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:

PATRICIA CARESS McMATH
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CHRISTOPHER A. AMERICANOS
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.J.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0611-JV-996
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0608-JD-003043

July 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

A.J. appeals the juvenile court's adjudication finding him to be a delinquent child for committing an act that would be possession of marijuana, a Class A misdemeanor if committed by an adult. On appeal, A.J. raises one issue, which we restate as whether the juvenile court abused its discretion by admitting into evidence the marijuana found during a search of the vehicle A.J. was driving. Finding that the juvenile court did not abuse its discretion by admitting the marijuana into evidence, we affirm.

Facts and Procedural History

On August 1, 2006, police officer Adam Franklin ("Officer Franklin") initiated a traffic stop on a city street after observing that the vehicle he was following had an expired license plate. A.J. was the driver and sole occupant of the vehicle. When Officer Franklin requested A.J.'s license and registration, A.J. replied that he had neither. A.J. told Officer Franklin that he had just purchased the vehicle but had no paperwork indicating that he was the owner, and he presented to Officer Franklin a title bearing the name "Veronica Spencer." Officer Franklin ran a check to confirm that A.J. did not have a valid driver's license, and he arrested A.J. for driving without a license. After placing A.J. in handcuffs, and before having the vehicle impounded, Officer Franklin requested that assisting police officer Adam Chappell ("Officer Chappell") perform an inventory search of the vehicle for A.J.'s personal belongings. During the inventory search, Officer Chappell discovered a hand-rolled marijuana cigarette under the driver's seat of the vehicle.

The State filed a petition alleging A.J. to be a delinquent child for committing the acts of Possession of Marijuana, a Class A misdemeanor if committed by an adult,[1] and Driving Without a License, a Class C misdemeanor if committed by an adult.[2] At the denial hearing, A.J. admitted to driving without a license but denied the possession of marijuana allegation. A.J. agreed to stipulate that the lab report, which indicated that the substance found in the vehicle he was driving was marijuana, was valid and admissible as evidence. However, A.J. moved to suppress any evidence of marijuana:

> PUBLIC DEFENDER: Uh yes your honor we would move to suppress any uh evidence uh relating to any marijuana. Basically, [we are] moving to suppress any testimony about the search of the car that uh [A.J.] was driving.
>
> THE COURT: Okay.
>
> PUBLIC DEFENDER: As this was a (inaudible). I believe the State has the burden of showing that the search was valid.
>
> THE COURT: Okay well uh alright we'll do it in the form of a trial and I will note and everyone is on notice that you are objecting and you are objecting to the admissibility of evidence that was uh whatever was uh seized and we will incorporate by reference the testimony to the trial in chief.

Tr. p. 6-7. Officer Franklin testified, "After I placed [A.J.] in handcuffs[,] . . . I asked Officer Chappell to conduct an inventory of the vehicle for [A.J.'s] personal belongings." *Id*. at 11. Officer Franklin also answered in the affirmative when the State asked, "Is it common practice as an officer through your training and experience to do an inventory

[1] Ind. Code § 35-48-4-11.

[2] Ind. Code § 9-24-18-1.

search of a vehicle when you are planning on towing it?" *Id*. at 14. Officer Chappell testified, "[Officer Franklin] asked me to perform an inventory search of the vehicle for valuables, which I did." *Id*. at 18. The State then moved to enter into evidence the marijuana found during the inventory search of the vehicle. This colloquy ensued:

STATE:	Okay your Honor at this time [the] State would move to enter into evidence State's Exhibits I and II. [Exhibit] I would be the marijuana and [Exhibit] II would be the stipulated lab report.
THE COURT:	Okay [Public Defender]?
PUBLIC DEFENDER:	No objection your honor.
THE COURT:	Alright State's [Exhibits] I and II admitted into evidence.
PUBLIC DEFENDER:	Judge for clarification we have an ongoing objection to the (inaudible) …
THE COURT:	Well (inaudible) …
PUBLIC DEFENDER:	I mean this is a trial. I mean I still got my motion to suppress out there and I am… Obviously I am objecting…
THE COURT:	Well I thought that you [. . .] you said you were not objecting to [Exhibits] I and II.
PUBLIC DEFENDER:	Well.
THE COURT:	Now are you?
PUBLIC DEFENDER:	Absolutely. I mean I made my objection in the beginning and I haven't gotten an answer on my motion to suppress, kind of left that out there so yeah.
THE COURT:	Is this an oops?
PUBLIC DEFENDER:	Well I think maybe we have all made some

oops' here but okay yeah I am objecting to the marijuana. I mean we have allowed the…they have testified about it in the scope of my motion to suppress and you haven't ruled on that. I am framing all this as we still have a motion to suppress hanging out that [. . .] that hasn't been answered so yes, I would object to the admission of, of…

THE COURT: Alright I will admit [Exhibit] II that was the lab report based upon the stipulation.

