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IN THE
COURT OF APPEALS OF INDIANA

LEROY ARRINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-1103-CR-132
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
The Honorable Kathleen A. Sullivan, Magistrate
Cause No. 45G02-0906-FA-19

October 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Leroy Arrington ("Arrington") was convicted after a jury trial of dealing in cocaine[1] as a Class A felony and was sentenced to thirty years executed in the Department of Correction. He appeals, raising the following restated issue: whether the trial court abused its discretion when it allowed certain evidence to be admitted because he contends that the evidence was obtained in violation of the Fourth Amendment to the United States Constitution and Article I, section 11 of the Indiana Constitution.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 5, 2009, at approximately 12:55 a.m., Dyer Police Officer David Boshears ("Officer Boshears") was traveling westbound on US 30 in Dyer, Lake County, Indiana when he observed a red Buick with a cracked tail light. The Buick suddenly changed lanes without signaling and turned into a church parking lot. The Buick then turned around and began to proceed eastbound on US 30. Officer Boshears followed the Buick and observed it turn into the parking lot at Kahler Middle School. Officer Boshears then initiated a traffic stop and stopped the Buick.

When Officer Boshears approached the vehicle, he saw that the driver, Arrington, was nervous and his hands were shaking. Arrington would not make eye contact with the officer. Officer Boshears informed Arrington that he had been stopped because of the cracked tail light and for failure to signal when changing lanes. Arrington stated that he

[1] *See* Ind. Code § 35-48-4-1.

was unaware that the tail light was broken and told the officer that he was driving to one of the trailers near the middle school in order to go drink beer.

Officer Boshears asked for Arrington's driver's license, but Arrington did not have one. Arrington handed the officer an Illinois traffic ticket that contained his identifying information, but took it back. Arrington then gave Officer Boshears another traffic ticket with the same identifying information, and the officer returned to his patrol car in order to check the information from the ticket. Officer Boshears discovered that Arrington had a valid driver's license, so he wrote Arrington a warning ticket for the failure to signal when changing lanes. Officer Boshears returned to Arrington's vehicle and told him that the officer was giving him a verbal warning for the cracked tail light and a warning ticket for the failure to signal. Arrington was still acting nervous and would not make eye contact with Officer Boshears. Arrington's hands were shaking when the officer handed him the warning ticket. Officer Boshears asked Arrington if there was anything illegal in the car. Arrington replied, "F*ck no, I don't have sh*t. You can search it if you want." *Tr*. at 46. Officer Boshears then told Arrington, "Okay, please step out of the vehicle." *Id*.

After Arrington exited the vehicle, Officer Boshears patted him down and had him walk to the trunk area of the Buick, where a back-up officer was standing. Before opening the driver's side door, Officer Boshears looked at the driver's seat and observed what he believed to be crack cocaine in two plastic baggies. When Officer Boshears informed Arrington as to what the officer had found, Arrington said he had been given the crack cocaine and that he was on his way to Merrillville to sell it for $200. *Id*. at 47.

Laboratory testing later confirmed that the substance found in Arrington's vehicle contained crack cocaine and weighed 4.39 grams.

The State charged Arrington with dealing in cocaine as a Class A felony and possession of cocaine as a Class C felony. Arrington filed a motion to suppress the evidence discovered during the search of his vehicle. After a hearing, the motion was denied. A jury trial was held on January 11 and 12, 2011, and at the conclusion, Arrington was found guilty as charged. The trial court entered judgment of conviction for the Class A felony dealing in cocaine conviction due to double jeopardy concerns. Arrington was given a thirty-year executed sentence. Arrington now appeals.

DISCUSSION AND DECISION

The admission of evidence is within the sound discretion of the trial court, and we will reverse only on a showing of abuse of discretion. *McClendon v. State*, 910 N.E.2d 826, 832 (Ind. Ct. App. 2009), *trans. denied*; *Goldsberry v. State*, 821 N.E.2d 447, 453-54 (Ind. Ct. App. 2005). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *McClendon*, 910 N.E.2d at 832; *Goldsberry*, 821 N.E.2d at 454. In reviewing the admission of evidence, we will not reweigh the evidence, and we consider any conflicting evidence in favor of the trial court's ruling. *Lindsey v. State*, 916 N.E.2d 230, 238 (Ind. Ct. App. 2009), *trans. denied* (2010). However, we must also consider the uncontested evidence favorable to the defendant. *Id.* "Although a trial court's determination of historical facts is entitled to deferential review, we employ a *de novo* standard when reviewing the trial court's ultimate determinations of reasonable suspicion and probable cause." *Id*.

