



Rodrigo Medrano, Jr. appeals his convictions of carrying a handgun while having a felony conviction, a Class C felony,<sup>1</sup> and possession of marijuana while having a prior conviction, a Class D felony.<sup>2</sup> We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 12, 2008, Officer Barthelemy of the Lafayette Police Department observed a green Malibu circling an area he was patrolling. Officer Barthelemy ran the license plate and learned the car was registered to Medrano, who was a gang member and had carried a concealed weapon.

The next day, Officer Barthelemy saw Medrano's green Malibu circling the same area. Officer Barthelemy attempted to follow Medrano, but lost him and notified Officer Long that Medrano was headed in his direction. After Medrano made two lane changes without properly signaling, Officer Long conducted a traffic stop. Officer Long radioed for back-up and approached the vehicle, where he informed Medrano a warning would be issued for his failure to signal. There was a passenger in the vehicle, later identified as Aldo Gaeta. Medrano appeared nervous and repeatedly asked Officer Long if something was wrong. Medrano began to sweat and continued to do so throughout the stop.

While Officer Long prepared the warning at his patrol car, a back-up officer arrived and approached the passenger side of the vehicle. The officer noticed Gaeta, who was still in the vehicle, was extremely nervous, sweating profusely, and fidgeting. After completing the warning ticket, Officer Long returned to the vehicle and asked Medrano to step out for

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<sup>1</sup> Ind. Code § 35-47-2-1 and Ind. Code § 35-47-2-23(c).

further explanation. Although Medrano was much larger than Officer Long, the officer believed removing Medrano from the car was the safer option because he did not know what might be within Medrano's reach inside the car. After Medrano exited the vehicle, Officer Long noticed Medrano's shirt hung past his waist, making it impossible to see his waistline or waistband. Officer Long became concerned Medrano might have a weapon in that area, especially because Medrano appeared excessively nervous, was in a hurry, and was sweating profusely.

Officer Long conducted a pat-down search for weapons and discovered a lump in Medrano's pocket. It was later identified as marijuana. After searching the vehicle, officers found brass knuckles in the center console and a gun inside the glove box.

Medrano was charged with carrying a handgun while having a felony conviction, a Class C felony; possession of marijuana, a Class A misdemeanor;<sup>3</sup> and possession of marijuana while having a prior conviction, a Class D felony. Medrano moved to suppress the handgun and marijuana, and the trial court denied that motion. Following a bench trial, Medrano was found guilty of all counts. Convictions were entered on Count I, carrying a handgun while having a felony conviction, and Count III, possession of marijuana while having a prior conviction.

## **DECISION AND DISCUSSION**

The sole issue Medrano raises is whether the trial court erred in admitting evidence. A trial court has broad discretion regarding the admissibility of evidence, and therefore its

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<sup>2</sup> Ind. Code § 35-48-4-11.

decisions will be overruled only for abuse of that discretion. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts before the court. *Id.*

Although the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution contain textually similar language, each must be separately analyzed. *State v. Washington*, 898 N.E.2d 1200, 1205-06 (Ind. 2008).

#### I. Fourth Amendment Claim

Officer Long stopped Medrano for failure to properly signal prior to making a lane change. Police may stop vehicles for minor traffic violations regardless of whether the officer would have made the stop but for ulterior motives or suspicions. *Jackson v. State*, 785 N.E.2d 615, 619 (Ind. Ct. App. 2003), *reh'g denied, trans. denied.*

Officer Long removed Medrano from the vehicle to explain the warning citation and to ensure his own safety. The Fourth Amendment permits an officer to ask a motorist who has been stopped for a traffic violation to exit the vehicle to receive an explanation. *Washington*, 784 N.E.2d at 587.

The authority to conduct a pat-down search after removing the driver and passengers from the vehicle is dependent on the nature and extent of the officer's concern for his safety and the safety of others. *Mitchell v. State*, 745 N.E.2d 775, 781 (Ind. 2001). A *Terry*<sup>4</sup> search of a motorist during an investigatory stop is appropriate so long as the officer has reasonable

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<sup>3</sup> Ind. Code § 35-48-4-11.

<sup>4</sup> In *Terry v. Ohio*, 392 U.S. 1 (1968), the court determined police officers may conduct a reasonable protective search for weapons if specific facts justify such an intrusion.

suspicion the driver or any passenger may be armed or dangerous. *Id.* at 780. Reasonable searches for weapons are permitted when an officer believes an individual to be armed or dangerous, regardless of whether probable cause exists for arrest. *Washington*, 784 N.E.2d at 588.

