

Children's Law Center of Indiana



Delinquency

4/22/10

In ***L.W. v. State***, 926 N.E.2d 52 (Ind. Ct. App. 2009), the Court reversed the child's delinquency adjudications for burglary, a class B felony when committed by an adult, and theft, a class D felony when committed by an adult. On May 28, 2009, Ebony Chisolm notified police regarding a burglary at her residence in Indianapolis. Chisolm had left her home at 8:30 p.m. that evening, and, when she returned, she found an open window and a broken interior door. Jewelry, money, a video game system, and a plastic water jug full of change were missing from Chisolm's home. A man who identified himself as Brandon Shockley called the police and reported that the burglary suspect was a "tall black male wearing [a] black shirt and black shoes." A Lawrence Police Department officer who was patrolling the area received Shockley's tip from police dispatch and saw the child walking about two blocks from Chisolm's house. The officer approached the child, who stopped when the officer requested and complied with the officer's order to get down on the ground. The officer observed that the child "looked like he wanted to run but didn't." The officer helped the child stand up and asked the child where he had come from. The child replied that he had just been playing basketball at his cousin's house. At that point the officer considered the encounter with the child to be a Terry stop, and he patted the child down "for weapons only." During the pat down, the officer did not feel a weapon, but he did feel what seemed to be a large number of coins in the child's front pockets, and he could hear what sounded like coins "moving around." After the officer learned that the burglary suspect had stolen a large quantity of change, he arrested the child. Thereafter, the officer found some of Chisolm's jewelry and coins in the child's pockets. The State filed a petition against the child, alleging delinquency for burglary and theft. During the hearing on the petition, the child objected to the admissibility of the evidence obtained by the police, arguing that the officer's investigatory stop and ensuing search were illegal. The juvenile court admitted the evidence and adjudicated the child a delinquent child on both counts. The child appealed.

The Court concluded the State has not demonstrated that based on specific and articulable facts the officer had a particularized and objective basis to suspect that the child had committed, was committing, or was about to commit legal wrongdoing; therefore, the information the police possessed was insufficient to support an investigatory stop of the child. *Id.* at 60. Quoting Terry v. Ohio, 392 U.S.1, 21-22, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968), the Court noted that 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 “may be afoot.” L.W. at 55. The reasonable suspicion requirement is met where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur. Id., citing United States v. Arvizu, 534 U.S. 266, 274, 122 S. Ct. 744, 151 L. Ed2d 740 (2002). The Court stated that the dispositive question is whether the tip Shockley provided to the police was sufficient to support a determination of reasonable suspicion to perform an investigatory stop of the child. L.W. at 55. Quoting State v. Glass, 769 N.E.2d 639, 643 (Ind. Ct. App. 2002), *trans. denied*, the Court said, “The fact that a named caller with an untested reputation called the police does not in itself establish reasonable suspicion.” L.W. at 55. The Court observed that both the U.S. and Indiana Supreme Courts have consistently held that the totality of the circumstances test applies to a determination of reasonable suspicion, even where a tipster identifies himself. Id. at 55-56. Quoting Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 110 L. Ed.2d 301 (1990), the Court stated, “[r]easonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability.” L.W. at 56. Quoting Kellems v. State, 842 N.E.2d 352 (Ind. 2006), the Court observed that while a tip made by a so-called “concerned citizen” has greater indicia of reliability than made by a professional informant, the ultimate test is “one of the totality of the circumstances.” Kellems at 356. L.W. at 56. The Court concluded that neither the U.S. nor the Indiana Supreme Court has held that a tip from a tipster whose identify is known to the police is sufficient per se to establish reasonable suspicion. Id. at 56-57. The Court further commented: (1) there is no evidence that Shockley identified himself in a way that would place his credibility at risk or subject him to criminal penalties; (2) Shockley did not demonstrate any inside knowledge or provide significant information that the police could corroborate; (3) the police knew Shockley’s name, but his reputation was untested. Id. at 57, 59. Although the State contends that there was a reasonable suspicion for the Terry stop of the child, the Court was not persuaded, noting: (1) given the hour and a half window of the time during which the crime occurred and the lack of evidence regarding the lapse of time between the dispatch and the police officer’s encounter with the child, the significance of the child’s location in the neighborhood is marginal; (2) while the child was two blocks away from Chisolm’s house at the time of the stop, he was also two blocks away from his cousin’s house, where he told the police officer he had been playing basketball; (3) the police officer’s speculation about the child’s intention to run was nothing more than a hunch, which is not enough; (4) there was no evidence that the child made any furtive gestures or movements; (5) the child did not flee, but stopped, followed the police officer’s commands, and answered his questions; (6) Shockley’s description of the suspect lacked sufficiently distinguishing characteristics to provide a basis for meaningful corroboration; (7) the officer did not notice the child’s bulging pockets until after the officer had initiated the pat down search. Id. at 60. Considering the totality of the circumstances, including both the quantity and quality of information, the Court concluded that the information the police possessed was insufficient to support an investigatory stop of the child. Id.