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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY HARVEY,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0703-CR-214

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
Cause No. 49G23-0610-CM-214

August 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Anthony Harvey appeals his conviction for Carrying a Handgun Without a License, as a Class A misdemeanor, following a bench trial. He presents one issue for our review, namely, whether the court abused its discretion when it admitted certain evidence.

Affirmed.

FACTS AND PROCEDURAL HISTORY

On October 10, 2006, Indianapolis Police Officer Jeremy Johnson stopped a vehicle because the license plate was not lit. Harvey was a passenger in the car and the driver of the car, Latoya Mays, did not have a valid driver's license. Officer Johnson asked Harvey for identification, and Harvey produced his gun permit. Officer Johnson asked Harvey if he had a gun in the car, and Harvey said yes. Officer Johnson then located the loaded semiautomatic handgun under the passenger seat of the car. Officer Johnson noticed that the gun permit had expired. Officer Johnson ordered Mays and Harvey out of the car. He never advised Harvey of his Miranda rights. Officer Johnson handcuffed both Mays and Harvey, and Officer Johnson arrested Harvey. Although he learned of an arrest warrant for Harvey, Officer Johnson also knew that there was a question as to whether the warrant actually applied to Harvey.

On October 11, the State charged Harvey with carrying a handgun without a license, as a Class A misdemeanor. Harvey filed a written Motion to Suppress, and on November 27, the court heard evidence on the motion to suppress Harvey's statement and the subsequent discovery of the handgun. Harvey testified that his cousin, Marvin

Carswell, had used Harvey's identification when he was arrested, and the warrants were actually for Carswell. Harvey presented evidence in the form of documents issued on October 11 after Harvey's arrest, including a card containing his fingerprints issued by the Indianapolis Police Department Identification Branch, that proved he had no outstanding warrants.

The court ruled that Officer Johnson could not have conducted a warrantless inventory search of the car because there was no basis to impound the car. The court engaged the parties in a discussion of the facts and caselaw and stated:

The Defendant said one thing. [Officer Johnson] said something else and I've got no reason to believe that [either one of] you [is] lying. It's hard to reconcile it as if everybody is telling the truth. It's hard to do when you get two (2) versions and then he said that he didn't get his Miranda rights.

Transcript at 35. The court then ruled:

I think there was a basis to do an investigation and therefore frisk the vehicle [sic]. So it doesn't even get to the standing issue. There was a basis to frisk the vehicle [sic]. I don't believe this was a situation where Miranda warnings were required. Therefore[,] for all those reasons I am going to deny the motion to suppress.

Id. at 37. The court then proceeded to the trial on the charge.

The parties stipulated that the court could consider the evidence from the motion to suppress, and Harvey's objection was preserved for review. The State and Harvey presented additional evidence. The court found Harvey guilty as charged. On February 6, 2007, the court held Harvey's sentencing hearing and fined him \$250. This appeal ensued.

DISCUSSION AND DECISION

Harvey contends that the trial court improperly denied his motion to suppress his statement to Officer Johnson because Officer Johnson never read Harvey the warning required by Miranda v. Arizona, 384 U.S. 436 (1966). Harvey argues that he was under arrest at the time Officer Johnson asked about the gun and that arrest—based on warrants subsequently proven to be invalid—was improper. The State responds that Officer Harvey’s question was proper because Harvey was not in custody or, even if he was, the question was not reasonably likely to elicit an incriminating response.

The court held Harvey’s bench trial immediately after the suppression hearing, and the statement was admitted during his trial. Thus, the issue is whether the trial court abused its discretion by admitting the Harvey’s statement during his trial. Miller v. State, 846 N.E.2d 1077, 1080 (Ind. Ct. App. 2006), trans. denied. The standard of review for the admission of evidence is the same whether the defendant challenges the admission in a pre-trial motion to suppress or with an objection during trial. Id. “We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling.” Id. We are also required to consider the uncontested evidence favorable to the defendant. Id.

Harvey claims that “[t]he facts are undisputed that Mr. Harvey was arrested and handcuffed because a computer check showed two (2) warrants for his arrest.” Appellant’s Brief at 3. Although Harvey testified to those events,¹ Officer Johnson’s

¹ Harvey recounted the following sequence of events: 1) he provided Officer Johnson with his military identification card when the officer asked for identification; 2) Officer Johnson left but came back to the car and said that he was arresting Harvey for two warrants; 3) Officer Johnson ordered both Mays and Harvey out of the car and handcuffed them; 4) Officer Johnson went through Harvey’s pockets

testimony was markedly different.² The State summarizes the facts as “[Harvey] was not in handcuffs and the officer was attempting to identify the driver and passenger on the scene, [and Harvey] was not in custody.” Appellee’s Brief at 3.

