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IN THE
COURT OF APPEALS OF INDIANA

CHRIS FIELDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1105-CR-223
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz
The Honorable Michael S. Jensen, Magistrate
Cause No. 49G20-1002-FB-009487

December 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Chris Fields ("Fields") appeals his conviction for Unlawful Possession of a Firearm by a Serious Violent Felon ("SVF"), a Class B felony,[1] presenting the sole issue of whether the trial court properly admitted evidence that a handgun was found in Fields' possession during a traffic stop and search. We reverse.

Facts and Procedural History

Around midnight on February 8, 2010, Indianapolis Metropolitan Police Officer Johnathan Burger was sitting in his police vehicle located at a church parking lot when he observed a vehicle driven by Fields make a u-turn in the parking lot. The vehicle slid sideways and "nearly struck a huge snow mound with a light pole in the center." (Tr. 13-14.) According to Officer Burger, the vehicle was traveling "too fast for the road conditions." (Tr. 13.)

Fields pulled his vehicle onto 42nd Street and Officer Burger followed for approximately one block before initiating a traffic stop. Officer Burger asked for a driver's license and Fields responded that he did not have a license. Officer Burger directed Fields to exit the vehicle. Officer Burger ordered Fields to place his hands on the top of his vehicle, and Fields initially complied, but then placed one hand back in his pocket. Officer Burger handcuffed Fields, searched his pockets, and found a handgun.

Fields was charged with Unlawful Possession of a Firearm by a SVF and Driving

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[1] Ind. Code § 35-47-4-5.

While Suspended.[2] At a bench trial conducted on March 23, 2011, the State elected to proceed only on the possession offense. Fields conceded that he had a 1994 conviction for Robbery, as a Class C felony. Fields was convicted of the possession offense and acquitted of Driving While Suspended. Fields received an eighteen-year sentence, with six years to be executed on home detention and twelve years suspended, with five of those years suspended to probation. This appeal ensued.

Discussion and Decision

Prior to trial, Fields filed a written motion to suppress evidence that a handgun had been recovered from his person, contending that Officer Burger obtained evidence as a result of "an improper detention and search" in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. (App. 34.) On the day of trial, Fields asserted as grounds for the motion to suppress that "no infraction had been noted" in the probable cause affidavit. (Tr. 12.) The trial court took the motion to suppress under advisement and proceeded with the trial. Ultimately, the trial court denied the motion to suppress, admitted the handgun into evidence and convicted Fields. Thus, the appeal presents a challenge to the admissibility of evidence.

"Where a defendant does not perfect an interlocutory appeal from a trial court's ruling on a motion to suppress, but objects to the admission of the evidence at trial, the issue on appeal is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial." Danner v. State, 931 N.E.2d 421, 426 (Ind. Ct. App. 2010),

[2] Ind. Code § 9-24-19-2.

trans. denied. Here, however, the evidence to be admitted was seized from Fields' person after a traffic stop led to a search. We review de novo a trial court's ruling on the constitutionality of a search or seizure. Id. (citing Belvedere v. State, 889 N.E.2d 286, 287 (Ind. 2008)). Nonetheless, we defer to a trial court's determination of the facts, which will not be overturned unless clearly erroneous. Id. We do not reweigh the evidence, but consider conflicting evidence most favorable to the trial court's ruling. Id. "The State bears the burden of demonstrating the constitutionality of the measures it uses in securing information." State v. Murray, 837 N.E.2d 223, 225 (Ind. Ct. App. 2005), trans. denied.

Fields contends that Officer Burger lacked reasonable suspicion to support a traffic stop and the resultant taking of the handgun therefore amounted to an unlawful seizure in violation of the Fourth Amendment.[3] A police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity maybe afoot. Terry v. Ohio, 392 U.S. 1, 21-22 (1968). "A traffic stop is a seizure under the Fourth Amendment, [and] police may not initiate a stop for any conceivable reason, but must possess at least reasonable suspicion that a traffic law has been violated or that criminal activity is taking place." Meredith v. State, 906 N.E.2d 867, 869 (Ind. 2009) (citing Whren v. United States, 517 U.S. 806, 809-10 (1996)). A law enforcement officer who believes in good faith that a person has committed an infraction or ordinance violation may detain that

[3] Fields does not develop a separate argument with respect to Article 1, Section 11 of the Indiana Constitution.

person; however, an officer's mistaken belief about what constitutes a violation does not amount to good faith. Gunn v. State, 956 N.E.2d 136, 139 (Ind. Ct. App. 2011) (citing Meredith, 906 N.E.2d at 870.)

