

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

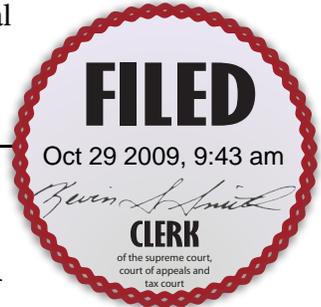
ATTORNEY FOR APPELLANT:

**ELIZABETH A. GABIG**  
Marion County Public Defender Agency  
Appellate Division  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**NICOLE DONGIEUX WIGGINS**  
Deputy Attorney General  
Indianapolis, Indiana



---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

R.P., )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-0905-JV-395

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn Moores, Judge  
The Honorable Geoffrey Gaither, Magistrate  
Cause No. 49D09-0901-JD-194

---

**October 29, 20089**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

R.P. appeals the juvenile court's true finding of dangerous possession of a firearm, a class A misdemeanor if committed by an adult. We affirm.

## **Issue**

Did the juvenile court admit evidence obtained in violation of R.P.'s Fourth Amendment right against unreasonable search and seizure?

## **Facts and Procedural History**

On January 20, 2009, Indianapolis Metropolitan Police Department Officer Samuel J. House was patrolling a neighborhood in which several robberies had recently been committed. Near midnight, Officer House saw R.P., who was seventeen years old, walking in the middle of the street. Officer House testified that he noticed R.P. because "he was walking in the road when there was a sidewalk available, and . . . the fact that it was late and he appeared to be young and he was in the neighborhood by himself which to me seemed a little, a little odd at the time[.]" Tr. at 8. Officer House stopped his vehicle, activated his overhead lights, and walked toward R.P. He asked R.P. "if we could talk." *Id.* When R.P. began walking toward him, Officer House became uneasy because R.P.'s hands were concealed "in his shirt or in his pockets." *Id.* He asked R.P. to show his hands, but R.P. failed to do so. When the officer asked a second time, there was "a little bit of a pause, and he finally showed me his hands." *Id.* Officer House then asked R.P. if he would mind being patted down and if he had any weapons. R.P. responded that he did have a weapon, and Officer House patted him down and found a sawed-off .22 caliber rifle in his right pant leg.

The State alleged that R.P. committed dangerous possession of a firearm, a class A misdemeanor if committed by an adult. At his evidentiary hearing, R.P. moved to suppress all evidence seized following the stop. He argued that Officer House violated his Fourth Amendment rights because he did not have reasonable suspicion to detain R.P. The juvenile court denied the motion to suppress and entered a true finding against R.P.

R.P. now appeals, challenging the legality of the stop and not the patdown search.

### **Discussion and Decision**

R.P. claims that the juvenile court erred by denying his motion to suppress. Because R.P. appeals following a completed trial, the issue is appropriately framed as whether the juvenile court abused its discretion by admitting the evidence at trial. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of an abuse of discretion. *Id.* An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id.* We will not reweigh the evidence, and we will consider conflicting evidence in the light most favorable to the trial court's ruling. *Cole v. State*, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007).

R.P. argues that the evidence obtained by Officer House was inadmissible because the stop violated his rights under the Fourth Amendment, which protects citizens from unreasonable searches and seizures. An officer may briefly stop an individual for investigative purposes if the officer has reasonable suspicion of criminal activity. *Williams v. State*, 754 N.E.2d 584, 587 (Ind. Ct. App. 2001) (citing *Terry v. Ohio*, 392 U.S. 1, 30

(1968)), *trans. denied*. Reasonable suspicion exists where the facts known to the officer, along with the reasonable inferences drawn therefrom, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur. *Id.* Reasonable suspicion is determined on a case-by-case basis by examining the totality of the circumstances. *J.D. v. State*, 902 N.E.2d 293, 296 (Ind. Ct. App. 2009), *trans. denied*. “Reasonable suspicion must be an objective determination that is more than an inchoate and unparticularized suspicion or hunch, but less than proof of wrongdoing by a preponderance of the evidence.” *Id.* We review *de novo* the trial court’s ultimate determination of reasonable suspicion. *State v. Whitney*, 889 N.E.2d 823, 829 (Ind. Ct. App. 2008). A police officer’s subjective motives are irrelevant in Fourth Amendment analysis, and a stop will be valid provided there is an objectively justifiable reason for it. *Id.*