The trial court acknowledged that the testimony of Officer Johnson and Harvey was contradictory, but it never clearly indicated which facts it relied upon to deny Harvey’s motion to suppress. The court also never determined whether Harvey was in custody when he made the statement that prompted Officer Johnson to find the handgun. Transcript at 36 (“Then if I find that there is a valid arrest even though it may have been based upon an invalid warrant[,], the officer had the basis to do either an arrest or a further investigatory detention.” (Emphasis added)). Given the contradictory testimony and the divergent arguments presented by the parties, our review of its ruling would be easier if the trial court had made explicit factual findings. See Willsey v. State, 698 N.E.2d 784, 789 (Ind. 1998) (“Where a ruling turns on disbelief of the only testimony in the record, it would be very helpful if the trial court had made an explicit finding.”)

Nevertheless, we resolve conflicting evidence in favor of the trial court and consider any substantial uncontroverted evidence. Id. Further, we will affirm the trial

and found the gun permit and asked Harvey if he had a gun; 5) Harvey said he did; and 6) Officer Johnson found the gun and told Harvey that he would be charged with possession of a handgun by a serious violent felon.

² Officer Johnson testified to this sequence: 1) Harvey produced the gun permit in response to Officer Johnson’s request for identification while Harvey was still in the car; 2) Officer Johnson asked Harvey if there was a gun in the car because it was his practice to do so; 3) Harvey said that the gun was under the front passenger seat; 5) Officer Johnson took the gun out of the car before Harvey was handcuffed; 6) Officer Johnson noticed that Harvey’s gun permit had expired; 7) Officer Johnson also ran a computer check on Harvey, which revealed an outstanding warrant, which he realized might not have actually applied to Harvey; and 10) Officer Johnson placed Harvey under arrest because of the warrant and the expired gun permit, but he would have arrested Harvey based on the expired gun permit alone. Officer Johnson admitted that he saw Harvey’s military identification card, but he could not testify specifically when in the series of events he saw it.

court's ruling where the basis for the ruling on a motion to suppress is unclear and "a reasonable view of the evidence supports the trial court's decision." Id. Although the court did not specifically rule whether Harvey was in custody, there are grounds in the record to affirm the trial court under this standard of review.

The undisputed evidence shows that Officer Johnson stopped the car because the license plate was unlit. "[P]olice officers may stop a vehicle when they observe minor traffic violations." State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006) (quoting Black v. State, 621 N.E.2d 368, 370 (Ind. Ct. App. 1993)). Even a minor traffic violation creates probable cause to stop the driver of the vehicle. Id. It is also undisputed that: Officer Johnson came into possession of Harvey's gun permit; Officer Johnson routinely inquires if there is a gun when he is confronted with a gun permit; Officer Johnson asked Harvey if he had a gun; Harvey immediately said he did and told Officer Harvey where the gun was located; and Officer Harvey took possession of the gun.

Our Supreme Court has held that "the Fourth Amendment does not prohibit police from routinely inquiring about the presence of weapons." Lockett v. State, 747 N.E.2d 539 (Ind. 2001). In that case, a police officer pulled Lockett over after the officer observed Lockett "turning without signaling, making wide turns, driving at inconsistent speeds, and using the entire roadway" because the office believed Lockett was impaired. Id. at 541. The officer asked Lockett for identification and whether he had any weapons, and, the second time the officer asked about weapons, Lockett said, "Yes, sir, underneath the driver's seat." Id. Lockett was arrested and charged with driving with a suspended

license and carrying a handgun without a license. Id. The trial court denied Lockett's motion to suppress, and the court affirmed that denial because:

[T]he traffic stop of the defendant, the officer's request that the defendant exit the car, and the officer's questioning the defendant regarding weapons did not constitute a custodial interrogation. This was a conventional traffic stop, and no Miranda warnings were required as the defendant was not in custody.

Id. at 543.

Here, the court did not make the basis for its ruling clear, but a reasonable view of the evidence, specifically Officer Johnson's testimony, supports the denial of Harvey's motion to suppress. That evidence shows that Officer Johnson stopped Mays' car due to a traffic infraction and he asked both Mays and Harvey for identification. When Harvey presented his gun permit for identification purposes, Officer Johnson asked if there was a gun in the car. Harvey quickly responded that there was a gun under the passenger seat.

Under Lockett, Officer Johnson could have asked this question even if Harvey had not used the gun permit as identification. Because these events occurred in the process of a valid traffic stop and Officer Johnson did not unreasonably detain Harvey prior to asking if he had a gun, Harvey was not in custody and no Miranda warnings were required. Id. at 543; see also Jarrell v. State, 818 N.E.2d 88, 92 (Ind. Ct. App. 2004), trans. denied (affirming denial of motion to suppress gun located in response to "Lockett-type inquiry . . . where Jarrell readily divulged the gun's presence after being asked only once"). Thus, the trial court properly denied Harvey's motion to suppress.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.