

Following a bench trial, James Denson was convicted of Illegal Possession,¹ a class C misdemeanor.² On appeal, Denson presents one issue for our review, which we restate as: Did the trial court abuse its discretion in admitting evidence obtained as a result of Denson's encounter with a police officer?

We affirm.

The facts most favorable to the conviction reveal that on November 21, 2008, just before midnight, Officer Alonzo Watford of the Indianapolis Metropolitan Police Department responded to two 911 calls, made back to back, from the same apartment address. The first 911 call reported that a female at the residence had been struck in the face by an unidentified person. Officer Watford responded to the call, but the residents at the address were not cooperative, so he left. While Officer Watford was still in the neighborhood, he received a second report from the same address of "trouble with a person."³ *Transcript* at 9. Officer Watford, who was only two blocks away, returned to the apartment from where the call originated. As Officer Watford approached the apartment building, he observed Denson standing outside the building, talking on his cell phone in a loud manner and using profane language. As Officer Watford approached Denson, Denson started to walk away. Believing that Denson may have been the subject of the report, Officer Watford continued his approach and asked Denson what was going on. During his initial encounter

¹ Ind. Code Ann. § 7.1-5-7-7 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

² The crime was charged as "Minor in Possession." *Appellant's Appendix* at 12.

³ There was no further description given of the individual, nor the specific location or the nature of the trouble.

with Denson, Officer Watford observed that Denson smelled of alcohol, his eyes were glassy, red, and watery, and his speech was slurred. Denson was also disrespectful in response to Officer Watford's questions concerning the phone call. Officer Watford indicated Denson's young age by noting that he was old enough to be Denson's father.

Within a short time, other officers arrived and detained Denson while Officer Watford went to the apartment where the 911 call originated. Officer Watford learned that Denson was the subject of the second call complaining of "trouble with a person." *Id.* Officer Watford returned to Denson and observed that Denson was unsteady on his feet, moving back and forth and holding himself up. As Officer Watford spoke to Denson about the call he was responding to, Denson kept interrupting him. Denson told Officer Watford that he was waiting for a ride. Officer Watford informed Denson that based on his conversation with the residents of the apartment, he did not believe that any of them would be willing to take Denson home. Denson made a disrespectful comment in response.

Officer Watford arrested Denson for alcohol-related offenses. In his twenty-five years of experience as a police officer, Officer Watford had made over a hundred alcohol-related arrests. According to Officer Watford, Denson admitted to drinking. In Officer Watford's opinion, Denson was "definitely under the influence." *Transcript* at 19. At trial, Denson denied having consumed alcohol and denied telling Officer Watford that he had been drinking. Denson did admit that he did not have "a high tolerance for police officers" *Id.* at 34. The State also submitted into evidence without objection Denson's BMV record,

which showed that he was born April 3, 1989, and thus was under twenty-one years of age on the date in question.

On November 22, 2008, the State charged Denson with public intoxication as a class B misdemeanor and illegal consumption of alcohol by a minor, a class C misdemeanor. At the conclusion of a January 29, 2009 bench trial, the trial court found Denson not guilty of public intoxication but guilty of minor in possession of alcohol. The trial court sentenced Denson to sixty days, with fifty-eight days suspended and further ordered Denson to attend six alcohol anonymous meetings and perform twenty-four hours of community service work. Denson now appeals.

Although Denson frames his issue as a challenge to the sufficiency of the evidence,⁴ Denson's argument is that the trial court erred in denying his motion to suppress and abused its discretion in admitting Officer Watford's testimony over his objection. Because Denson appeals following his conviction, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence during the bench trial. *Peters v. State*, 888 N.E.2d 274 (Ind. Ct. App. 2008), *trans. denied*. Trial courts have broad discretion regarding the admission of evidence. *Kelley v. State*, 825 N.E.2d 420 (Ind. Ct. App. 2005). We will reverse a trial court's ruling on the admission of evidence only for an abuse of discretion, that is, when the court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* We examine the evidence favorable to the trial court's ruling

