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IN THE
COURT OF APPEALS OF INDIANA

MARQUINN MCGRUDER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1102-CR-29
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-1006-CM-44750

October 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Marquinn McGruder appeals from his convictions after a bench trial of class A misdemeanor Carrying a Handgun Without a License[1] and class A misdemeanor Possession of Marijuana.[2] McGruder presents the following restated issue for our review: Did the trial court abuse its discretion by admitting into evidence a handgun and marijuana found in McGruder's vehicle?

We affirm.

At approximately midnight on June 5, 2010, Indianapolis Metropolitan Police Sergeant Eric Ledoux was on foot patrol looking for suspicious activity in a dark, residential area in Broad Ripple. Sergeant Ledoux noticed McGruder sitting alone in a parked vehicle in a dark area in front of a house. The vehicle's engine was not running and the headlights were not activated. As Sergeant Ledoux approached the vehicle from the sidewalk on the passenger side, he shined his flashlight into the vehicle and saw McGruder in the driver's seat "fumbling with something." *Transcript* at 16.

Sergeant Ledoux left the sidewalk and walked to the driver's side of the vehicle. He asked McGruder to roll down the vehicle's window and McGruder complied. Sergeant Ledoux then asked McGruder what he was doing and for his identification. McGruder provided his driver's license and said that he was waiting for a friend. Sergeant Ledoux initiated a records check based on McGruder's driver's license information. While waiting for the response, the officer asked McGruder if he "had anything in the vehicle he shouldn't

[1] Ind. Code Ann. §35-47-2-1 (West, Westlaw current through 2011 1st Reg. Sess.).
[2] Ind. Code Ann. §35-48-4-11 (West, Westlaw current through 2011 1st Reg. Sess.).

have." *Id*. at 19. McGruder admitted that he had a small amount of marijuana in the vehicle. Based on that admission, Sergeant Ledoux called for back-up.

Indianapolis Metropolitan Police Officer Jeremy Johnson responded to the call for back-up. After Officer Johnson arrived, Sergeant Ledoux asked McGruder to step out of the vehicle, and after McGruder complied, detained him. Officer Johnson looked through the window of McGruder's vehicle and observed from that vantage point a white folded paper containing green leafy vegetation on the front passenger seat. Officer Johnson reached into the vehicle and retrieved the substance, which was later identified as marijuana. The officer then walked around to the driver's side of the vehicle to search it, looked under the driver's seat, and observed a handgun. Sergeant Ledoux collected the handgun, which was loaded. When asked if he had a valid license for the handgun, McGruder replied that he did not.

The State charged McGruder with carrying a handgun without a license as a class A misdemeanor and possession of marijuana as a class A misdemeanor. McGruder filed a motion to suppress alleging that the handgun and marijuana were obtained without McGruder receiving *Miranda*[3] or *Pirtle*[4] advisements. The trial court held a hearing and denied the motion to suppress. At the conclusion of McGruder's bench trial, the trial court found him guilty as charged and sentenced him to 365 days, 40 days executed to be served on home detention, 180 days of probation, and the rest suspended. McGruder now appeals.

McGruder argues that the trial court abused its discretion by admitting the handgun

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[4] *Pirtle v. State*, 263 Ind. 16, 323 N.E.2d 634 (1975).

and marijuana that were found in his vehicle. McGruder renewed his arguments made in his motion to suppress when the trial court was considering the admission of the evidence at trial. In particular, McGruder claimed that he was in custody from the time that Sergeant Ledoux took his driver's license and began asking him questions. McGruder asserts that he should have been given his *Miranda* and *Pirtle* advisements, and because he was not so advised, any evidence obtained thereafter was inadmissible under article 1, section 11 of the Indiana Constitution and the Fourth and Fifth Amendments to the Federal Constitution.

The standard used to review rulings "on the admissibility of evidence is effectively the same whether the challenge is made by a pre-trial motion to suppress or by a trial objection." *Burkes v. State*, 842 N.E.2d 426, 429 (Ind. Ct. App. 2006). Questions regarding the admission of evidence are within the sound discretion of the trial court, and we review the court's decision only for an abuse of discretion. *State v. Seabrooks*, 803 N.E.2d 1190 (Ind. Ct. App. 2004). A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law. *Id*. Additionally, errors in admitting evidence are to be disregarded as harmless error unless they affect the substantial rights of the party. *Turben v. State*, 726 N.E.2d 1245 (Ind. 2000); Ind. Trial Rule 61. A trial court's ruling on the admissibility of evidence will be upheld if it is sustainable on any legal theory supported by the record, even if the trial court did not use that theory. *Gonser v. State*, 843 N.E.2d 947 (Ind. Ct. App. 2006).

