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**IN THE
COURT OF APPEALS OF INDIANA**

ANTWAN POWELL,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A04-0701-CR-31
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Judge
Cause No. 49G06-0608-FB-161842

September 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Antwan Powell appeals his conviction for Possession of Cocaine,¹ a class D felony. Upon appeal, Powell presents the following issues:

1. Were Powell's rights under the Fourth Amendment of the United States Constitution and article 1, section 11 of the Indiana Constitution violated when, after the original basis for his detention dissipated, he continued to be detained?
2. Did the trial court abuse its discretion in admitting evidence obtained following his continued detention?

We affirm.

During the early morning hours of August 29, 2006, Officer Michael Elder of the Indianapolis Police Department was on patrol when he received a report of shots fired in the 1200 to 1300 block of North Medford. En route to that location, Officer Elder received a second report from dispatch that approximately twenty gunshots had been fired in the 1800 block of North Medford. When Officer Elder arrived in the 1800 block of North Medford, he observed a vehicle sitting in the middle of the street with its taillights off. As he got closer, Officer Elder observed the driver turn off all of the vehicle's lights and then drive more than half of a city block before pulling over and parking at the beginning of the 1900 block of North Medford. While broadcasting on the radio and before activating his lights, Powell and the driver of the vehicle got out of the vehicle and started walking toward Officer Elder's car with their hands in the air in what Officer Elder believed to be a posture of surrender.

¹ Ind. Code Ann. § 35-48-4-6 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

Out of concern for his safety and because the vehicle that the two men had just exited had been in the area where shots had been reported fired, Officer Elder ordered Powell and the driver to put their hands on the back of the car. Shortly thereafter, another officer arrived. Powell and the driver were each subjected to a pat-down search. The pat-down of Powell revealed nothing suspicious. During the pat-down of the driver, however, Officer Elder found an empty gun holster and a magazine for a handgun in the driver's front pocket. When questioned about the holster and magazine, the driver informed Officer Elder that he had a gun in the car and that he had a permit to carry it. Powell and the driver were then placed in handcuffs and advised of their Miranda rights. At some point, Officer Elder looked through the windows of the car and observed a gun protruding from under the driver's seat.

Approximately five to ten minutes later, Officer Elder was informed that neither Powell nor the driver were wanted in connection with the report of shots fired. Before releasing the men from their handcuffs and permitting them to leave, Officer Elder opened the car door to secure the gun, at which time he discovered loose marijuana on the driver's side of the vehicle. After searching the car further, Officer Elder discovered a second, loaded gun in the car and a baggie, which was later determined to contain 2.0285 grams of cocaine, on the passenger side of the vehicle. Officer Elder testified that Powell told him "all the drugs in the car are mine." *Transcript* at 92.

On August 31, 2006, the State charged Powell with a number of drug and firearm-related offenses. On October 3, 2006, Powell filed his motion to suppress. A bench trial commenced on December 13, 2006, in the midst of which the trial court considered

Powell's motion to suppress. After hearing the evidence and arguments of counsel, the trial court denied Powell's motion to suppress.

At the conclusion of the bench trial, the trial court found Powell guilty of possession of cocaine as a class D felony (Count 3). The trial court granted Powell's motion for judgment on the evidence with regard to the firearm charges against him (Counts 1, 2, and 4). The trial court then sentenced Powell to three years imprisonment, to be served consecutively to a sentence imposed in another case.

Upon appeal, Powell argues that he was illegally detained in violation of the Fourth Amendment of the United States Constitution and article 1, section 11 of the Indiana Constitution. Powell does not argue that Officer Elder acted improperly when he ordered Powell and the driver to place their hands on the vehicle or when he conducted the pat-down search. Rather, Powell argues only that his continued detention after Officer Elder learned that Powell was not a suspect in the shootings was not supported by reasonable suspicion.

The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches and seizures. Without violating the dictates of the Fourth Amendment, an officer may briefly stop a person for investigative purposes if the officer has reasonable suspicion of criminal activity. *Williams v. State*, 754 N.E.2d 584 (Ind. Ct. App. 2001) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). 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 or is about to occur. *Id.* Reasonable suspicion is determined on a case-by-case basis by looking at

the totality of the circumstances. *Person v. State*, 764 N.E.2d 743 (Ind. Ct. App. 2002). 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.*

The requirements of the Fourth Amendment are satisfied if the facts known to the officer at the moment of the stop are such that a person of reasonable caution would believe that the action taken was appropriate. *State v. Dodson*, 733 N.E.2d 968 (Ind. Ct. App. 2000). A stop made for investigative purposes must be temporary and last no longer than is necessary to effectuate the purpose. *Id.* 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.*

