions Phelps provided to police dispatch, who in turn provided that information to Officer Challis, were themselves more reliable in terms of quantity and quality.

Moreover, unlike in Florida v. J.L., Sellmer, and Segar, the information Phelps provided arose from circumstances that posed more of a public danger than existed in those cases. Phelps indicated that a gunshot was fired, and this is what gave rise to the call from police. This is unlike Florida v. J.L., where J.L. was alleged to possess a firearm but had not used it in any fashion, 529 U.S. at 271, Sellmer, where the caller reported a large quantity of marijuana was in a vehicle, 842 N.E.2d at 360, and Segar, where the anonymous caller

claimed a burglary was in progress but where no evidence that a burglary had occurred was introduced at the suppression hearing. 937 N.E.2d at 922. That is, the information Phelps provided pertained to acute criminal activity and the associated danger posed by it, which clearly differentiates this case from those upon which Wilson might rely.

Thus, under the totality of the circumstances, we conclude that there was reasonable suspicion justifying Officer Challis's decision to conduct an investigative stop and frisk of Wilson.

Whether the Investigative Stop Violated Wilson's Rights under Article 1, Section 11 of the Indiana Constitution

Article 1, Section 11 of the Indiana Constitution "tracks the Fourth Amendment verbatim," but provides broader protections from searches and seizures than does the Fourth Amendment to the United States Constitution. Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005). Specifically, whether a search is reasonable under the Indiana Constitution is a question of reasonableness under the totality of the circumstances that "requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." Id. at 360. This inquiry turns on "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the ordinary citizen's activities, and 3) the extent of law enforcement needs." Id. at 361.

Wilson claims inquiry under the Indiana Constitution weighs in his favor; we again disagree. Officer Challis responded to a call reporting that gunshots had been fired; this is

not like a report of marijuana in an individual's vehicle, as it tends to indicate that the individual in possession of a firearm is willing to use it because he or she has already done so. This stands contrary to Wilson's assertion that Officer Challis's concern, suspicion, or knowledge that a violation had occurred was "quite low." (Appellant's Br. 11.) The facts also weigh heavily in favor of Officer Challis's need to conduct a search, again because there was a report of shots having been fired in a residential area.

There was undoubtedly an intrusion upon Wilson's person and privacy as a result of the stop-and-frisk. But that concern was, under the totality of the circumstances, outweighed by law enforcement concerns and the need to conduct a search of two individuals matching descriptions of two of three persons described as being involved with active gunplay only minutes before at the general location of the search. Thus we find no violation of Wilson's rights under the Indiana Constitution.

Conclusion

Wilson's Fourth Amendment rights were not violated by Officer Challis when he performed an investigative stop-and-frisk in response to descriptions of suspects provided to dispatch during a call reporting gunshots having been fired. Nor were Wilson's rights under the Indiana Constitution violated by Officer Challis's stop-and-frisk. Accordingly, evidence obtained in that search was properly admitted by the trial court.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.