Officer Burger, the State's sole witness, testified that "it was snowy and icy on the ground but was not snowing at that time." (Tr. 11.) He described his observation of Fields' vehicle as follows:

> I just saw it sliding sideways. It was going too fast for the road conditions. It nearly struck a huge snow mound near – with a light pole in the center where they had pushed snow together and then it went, as I said, back onto 42nd Street.

(Tr. 13-14.) In light of Officer Burger's testimony that Fields had been driving "too fast for the road conditions," Fields argues that Officer Burger stopped him because of a mistaken belief that he had violated Indiana Code Section 9-21-5-1.[4] This statute provides in pertinent part, "A person may not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, having regard to the actual and potential hazards then existing." (emphasis added.) It is undisputed that Fields was driving in a parking lot as opposed to a highway when Officer Burger saw the vehicle slide, and thus this particular statute is inapplicable.

Nonetheless, we cannot discern, from the record before us, whether Officer Burger stopped Fields on suspicion that he had violated that statute. The State elicited no testimony and presented no argument concerning the traffic code or criminal statute that Fields was

[4] Officer Burger did not identify a particular statute.

suspected of violating. This led to subsequent suggestions on the part of the trial court and the State on appeal. As the State points out, a particularized, objective basis must exist for suspecting legal wrongdoing and Officer Burger's subjective belief that a particular statute was violated is not controlling. See State v. Atkins, 834 N.E.2d 1028, 1032 (Ind. Ct. App. 2005) (emphasis added), trans. denied.

At the conclusion of the bench trial, in considering the motion to suppress, the trial court suggested the applicability of Indiana Code Section 9-21-5-4(5), which requires reduced speed "when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions." The trial court then stated:

> I think he probably is in violation of that statute because he drove at such a speed that the car had to slide or did slide. Secondly, I think regardless of that statute, it's reasonable for an officer to investigate the car that for no apparent reason at all is driving in a parking lot fast enough just to turn around that you would slide. The Defendant's Motion to Suppress is denied.

(Tr. 31.) Indiana Code Section 9-21-5-4 specifies "The driver of each vehicle shall, consistent with section 1 of this chapter, drive at an appropriate reduced speed as follows[.]" Section 1 provides general restrictions on highway driving speed; section 4 provides specific examples (such as approaching a hill crest). Reading the statutes in conjunction, as directed by our Legislature, they plainly refer to highway driving.

On appeal, the State suggests that Fields may have violated Indiana Code Section 9-21-8-52(a)(1)(A), which provides:

> A person who operates a vehicle and who recklessly:
> Drives at such an unreasonably high rate of speed or at such an unreasonably low rate of speed under the circumstances as to:
> endanger the safety or the property of others . . .

commits a Class B misdemeanor.

However, there is nothing in Officer Burger's testimony to show that Fields was operating his vehicle in a reckless, as opposed to merely negligent, manner. Although Officer Burger testified that Fields was traveling "too fast," we do not know if this was minimally so or involved an "unreasonably high rate of speed" so as to bring the conduct within the purview of the foregoing statute.

It was incumbent upon the State to establish that the intrusion into Fields' liberty was supported by reasonable suspicion. Terry, 392 U.S. at 22. It is unclear upon what basis Officer Burger may have believed that illegal activity had occurred or was about to occur, and the scant evidence of objective facts and circumstances does not point to a specific violation. An investigatory stop not supported by reasonable suspicion is invalid under the Fourth Amendment. As such, the trial court erred in admitting into evidence the handgun found during the investigative stop.

Admissions of evidence in violation of the Fourth Amendment are subject to harmless error analysis. Cudworth v. State, 818 N.E.2d 133, 142 (Ind. Ct. App. 2004), trans. denied. Harmless error occurs when the conviction is supported by substantial independent evidence of guilt, sufficient to satisfy the reviewing court that there is no likelihood that the erroneously admitted evidence contributed to the conviction. Id. Here, the State does not argue harmless error, and without the admission of the handgun into evidence, the State could not have convicted Fields of the SVF possession offense. Therefore, we reverse and order the trial court to vacate the conviction.

Reversed.

BAKER, J., and DARDEN, J., concur.