Here, Officer Elder had responded to the vicinity of a report of shots fired when he observed the car in which Powell was a passenger parked in the middle of the street with its taillights off. As Officer Elder approached, the driver of the vehicle turned off all of the vehicles lights and drove nearly half a city block before parking. Before Officer Elder announced himself or attempted to initiate any type of encounter, Powell and the driver exited the vehicle and walked toward Officer Elder's car with their hands in the air as a gesture of surrender. Thus, aside from the fact that Officer Elder was responding to a report of shots fired, Officer Elder observed other particularly suspicious conduct from which a reasonable inference could be drawn that Powell and the driver may have been involved in some type of criminal activity, whether or not such criminal activity had anything to do with the reported shooting.

Further, we note that during an investigative stop, an officer may make a limited search for weapons if “a reasonably prudent person in the same circumstances would be warranted in the belief that his safety or that of another was in danger.” *State v. Dodson*, 733 N.E.2d at 971-72 (quoting *State v. Joe*, 693 N.E.2d 573, 575 (Ind. Ct. App. 1998), *trans. denied*). Even after Officer Elder learned that Powell and the driver were not wanted in connection with the shooting, their suspicious conduct prior to the investigative stop coupled with the fact that Officer Elder discovered an empty gun holster and magazine clip on the driver and that the driver admitted there was a gun in the car, were circumstances which presented concerns for Officer Elder’s safety. Under such circumstances, it was reasonable for Officer Elder to open the car door to secure the weapon. Looking at the totality of the circumstances, Officer Elder had an objectively justifiable reason to continue to detain Powell and the driver in order to search the car for such purpose.² Thus, we find no violation of the Fourth Amendment.

Powell also argues that his continued detention after he was ruled out as a suspect in the shootings and the subsequent search of the car were in violation of article 1, section 11 of the Indiana Constitution. Powell’s claim under the Indiana Constitution is the same as his Fourth Amendment claim. Although the language of article 1, section 11 largely tracks the language of the Fourth Amendment, Indiana has adopted a different analysis for claims brought under article 1, section 11. *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005). Under Indiana’s analysis, the validity of a search by the government turns on an

² As noted above, it was a result of this search that Officer Elder discovered the marijuana, which in turn led to a further search of the car during which the baggie of cocaine was discovered.

evaluation of the reasonableness of the officer's conduct given the totality of the circumstances. *Id.* Upon appeal, this court will evaluate the reasonableness of the search by looking at the totality of the circumstances, specifically considering both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure. *See Litchfield v. State*, 824 N.E.2d 356.

As noted above, the totality of the circumstances reveals that Officer Elder acted reasonably when he continued to detain Powell after learning that Powell was not wanted in connection with the report of shots fired. Indeed, Powell was a passenger in a car that was leaving the vicinity where shots had been fired. Officer Elder observed suspicious behavior in that (1) the car was originally parked in the middle of the street without its taillights on, (2) the driver then turned out all of the vehicle's lights before driving nearly half a block and parking, and (3) Powell and the driver then exited the car, without being asked to, and approached Officer Elder's car holding their hands in the air so as to communicate surrender. During a subsequent pat-down search, Officer Elder discovered that the driver had an empty gun holster and a magazine clip, and the driver eventually told Officer Elder that he did in fact have a gun in the car. After learning that Powell and the driver were not wanted in connection with the reported shooting, it was reasonable for Officer Elder to continue the detention of Powell and the driver in order to secure the weapon for officer safety, especially in light of the suspicious conduct he had observed and the fact that he had specific knowledge there was a gun in the car. We therefore find no violation of article 1, section 11.

2.

Powell argues that the trial court abused its discretion in admitting the drugs found in the car and his statement to Officer Elder that the drugs found in the car belonged to him because such evidence was obtained during what Powell argues was an illegal continued detention. Having rejected Powell's claim that his continued detention was not in violation of the Fourth Amendment or article 1, section 11, and thus there was no illegal search or seizure, there can be no "fruit of the poisonous tree." As discussed above, there are no constitutional violations that bar the admission of the challenged evidence.³

Judgment affirmed.

RILEY, J., and SHARPNACK, J., concur.

³ Furthermore, as an additional basis to affirm the trial court's admission of the cocaine found in the car, we note that Powell, as a passenger in the car, lacked standing to contest the search thereof. *See Polk v. State*, 822 N.E.2d 239 (Ind. Ct. App. 2005), *trans. denied*.