Arrington first argues that the trial court abused its discretion when it admitted evidence discovered after Officer Boshears asked him a question subsequent to giving Arrington the warning ticket because such evidence was obtained in violation of the Fourth Amendment to the United States Constitution. He contends this is because, after Officer Boshears handed Arrington the warning ticket, the purpose of the traffic stop had been completed, and Arrington should have been free to leave. Arrington asserts that Officer Boshears's question regarding whether there was anything illegal in Arrington's vehicle constituted continued detainment beyond the time necessary for the traffic stop in violation of the Fourth Amendment. He also claims that his nervousness during the traffic stop did not give rise to reasonable suspicion to justify further detainment. Arrington further alleges that his encounter with Officer Boshears was not consensual and any consent he gave did not remove the taint of the illegal detention.

The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. U.S. Const. amend. IV; *Matson v. State*, 844 N.E.2d 566, 570 (Ind. Ct. App. 2006), *trans. denied*, *cert. denied*. Generally, a search warrant is a prerequisite to a constitutionally proper search and seizure. *Halsema v. State*, 823 N.E.2d 668, 676 (Ind. 2005). However, the United States Supreme Court "has 'held repeatedly that mere police questioning does not constitute a seizure.'" *State v. Washington*, 898 N.E.2d 1200, 1204 (Ind. 2008) (quoting *Muehler v. Mena*, 544 U.S. 94, 101 (2005)). "'Even when officers have no basis for suspecting a particular individual, they may generally ask questions of the individual[.]'" *Id*. (quoting *Muehler*, 544 U.S. at 101).

In *Washington*, our Supreme Court addressed the issue of whether questions posed by the police, which are unrelated to the initial reason for a detention, may constitute an unlawful seizure. In its analysis, the Court discussed *United States v. Childs*, 277 F.3d 947 (7th Cir. 2002), *cert. denied*, which held:

> [B]ecause questions are neither searches nor seizures, police need not demonstrate justification for each inquiry. Questions asked during detention may affect the reasonableness of that detention (which *is* a seizure) to the extent that they prolong custody, but questions that do not increase the length of detention (or that extend it by only a brief time) do not make the custody itself unreasonable or require suppression of evidence found as a result of the answers.

Id. at 949. Our Supreme Court went on to hold that the "officer's brief questioning as to whether the defendant had any weapons, drugs, or anything else that could harm the officer was not itself a search or seizure and thus was not prohibited by the Fourth Amendment" even though it was not the initial reason for the stop. *Washington*, 898 N.E.2d at 1205. This is because "[t]he defendant was not obligated to answer the questions, and his choice to do so and to disclose inculpatory information provided the basis for the officer's further request for permission to search the defendant's trouser pockets." *Id*. The United States Supreme Court subsequently reaffirmed that, "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 129 S. Ct. 781, 788 (2009).

Here, Officer Boshears observed that, as it was being operated on a public road, Arrington's vehicle had a cracked tail light and that Arrington changed lanes without

signaling. Therefore, Officer Boshears validly stopped Arrington's vehicle for two traffic violations. Officer Boshears's single question as to whether there was anything illegal in Arrington's vehicle was not itself a search or seizure and therefore not prohibited by the Fourth Amendment. Arrington was not obligated to answer the question, and his decision to do so and give Officer Boshears permission to search the vehicle provided the officer with a valid basis for searching the vehicle. *See Harper v. State*, 922 N.E.2d 75, 80-81 (Ind. Ct. App. 2010) (finding that, although defendant argued that traffic stop had been completed, defendant consented to search and consent is well established exception to requirements of Fourth Amendment), *trans. denied*.

Additionally, we conclude that the single question posed by Officer Boshears did not constitute an unconstitutional delay. Arrington relies on *Holly v. State*, 918 N.E.2d 323 (Ind. 2009) for his contention that Officer Boshears's question was an unconstitutional delay because the reason for the traffic stop was complete. In that case, our Supreme Court held that the officer had reasonable suspicion to initiate a *Terry* stop because the officer knew that the registered owner had a suspended driver's license and the officer was not aware of anything that indicated that the owner of the vehicle was not the driver of the vehicle. *Id*. at 325. However, as soon as the officer approached the driver's side window, and it became apparent that the driver was not the owner of the vehicle, the Court held that the officer had no justification to pursue an investigatory stop. *Id*. at 326.

