



Purcell Turner, Jr. was convicted after a bench trial of burglary<sup>1</sup> as a Class C felony. He was sentenced to seven and one-half years. He appeals, raising the following restated issue: whether the trial court abused its discretion in admitting evidence that he alleges was obtained in violation of the Fourth Amendment to the United States Constitution and Article I, section 11 of the Indiana Constitution.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 10, 2009, Elizabeth Vanett (“Vanett”) was looking out her kitchen window when she observed Turner walking quickly down an alley and looking around garages, trashcans, and backyard areas. *Tr.* at 106. Vanett’s suspicions were raised because there had recently been several break-ins in the neighborhood. *Id.* About thirty minutes later, Vanett saw Turner again, but this time he was walking rapidly while pushing a lawn mower with other lawn equipment stacked on the mower. *Id.* at 107. Vanett then called 911. *Id.* In response to the suspicious person call, Officer Michael Carey of the South Bend Police Department arrived at Vanett’s home. *Id.* at 22.

Around the same time, Detective Jim McIntire and Chief Rick Bishop of the South Bend Police Department were patrolling the area for suspicious activity due to recent burglaries. *Id.* at 155-56. They observed Turner pushing the equipment, but they continued patrolling. *Id.* at 157. Very soon thereafter, the officers received a call from dispatch of a suspicious male pushing a lawn mower with other yard equipment, so they turned around to find Turner. *Id.* The officers stopped and questioned Turner. *Id.* at 158. Turner told them

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<sup>1</sup> See Ind. Code § 35-43-2-1.

the equipment was his and that he “was coming from mowing some yards.” *Id.* at 159. After further questioning regarding which lawns he mowed, the homeowners’ names, and what money he was paid, Turner changed his story and stated that he did not actually get to mow because the homeowners were not home. *Id.* at 160. The officers asked Turner to start any of the equipment, and he could not do so. *Id.*

Officer Gary Reynolds, who had joined Detective McIntire and Chief Bishop, went to Turner’s home and spoke with a female that Turner lived with, but the officer was unable to verify Turner’s story. *Id.* at 91-92. Officer Reynolds returned to Turner’s location, and the officers called for a unit to transport the yard equipment to the police station for holding until they could further investigate. *Id.* at 92. While Officer Reynolds was attempting to verify Turner’s story, a long, flat-bladed screwdriver was taken from Turner’s possession by Detective McIntire and Chief Bishop. *Id.* at 182. Turner was then released. *Id.* at 92.

Chief Bishop and Detective McIntire searched the area for signs of burglary and found a garage with a service door pried open. *Id.* at 164. No lawn mower was found in the garage. *Id.* at 186. Officer Reynolds heard over the radio that a possible garage burglary had occurred, so he located Turner, detained him, and drove to the scene of the suspected burglary. *Id.* at 93. Pry marks consistent with the flat-bladed screwdriver found in Turner’s possession were located on the garage door. *Id.* at 97. Lawn mower tracks were also found leading away from the door of the garage. *Id.* at 94-95. The owner of the garage identified the lawn mower, weed whacker, and lawn blower as belonging to him, and he said that Turner did not have his permission to take them. *Id.* at 166, 188-89.

On June 12, 2009, the State charged Turner with burglary as a Class C felony. *Appellant's App.* at 5. Turner filed a motion to suppress evidence obtained during his investigatory stop, claiming that: 1) the police lacked probable cause to believe a crime occurred at the time they detained him; 2) at the time of detention, there was no report of a criminal offense; and 3) the police had no reason to take possession of Turner's property. *Id.* at 14. The trial court denied Turner's motion after a hearing. *Tr.* at 79-81. At the bench trial, Turner did not make an objection as to the admission of the evidence or illegality of the stop. *Id.* at 83-280. At the conclusion of the trial, Turner was found guilty as charged and was given a seven and one-half year sentence. Turner now appeals.

### **DISCUSSION AND DECISION**

Turner contends the trial court erred in admitting illegally seized evidence. Turner filed a pre-trial motion to suppress evidence; however, "[t]he failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal." *Jackson v. State*, 735 N.E.2d 1146, 1152 (Ind. 2000). A contemporaneous objection allows the trial court to have another opportunity to rule on the matter after other evidence has been introduced. *Id.* Turner made no contemporaneous objection at trial to the introduction of evidence, and his pre-trial motion to suppress did not preserve the error on appeal.