The following facts support Officer Long's suspicion that Medrano was armed and dangerous. Officer Long had seen Medrano's criminal history and alerts in the Records Management System (RMS),<sup>5</sup> which indicated Medrano was involved in gang activity and had previously possessed a gun. Medrano repeatedly asked the same questions and began to sweat, which can indicate nervousness.<sup>6</sup> Medrano was significantly larger than Officer Long. Medrano's passenger was also fidgeting, sweating profusely, and nervously staring at the officers. Finally, Officer Long noticed the waistband of Medrano's pants was not visible, and Officer Long knew the waistband is a common place to conceal weapons. Based on these factors, Officer Long had legitimate safety concerns justifying his pat-down search of Medrano. *See Trigg v. State*, 725 N.E.2d 446, 449 (Ind. Ct. App. 2000) (finding defendant's nervous demeanor and fidgeting, and acting as though he were attempting to hide something,

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<sup>5</sup> RMS is a compilation of records created by police officers regarding specific individuals, which is available to all officers through their squad car equipment. We acknowledge Medrano's concerns regarding whether RMS information is reliable and current, but the court heard testimony such information is based on officers' first-hand knowledge and personal experiences, not on rumors or speculation.

<sup>6</sup> Medrano correctly notes nervousness may provide indication of potential wrongdoing, but should not be given significant weight, as nervousness is a common reaction when interacting with police officers. *State v. Quirk*, 842 N.E.2d 334, 341 (Ind. 2006). Nevertheless, nervousness was a factor that contributed to Officer Long's safety concerns.

justified officer's limited weapons search). Therefore, the admission of evidence obtained from this search did not violate the Fourth Amendment.

## II. Article I, Section 11 Claim

Article I, Section 11 of the Indiana Constitution provides, in part, for the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure . . . .” Ind. Const. Art. I, § 11. When evaluating searches under this section, the State must show the search was reasonable under a totality of the circumstances. *Washington*, 898 N.E.2d at 1206. Specifically, the reasonableness of a search turns on three factors: degree of the concern, suspicion, or knowledge that a violation occurred; degree of intrusion the method of search or seizure imposes on the citizen's ordinary activities; and the extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). The balancing of those three factors indicates Officer Long's search of Medrano was reasonable.

Officer Long had learned through RMS that Medrano was a gang member and had carried weapons in the past. Medrano's waistband was hidden by his shirt, Medrano was acting nervous and his passenger was nervously fidgeting. All of these factors increased Officer Long's suspicion that Medrano might have a weapon hidden in his waistband.

The degree of intrusion was relatively small considering the nature of the privacy interest at stake. Officer Long conducted a pat-down search out of concern Medrano was concealing weapons in the waistband of his pants. Pat-down searches of motorists for weapons can be considered a small intrusion on privacy when balanced with the other *Litchfield* factors. *See Merchant v. State*, 926 N.E.2d 1058, 1066 (Ind. Ct. App. 2010)

(finding limited pat-down search of motorist for weapons can be considered a small intrusion when viewed in totality of the circumstances).

Strong law enforcement needs existed. Concerns regarding safety, security, and protection permit some intrusion on privacy, so long as the intrusion is reasonably related to the safety concern. *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006). Balancing the strong needs of law enforcement and the relatively small degree of intrusion, Officer Long's search of Medrano was permissible under a totality of the circumstances.<sup>7</sup>

Medrano asserts the totality of circumstances could not justify "further detention and frisk" after the "purpose of the stop has been concluded." (Appellant's Br. at 15.) However, at the time of the pat-down search, the stop was not concluded. Officer Long was still explaining the warning to Medrano and had not yet returned the identification card to Medrano's passenger, Gaeta. *See Washington*, 784 N.E.2d at 587 (justifying explanation of warnings to defendant outside of the car and finding stop had not been concluded at time of search). Medrano correctly notes that Article I, Section 11, "permits an officer, during an investigatory stop, to detain a motorist briefly only as necessary to complete the officer's work related to the illegality for which the motorist was stopped." *Quirk*, 842 N.E.2d at 340. But Officer Long's work related to the investigatory stop was not complete, because he was still explaining the warning to Medrano when the pat-down search took place.

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<sup>7</sup> Medrano also asserts reliance on the information contained in RMS was improper because allowing use of this information would effectively subject any person with an RMS alert for previously carrying a weapon to a search after a traffic stop. (Appellant's Br. at 16). We acknowledge that concern but find the RMS information was one of many factors used by officers to assess their safety.

Viewing the totality of the circumstances, as we must, we cannot say Medrano's pat-down search was improper and must accordingly find the evidence obtained from the search was properly admitted under Article I, Section 11 of the Indiana Constitution.

### **CONCLUSION**

The search of Medrano's person and his vehicle did not violate his rights under the Fourth Amendment to the United States Constitution or Article I, Section 11 of the Indiana Constitution. Thus the trial court did not abuse its discretion by admitting this evidence, and we affirm Medrano's convictions.

Affirmed.

ROBB, J., and VAIDIK, J., concur.