PUBLIC DEFENDER: We stipulate that what is in that bag is marijuana but whether…

THE COURT: It's admissible for the case in chief is another thing.

PUBLIC DEFENDER: Yes that is a totally different issue.

* * * * *

THE COURT: Okay do you want to make argument with respect to the admissibility of (inaudible)[?]

* * * * *

PUBLIC DEFENDER: Ok uh the inventory exception is a well recognized exception to the warrant requirement. But the State still needs to show that an inventory search was necessary and proper . . . [I]f there has been no evidence that it is necessary to impound the car uh then it is okay and it is proper to suppress any evidence that was part of an inventory search . . . so basically our argument is that the police did not need to do an inventory search.

Id. at 19-22. The juvenile court denied A.J.'s motion to suppress and made a true finding as to possession of marijuana. The juvenile court adjudicated A.J. a delinquent child for committing possession of marijuana and driving without a license and placed him on

probation. A.J. now appeals the true finding on the possession of marijuana allegation.

Discussion and Decision

On appeal, A.J. argues that the juvenile court abused its discretion by admitting the marijuana into evidence because it was found during an unconstitutional search of the vehicle he was driving. Specifically, A.J. contends that the warrantless search of the vehicle he was driving violated the Fourth Amendment to the United States Constitution and Article I, § 11 of the Indiana Constitution, both of which serve to protect persons from unreasonable searches and seizures. *See Taylor v. State*, 842 N.E.2d 327, 330, 334 (Ind. 2006).

However, the State argues:

> [A.J.] is precluded from challenging the reasonableness of the search because he made no such challenge at trial . . . Although [A.J.] objected to the admission of evidence based on the appropriateness of the vehicle's impoundment, he never brought the reasonableness of the inventory search to the attention of the trial court and [it] is raised for the first time on appeal. Because [A.J.] failed to make an objection at trial, there is no issue for this Court to review . . . Juvenile also waived review of the search under the Indiana Constitution because nothing in the record establishes an objection at trial on that basis.

Appellee's Br. p. 4-5 n.3. We note that it is not immediately clear from the transcript the exact grounds upon which A.J. objected to admission of the marijuana evidence during the denial hearing, perhaps due in part to difficulties in transcription beyond A.J.'s control (the word "inaudible" appears four times in the pertinent part of the transcript from the denial hearing). As such, we will assume, for our purposes, that A.J. made the proper objections during the denial hearing, and we will address his arguments on their merits.

Because the admission and exclusion of evidence falls within the sound discretion of the trial court, we review the admission of evidence only for abuse of discretion. *N.W. v. State*, 834 N.E.2d 159, 161 (Ind. App. 2005), *trans. denied*. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances before the court. *Id*.

I. United States Constitution

A.J. first argues that the inventory search of the vehicle he was driving violated his Fourth Amendment right to be free from unreasonable searches, and the juvenile court abused its discretion, therefore, by admitting the marijuana into evidence. The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. *Berry v. State*, 704 N.E.2d 462, 464-65 (Ind. 1998). As a general rule, the Fourth Amendment prohibits a warrantless search. *Id*. at 465. When a search is conducted without a warrant, the State has the burden of proving that an exception to the warrant requirement existed at the time of the search. *Id*. One such exception to the warrant requirement is an inventory search of an impounded vehicle. *See, e.g., Colorado v. Bertine*, 479 U.S. 367, 371 (1987). In determining the propriety of an inventory search, the threshold question is whether the impoundment itself was proper. *See Fair v. State*, 627 N.E.2d 427, 431 (Ind. 1993). An impoundment is proper if it is authorized by state statute. *See South Dakota v. Opperman*, 428 U.S. 364, 373 (1976); *Goliday v. State*, 708 N.E.2d 4, 7 (Ind. 1999).

Here, the State has pointed to Indiana Code § 9-18-2-43(a), which provides as follows:

> [A] law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle required to be registered under this article that does not have the proper certificate of registration or license plate:
>
> (1) shall take the vehicle into the officer's custody; and
> (2) may cause the vehicle to be taken to and stored in a suitable place until:
>
> (A) the legal owner of the vehicle can be found; or
> (B) the proper certificate of registration and license plates have been procured.

A.J. was driving a vehicle that did not have the proper license plate, and A.J. was stopped and arrested on a city street. Thus, Indiana Code § 9-18-2-43(a) applies, and the impoundment here was proper. *See Goliday*, 708 N.E.2d at 7; *Edwards v. State*, 762 N.E.2d 128, 132-33 (Ind. Ct. App. 2002) (impoundment of a truck was proper after a juvenile was cited for an expired license plate, even though the truck was not left on the highway and there was no evidence that the truck posed any hazard, because Indiana Code § 9-18-2-43(a) required impoundment), *aff'd on reh'g*, 768 N.E.2d 506, *trans. denied*.