We find *Holly* to be distinguishable from the present case. There, the officer would have realized from his initial interaction with the driver that the officer had no

basis to detain the driver. Here, however, it is undisputed that Officer Boshears had probable cause to detain Arrington for two traffic violations. The only issue, then, is whether the officer's single question at the conclusion of the lawful stop unreasonably prolonged the stop. Arrington admits that Officer Boshears could have asked him the same question before giving him the warning ticket without violating the Fourth Amendment. *Appellant's Br*. at 22-23. The traffic stop would have taken the same amount of time whether the officer asked the question prior to or after giving Arrington his warning ticket. Under the reasoning of *Childs*, which was cited with approval by our Supreme Court in *Washington*, "'[q]uestions that hold potential for detecting crime, yet create little or no inconvenience, do not turn reasonable detention into unreasonable detention.'" *Washington*, 898 N.E.2d at 1205 (quoting *Childs*, 277 F.3d at 953–54). Officer Boshears's question was therefore not a constitutional violation because it was asked after, instead of before, the warning ticket was given to Arrington. The question was asked immediately after the ticket was given to Arrington, took only seconds to ask, and did not unreasonably prolong the traffic stop. We therefore conclude that the single question asked by Officer Boshears did not measurably extend the length of the stop and was permissible under the Fourth Amendment. The trial court did not abuse its discretion when it admitted the evidence discovered during the search of Arrington's vehicle because Officer Boshears's question did not unreasonably extend the stop and Arrington consented to the search.

Arrington also argues that the trial court abused its discretion when it admitted the evidence discovered after he was asked a question by Officer Boshears subsequent to

giving Arrington the warning ticket because such evidence was obtained in violation of Article I, section 11 of the Indiana Constitution. Arrington contends that, based upon the totality of the circumstances, it was unreasonable for Officer Boshears to continue to detain him after the completion of the traffic stop. Arrington asserts that, after he had been given the warning ticket, the reason for the traffic stop was complete, and he should have been free to leave. Therefore, any continued detainment, no matter how brief, to ask him a question about whether there was anything illegal in the vehicle was unreasonable and in violation of the Indiana Constitution.

Although the language of Article I, section 11 of the Indiana Constitution and the Fourth Amendment are almost identical, a different analysis has been applied to claims raised under the Indiana Constitution. The legality of a governmental search under the Indiana Constitution 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, 359 (Ind. 2005). Although other relevant considerations may be considered, the reasonableness of a search or seizure under the Indiana Constitution turns on the 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. *Id*. at 361.

In *Washington*, our Supreme Court held that the officer did not violate the Indiana Constitution when he asked at the end of the traffic stop whether the defendant had any drugs or weapons on his person. *Washington*, 898 N.E.2d at 1208. In applying the factors from *Litchfield*, the Court found that the officer's observations of possible traffic

infractions provided a reasonable basis to conclude that the defendant had violated traffic laws. *Id*. at 1206. It concluded that the officer's brief question constituted a slight degree of police intrusion and "was consistent with the officer's concern for his own safety and law enforcement's responsibilities to deter crime, to intercept criminal activity, and to apprehend its perpetrators." *Id*. The Court also reasoned that the defendant was free not to answer the question and that it was the defendant's voluntary response to the question that provided the basis of the subsequent search of the defendant. *Id*. Our Supreme Court also stated that, to the extent that other Indiana cases had prohibited police from questioning motorists or seeking consent to search following a terminated traffic stop, the cases were incorrect. *Id*. at 1207. Therefore, the Court determined that the officer's question was reasonable under the totality of the circumstances and did not violate the Indiana Constitution.

We conclude that the same is true in the present case. Here, because Officer Boshears merely asked Arrington a brief question as to whether he had anything illegal in his vehicle, and Arrington was under no obligation to answer the question or to give the officer permission to search the vehicle, the officer's question was not unreasonable under the totality of the circumstances. Therefore, the officer's question did not violate Article I, section 11 of the Indiana Constitution. The trial court did not abuse its discretion when it allowed the evidence discovered during the search of Arrington's vehicle to be admitted.

Affirmed.

BAKER, J., and BROWN, J., concur.