⁴ Denson does not provide us with a standard of review for a challenge to the sufficiency of the evidence and does not otherwise argue that the evidence is insufficient to support his conviction. Denson's argument in this regard apparently follows from his argument that without Officer Watford's testimony, the admission of which Denson does challenge, the remaining evidence is insufficient to support his conviction.

along with any uncontradicted evidence. *Matson v. State*, 844 N.E.2d 566 (Ind. Ct. App. 2006), *trans. denied*. We neither reweigh evidence nor judge witness credibility. *Id.*

During the bench trial, Denson moved to suppress Officer Watford's testimony relating to the initial stop of Denson on grounds that Officer Watford lacked reasonable suspicion to detain Denson. Denson thus argued that the encounter between him and Officer Watford was in violation of his rights under the Fourth Amendment and article 1, section 11. In response, the State argued that the initial encounter was a consensual encounter, and thus, need not have been based on reasonable suspicion. The trial court denied Denson's motion and permitted Officer Watford to testify.

As we have noted before, not every encounter with a police officer requires reasonable suspicion. In *Overstreet v. State*, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), this court explained the three levels of police investigation:

First, the Fourth Amendment requires that an arrest or detention for more than a short period be justified by probable cause. *Woods v. State*, 547 N.E.2d 772, 778 (Ind. 1989). Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. *Woods*, 547 N.E.2d at 778. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. In this type of "consensual encounter" no Fourth Amendment interest is implicated. *See Molino v. State*, 546 N.E.2d 1216, 1218 (Ind. 1989)

(citing *Florida v. Rodriguez*, 469 U.S. 1, 5-6, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984)).

In *Overstreet*, a police officer observed Overstreet looking into a mailbox and then closing the mailbox door. Overstreet then walked hurriedly toward a parked vehicle and drove away. Overstreet drove a short distance and stopped at a gas station. The officer was familiar with newspaper carriers and their vehicles and did not recognize Overstreet or his vehicle. The officer, in his marked police car, followed Overstreet to the gas station and pulled in behind Overstreet's car. The officer's lights were not activated. Up to this point, no illegal activity had occurred. The officer approached Overstreet and asked what he had been doing at the mailbox and also requested Overstreet's identification. The court held that the officer's brief encounter and inquiry did not rise to the level of an investigatory stop requiring reasonable suspicion. Rather, the encounter was a consensual inquiry that did not implicate the Fourth Amendment.

The undisputed facts of the present case show that Officer Watford was responding to a second 911 call reporting "trouble with a person" within minutes of responding to the first 911 call from the same apartment. As Officer Watford approached the apartment building from where the 911 call originated, he observed Denson, who was obviously upset, talking loudly on the phone and using profanity. Officer Watford approached Denson and inquired as to what was going on. Officer Watford did not display a weapon, he was the only officer that approached, and he simply made a brief inquiry of Denson. Under these facts, Officer Watford had every right to approach Denson as he stood outside the apartment building and inquire as to what he was doing. Indeed, because Officer Watford was responding to a 911

call reporting “trouble with a person,” he not only had the right to approach Denson, but a responsibility to do so as well.

This case falls right in line with *Overstreet*. As in *Overstreet*, Officer Watford could approach Denson to initiate a brief encounter and inquiry, even when there was no evidence yet of illegal activity. As the court noted in *Overstreet*, “[t]o characterize every street encounter between a citizen and the police as a seizure, while not enhancing any interest guaranteed by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement purposes.” 724 N.E.2d at 664. Here, the investigation of a 911 call was a legitimate law enforcement purpose.

We further note that upon approaching Denson and observing that he smelled of alcohol, that he had blood shot, watery eyes, and that his speech was slurred, Officer Denson reasonably believed that Denson may have been intoxicated. At this point, reasonable suspicion attached, and Officer Denson was justified in further detaining Denson so that he could investigate the 911 call and determine if Denson was the subject thereof and also investigate possible alcohol-related offenses related to Denson’s conduct. Based on the above, we conclude that the trial court did not abuse its discretion in admitting Officer Watford’s testimony into evidence.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.