Waiver notwithstanding, Turner has failed to show that the evidence was illegally seized. A trial court has broad discretion in ruling on the admissibility of evidence. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Accordingly, we will

reverse a trial court's ruling on the admissibility of evidence only when the trial court abused its 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.*

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution protect citizens from unreasonable searches and seizures. Although the language of Article I, Section 11 is nearly identical to its federal counterpart, our analysis under Article I, Section 11 is separate and distinct. *Peters v. State*, 888 N.E.2d 274, 278 (Ind. Ct. App. 2008), *trans. denied*. We therefore generally conduct independent examinations of the propriety of the search and seizure under the Fourth Amendment and Article I, Section 11. *Id.*

The Fourth Amendment provides, in pertinent part: "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. Amend. IV. Generally, the Fourth Amendment prohibits warrantless searches. *Peters*, 888 N.E.2d at 278. Consequently, when a search is conducted without a warrant, the State has the burden of proving that the search falls into one of the exceptions to the warrant requirement. *Id.* Further, there are three levels of police investigation, two of which implicate the Fourth Amendment and one of which does not. *State v. Augustine*, 851 N.E.2d 1022, 1025 (Ind. Ct. App. 2006). First, the Fourth Amendment requires that an arrest or detention lasting more than a short period of time be justified by probable cause. *Id.* Second, the police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based upon specific and articulable

facts, the officer has a reasonable suspicion that criminal activity has or is about to occur. *Id.* Third, if an officer makes a brief and casual inquiry of a citizen, the Fourth Amendment is not implicated. *Id.*

Reasonable suspicion is satisfied where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur. *Id.* Reasonable suspicion requires something more than an inchoate and unparticularized suspicion or hunch, but something considerably less than proof of wrongdoing by a preponderance of the evidence. *Cardwell v. State*, 666 N.E.2d 420, 422 (Ind. Ct. App. 1996), *trans. denied*.

Article I, Section 11 turns on an evaluation of the reasonableness of police conduct under the totality of the circumstances. *State v. Litchfield*, 849 N.E.2d 170, 173 (Ind. Ct. App. 2006), *trans. denied*. The reasonableness of a search or seizure turns on the balancing of: (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 totality of the circumstances evaluation requires consideration of 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. *Litchfield*, 849 N.E.2d at 173. In selecting a subject for search, an officer must have an articulable individualized suspicion, a standard essentially the same as the Fourth Amendment's reasonable suspicion requirement for investigative stops. *Id.*

Here, the officers involved had reasonable suspicion that Turner had committed criminal activity. There had been a recent rash of burglaries in the area. A witness saw Turner moving quickly and looking around yards and property, and the same witness saw Turner thirty minutes later with yard equipment that he did not have when she previously observed him. The witness called 911 and gave a description of Turner to police, and the officers stopped him because he matched the description. Collectively, these facts gave the officers reasonable suspicion to stop Turner for investigative purposes under both the Fourth Amendment and Article I, Section 11.

Turner also argues that the officers' seizure of the lawn equipment was without probable cause. He bases this argument on the fact that the equipment had not been reported stolen when it was seized. We disagree. We initially note that Turner did not have standing to challenge the seizure of the lawn equipment. To establish a violation of Fourth Amendment rights, a defendant must demonstrate that he personally has an expectation of privacy in the place searched and that his expectation is reasonable. *Sisk v. State*, 785 N.E.2d 271, 274 (Ind. Ct. App. 2003). "It is well-founded that the privilege against unlawful search and seizure is personal, and cannot be asserted to challenge the search or seizure of another person's property." *Buza v. State*, 529 N.E.2d 334, 338 (Ind. 1988). Therefore, Turner did not have standing to challenge the admittance of the stolen property into evidence as he had no legitimate expectation of privacy or interest in the stolen property.

Further, probable cause existed to seize the property. In addition to the facts that caused the officers to have a reasonable suspicion that criminal activity had occurred, during the investigatory stop of Turner, he provided probable cause to seize the property. He changed his story in reaction to investigative questions by the officers. Doing so caused his entire story to be suspicious. He was unable to start any of the equipment that he claimed belonged to him, and an officer who went to Turner's residence in an effort to corroborate his story was unable to do so. The officers had probable cause to seize the property.

Under an Article I, Section 11 analysis, the officers' conduct was reasonable under the totality of the circumstances. The degree of intrusion upon Turner's activity was not terribly high. The officers seized equipment that was already exposed to the public as Turner was walking home. Seizing the equipment did not create any substantial hardship on Turner. The basis for approaching Turner was that a witness had called 911 and reported a suspicious person that matched Turner's appearance. Due to several recent burglaries in the area, the police officers' need to catch anyone involved in burglaries was high. Once stopped, the circumstances discussed above gave the officers probable cause to seize the lawn equipment. We conclude that the trial court did not abuse its discretion when it admitted the evidence at trial.

Affirmed.

RILEY, J., and BAILEY, J., concur.