Having established that impoundment was proper, we next look to the reasonableness of the search itself. *See Fair*, 627 N.E.2d at 431. To pass constitutional muster, the search must be conducted pursuant to standard police procedures. *Id*. at 345. A.J. is correct in his assertion that the State must present more than the mere conclusory testimony of an officer that the search was conducted as a routine inventory. *See Stephens v. State*, 735 N.E.2d 278, 282 (Ind. Ct. App. 2000), *trans. denied*. The circumstances surrounding the intrusion must also indicate that the search was part of established and routine department procedures that are consistent with the protection of the police from potential danger and false claims of lost or stolen property and the

protection of the property of those arrested. *Rabadi v. State*, 541 N.E.2d 271, 275 (Ind. 1989).

Here, these standards were satisfied. Officer Franklin testified that it was common practice for an officer with his training and experience to do an inventory search of a vehicle he planned to have towed, and he testified that he acted pursuant to this common police practice. Thus, the State, through Officer Franklin's testimony, presented evidence demonstrating (1) the common police practice and (2) that Officer Franklin's actions were in accordance with this common practice. Further, Officer Franklin testified that he asked Officer Chappell to perform the inventory search for A.J.'s "personal belongings." Tr. p. 14. Officer Chappell testified that Officer Franklin asked him to perform the inventory search for A.J.'s "valuables." *Id*. at 18. These statements suggest that Officer Franklin ordered the inventory search in order to find and protect A.J.'s personal property so that the officers would not be subject to later claims of lost or stolen property. Also, Officer Chappell did not find the marijuana in a backpack or a locked compartment; he found the marijuana directly under the driver's seat, which provides no indication that Officer Chappell's search was so intrusive or overly comprehensive as to be unreasonable. *Cf. Edwards*, 762 N.E.2d at 133-34 (the inventory search was unconstitutional where a police officer found evidence inside of a closed garbage bag located in the vehicle, and the record did not include the substance of any police department policy regarding inventory searches or indicate that any policy existed). As such, the search of A.J.'s vehicle was a reasonable inventory search that fell within a well-recognized exception to the warrant requirement of the Fourth Amendment, and

thus, under this standard, we cannot say that the juvenile court abused its discretion by admitting into evidence the marijuana found during the search.

II. Indiana Constitution

Next, A.J. argues that, under the totality of the circumstances, the inventory search violated his rights under the Indiana Constitution. Specifically, he argues that the State did not carry its burden of showing the need for the search since it was not necessary for the police to impound the vehicle, and thus, the juvenile court abused its discretion by admitting the marijuana found during the search into evidence. To determine if a search and seizure is lawful under the Indiana Constitution, we apply a different analysis. Article 1, § 11 protects those areas of life that Hoosiers regard as private from unreasonable police activity. *Brown v. State*, 653 N.E.2d 77, 79 (Ind. 1995). In determining admissibility of evidence seized in a search, the trial court must consider the facts of the case to decide whether the police behavior was reasonable. *See id*. This provision must be liberally construed in its application to guarantee that people will not be subjected to unreasonable search and seizure. *Id*. It is the State's burden to prove that the search was reasonable under the totality of the circumstances. *Mitchell v. State*, 745 N.E.2d 775, 786 (Ind. 2001).

First, we consider the reasonableness of the impoundment. Here, the State has again pointed to Indiana Code § 9-18-2-43(a), which requires the police to take into custody vehicles that lack proper license and registration. Lacking the proper license and registration here, A.J.'s vehicle was properly taken into police custody per that statute, and the impoundment was reasonable.

As to the reasonableness of the search itself, we consider the following three factors: (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, 361 (Ind. 2005). The first prong of the test is inapplicable here because Officer Franklin testified that he performed an inventory search pursuant to common police practice, not a search initiated by suspicion or knowledge of a crime. As to the degree of intrusion, Officer Chappell found the marijuana directly under the driver's seat, not in a compartment or a bag, indicating that the intrusion was minimal. The third prong of the test considers the needs of law enforcement, and it is often recognized that police officers need to perform inventory searches of vehicles they plan to tow in order to protect themselves from liability for claims of lost or stolen goods that may arise out of impoundment of a vehicle. *See Rabadi*, 541 N.E.2d at 275. Officer Franklin and Officer Chappell both testified that they were looking for A.J.'s personal possessions. The officers were attempting to shield themselves from liability for any potential claims A.J. may have had concerning lost or stolen goods. Thus, upon review of the totality of the circumstances, we find that the inventory search of the vehicle was reasonable under Article 1, § 11 of the Indiana Constitution. As such, the evidence of marijuana was admissible, and we find no abuse of discretion.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.