"While almost identical to the wording in the search and seizure clause of the federal constitution, Indiana's search and seizure clause is independently interpreted and applied." *Baniaga v. State*, 891 N.E.2d 615, 618 (Ind.Ct.App.2008). Under the Indiana Constitution,

the legality of a governmental search turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356 (Ind.2005). Although other relevant considerations under the circumstances may exist, our Supreme Court has determined that the reasonableness of a search or seizure turns on a balance of: 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 citizens' ordinary activities; and 3) the extent of law enforcement needs. *Baniaga v. State*, 891 N.E.2d 615. The burden is on the State to show that under the totality of the circumstances, the intrusion was reasonable. *Id.*

The Fourth Amendment of the United States Constitution protects citizens against unreasonable searches and seizures. *Trimble v. State*, 842 N.E.2d 798 (Ind. 2006). Three levels of police investigation exist, two of which implicate the Fourth Amendment of the U.S. Constitution, and one which does not. *Overstreet v. State*, 724 N.E.2d 661 (Ind. Ct. App. 2000). The Fourth Amendment requires that an arrest or detention that lasts for more than a short period of time must be justified by probable cause. *Powell v. State*, 912 N.E.2d 853 (Ind. Ct. App. 2009). Second, under the Fourth Amendment, the police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based upon specific and articulable facts, the officer has reasonable suspicion that criminal activity has occurred or is about to occur. *Id*. The third level of investigation occurs when an officer makes a casual and brief inquiry of a citizen, which involves neither an arrest nor a stop, i.e., a consensual encounter not implicating the Fourth Amendment. McGruder argues that he was

in custody thus triggering Fourth Amendment protections. The State argues that the situation at issue is a consensual encounter. We agree with the State.

As we stated in *Overstreet*,

> Not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification. A person is seized only when, by means of physical force or show of authority, his or her freedom of movement is restrained. It is not the purpose of the Fourth Amendment to eliminate all contact between the police and the citizenry.

724 N.E.2d 661 (internal citations and quotations omitted). In a consensual encounter, the person is free to disregard the police officer's questions and walk away. *Bovie v. State*, 760 N.E.2d 1195 (Ind. Ct. App. 2002). The encounter becomes an investigatory stop when the individual no longer remains free to leave. *Id.*

Whether a person is detained requires an evaluation under the totality of the circumstances whether a reasonable person would feel free to disregard the police and go about the person's business. *Finger v. State*, 799 N.E.2d 528 (Ind. 2003). Instances in which a reasonable person would not have believed he was free to leave include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *Overstreet v. State*, 724 N.E.2d 661.

Sergeant Ledoux, who was alone and on foot, approached McGruder's parked vehicle, which did not have any lights on, and the engine was not running. McGruder was sitting in the driver's seat of the vehicle, but the seat was positioned far from the steering wheel. Sergeant Ledoux used his flashlight to look into the vehicle because the area was dark and, upon observing McGruder in the vehicle, asked him to roll down the window. Sergeant

Ledoux did not order McGruder to stop or move and McGruder was not in handcuffs or in any other way detained. There was no evidence that Sergeant Ledoux had his weapon drawn, ordered McGruder to do anything, or issued any commands to him. This evidence supports the conclusion that the encounter was consensual at that point.

Where an officer approaches a parked vehicle on foot, without activating the patrol car's siren or emergency lights, and not displaying a weapon to the vehicle's occupants, it is a consensual encounter and not a seizure for purposes of the Indiana Constitution and the Federal Constitution. *United States v. Mendenhall*, 446 U.S. 544, 553 (1980); *Powell v. State*, 912 N.E.2d 853 (Ind. Ct. App. 2009). Further, we have held that where an officer approached a driver sitting in a stopped vehicle in a driveway and spoke to the driver, the situation was a consensual encounter and not a stop. *State v. Augustine*, 851 N.E.2d 1022 (Ind. Ct. App. 2006). Additionally, we have held that where an officer approached a parked car and asked the occupant questions including a request for identification, and asked that all occupants keep their hands visible, the encounter was consensual and not a stop. *See Bentley v. State*, 846 N.E.2d 300 (Ind. Ct. App. 2006).