R.P. likens his case to *Castner v. State*, 840 N.E.2d 362, 365-66 (Ind. Ct. App. 2006), in which another panel of this Court determined that police had violated a man’s Fourth Amendment rights by detaining and searching him. In *Castner*, a police officer responded to an anonymous tip that a white male wearing a tank top and blue jeans was selling pills to children in a high-crime area. Upon arriving at the location identified in the tip, the officer saw Castner, who matched the description, standing in a gas station parking lot. He did not observe Castner making transactions with children; in fact, there were no children near Castner. The officer also testified that Castner made no threatening gestures. The officer approached Castner and asked him to take his hands out of his pockets. Castner initially did not comply. Out of safety concerns, the officer performed a patdown search of Castner’s

person and saw a metal pipe in Castner's utility pocket. The pipe was determined to contain cocaine residue, and Castner was charged with and later found guilty of reckless possession of paraphernalia.

In our review of the case, we stated in pertinent part as follows:

Under the totality of the circumstances, the facts that Castner was in a reputedly high-crime area with his hands in his pockets could not have given [the officer] more than the unparticularized hunch that criminal activity might be afoot. Accordingly we conclude [the officer] did not have reasonable suspicion to justify his detention of Castner, and that the pipe he found during that detention was therefore inadmissible.

*Id.* at 366.

R.P. claims that his case is similar to *Castner* in that Officer House searched him after detaining him in a high-crime area while he was walking with his hands in his pockets. Unlike Castner, however, R.P. was walking in the middle of the street late at night. The State claims that this fact provided Officer House with reasonable suspicion that R.P. might be violating Indiana Code Section 35-42-2-4(a), which states, "A person who recklessly, knowingly, or intentionally obstructs vehicle or pedestrian traffic commits obstruction of traffic, a Class B misdemeanor." R.P. claims that he was not obstructing traffic because "[n]o witness ever mentioned the presence of any other traffic on the road during the period of time Officer House observed R.P." Appellant's Reply Br. at 5. Regardless, walking in the middle of the road late at night presents a potentially dangerous situation that a police officer need not ignore.

Also, Officer House testified that R.P. was walking upon the road despite the presence of a sidewalk, which is a class C traffic infraction pursuant to Indiana Code Sections 9-21-

17-12 and -24.<sup>1</sup> A police officer may briefly detain someone whom the officer believes has committed a traffic infraction. *State v. Harris*, 702 N.E.2d 722, 726 (Ind. Ct. App. 1998). If something occurs during the stop that causes the officer to have a reasonable suspicion that criminal activity is afoot, then the person may be further detained. *Thayer v. State*, 904 N.E.2d 706, 709 (Ind. Ct. App. 2009) (citing *United States v. Hill*, 195 F.3d 258, 264 (6th Cir. 1999), *cert. denied* (2000)).

Finally, Officer House was concerned to see a minor out so late at night in apparent violation of Indiana Code Section 31-37-3-2, which designates a curfew of 11:00 p.m. for children fifteen through seventeen years of age. Clearly, this fact would support a reasonable suspicion that criminal activity was afoot, and it was an objectively justifiable reason for Officer House to stop R.P.

In sum, the facts known to Officer House before he detained R.P., along with the reasonable inferences drawn therefrom, would cause an ordinarily prudent person to believe that criminal activity had occurred or was about to occur. Based on the totality of the circumstances, the stop was not improper, and therefore, the juvenile court did not abuse its discretion by admitting the evidence seized by Officer House.

Affirmed.

MAY, J, and BROWN, J., concur.

---

<sup>1</sup> Indiana Code Section 9-21-17-12 states: “If a sidewalk is provided and the sidewalk’s use is practicable, a pedestrian may not walk along and upon an adjacent roadway.” Indiana Code Section 9-21-17-24 identifies this violation as a class C traffic infraction.