An investigating officer is free to ask a person for identification without implicating the Fourth Amendment. *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humbolt County*, 542 U.S. 177 (2004). No seizure occurs were police officers ask to examine a person's identification. *Florida v. Bostick*, 501 U.S. 429 (1991). The situation here is unlike the situation in *Finger* where we held that what initially began as a consensual encounter evolved into an investigative stop where the officer returned to the person's vehicle after performing a license check and did not return the person's identification. *See Finger v. State*, 799 N.E.2d

528. Here, while he was in the process of conducting a records check, Sergeant Ledoux asked McGruder if there was anything he should not have in his vehicle. There is no evidence in the record to suggest that the officer confiscated McGruder's driver's license.

Because the encounter was consensual, McGruder was not entitled to *Miranda* or *Pirtle* advisements. He was not in custody and was not subject to custodial interrogation. "The purpose of *Miranda* is to dispel the inherently coercive effect of police custody and interrogation." *Sears v. State*, 668 N.E.2d 662, 668 (Ind. Ct. App. 1996) (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)). Furthermore, *Pirtle* warnings apply only in custodial situations. *Jones v. State*, 655 N.E.2d 49 (Ind. 1995) (a person in custody must be informed of the right to consult with counsel about consent to search before valid consent can be given).

"Not every statement uttered by a police officer which is punctuated by a question mark will necessarily constitute an interrogation." *Johnson v. State*, 269 Ind. 370, 380 N.E.2d 1236, 1240 (1978). *Miranda* does not apply to "general on-the-scene questioning" in the fact-finding process because it lacks "the compelling atmosphere inherent in the process of in-custody interrogation." *Miranda v. Arizona*, 384 U.S. at 477-78. An interrogation occurs when "express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect." *Lawson v. State*, 803 N.E.2d 237, 239 (Ind. Ct. App. 2004) (quoting *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002)). There must be some evidence of compulsion for a defendant's statement to be deemed the product of an interrogation.

Sergeant Ledoux's question to McGruder about whether he had anything in the vehicle was not an interrogation. Although the answer to the question could have been, and in this instance was, incriminating, the question itself was open-ended. Additionally, there was no evidence of compulsion. McGruder could have chosen to lie about the presence of the marijuana, or simply have not answered the question. We have held that the Fourth Amendment was not implicated when a police officer asked a motorist during a traffic stop if the motorist had been drinking. *State v. Carlson*, 762 N.E.2d 121 (Ind. Ct. App. 2002). We conclude that the trial court correctly found that there was no custodial interrogation in this situation and that no warnings were necessary.

McGruder also challenges the search of his vehicle, which led police to locate the marijuana and discover the handgun. "One exception to the warrant requirement is probable cause to believe an operable vehicle contains contraband or evidence of a crime." *Danner v. State*, 931 N.E.2d 421, 428 (Ind. Ct. App. 2010). Here, Sergeant Ledoux not only had probable cause, but also McGruder's own admission that the vehicle contained a small amount of marijuana. After Sergeant Ledoux detained McGruder, Officer Johnson looked through the window of the vehicle and observed the marijuana on the front passenger's seat. Officer Johnson then looked under the driver's seat of the vehicle and observed the handgun, which he later learned was loaded. Both items were located within reaching distance from where McGruder had been seated. We conclude that the trial court correctly determined that the search of the vehicle in which McGruder had been seated was valid.

The totality of the circumstances surrounding the search of McGruder's vehicle also supports the constitutionality of the search under the Indiana Constitution. Although there

may be other relevant considerations in this analysis, our Supreme Court has explained the reasonableness of a search or seizure as turning on a balance of: (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 citizen's ordinary activities; and (3) the extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356. Here, Sergeant Ledoux knew that there was marijuana in the vehicle. Officer Johnson was able to see the marijuana by looking through the window of the vehicle and was able to reach into the vehicle in order to retrieve it. Sergeant Ledoux then collected the handgun. The law enforcement needs were great because the marijuana was visible on the front passenger seat of the car. We find that the trial court correctly concluded that the search was valid under the Indiana Constitution.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.