

Children's Law Center of Indiana



Delinquency

6/17/10

In W.H. v. State, 928 N.E.2d 288 (Ind. Ct. App. 2010), the Court affirmed the juvenile court's delinquency adjudication of the child for Class A misdemeanor carrying a handgun without a license. On July 18, 2009, two Indianapolis Metropolitan Police Officers, who were in full police uniform on duty at Indiana Black Expo, received a radio report from a police spotter that a subject, a black male wearing a white shirt with red stripes and black jeans or shorts, was "making hand [] movements towards his waist," "lifting up his shirt," and "showing something from his waistband to another person." The officers headed into the crowd of 50 to 100 people. One of the officers suspected that the subject was carrying a firearm and the officer was concerned for his own safety and the safety of those around him. The officers walked toward a subject later identified as the fifteen-year-old child. The officers told the child he "was being detained" based on the radio report. The child took a few steps toward one of the officers and then turned away and placed his left hand inside his left front pants pocket. One of the officers asked the child if he had any weapons on him. The child denied having a weapon. One of the officers noticed a bulge on the child's right side beneath his shirt, lifted the shirt, and discovered a loaded .9 millimeter semi-automatic pistol for which the child did not have a license. The child was handcuffed and taken into custody. The State charged the child with, among other things, Class A misdemeanor carrying a handgun without a license and Class A misdemeanor dangerous possession of a firearm. The State called the police officers to testify at the delinquency fact-finding hearing and also offered the child's handgun into evidence. The child moved to suppress the State's evidence as the product of an unconstitutional search and seizure. The parties argued the motion throughout the fact-finding hearing. The child directed the court's attention to Stalling v. State, 713 N.E.2d 922 (Ind. Ct. App. 1999), where the Court found that a police stop was not based on reasonable suspicion and was therefore unconstitutional. The juvenile court concluded that the facts in Stalling were different than the facts in the child's case. The court denied the child's suppression motion and admitted the State's evidence over objection. The court merged the weapons charges and entered a true finding on Class A misdemeanor carrying a handgun without a license. After the court entered its findings, Father sought permission to address the court. Father was concerned about the propriety of the police officers' conduct, arguing that the police treated the child differently because the child is African-American. Father and the juvenile court magistrate had a discussion, during which, inter alia, Father agreed the child was downtown with a loaded gun and the magistrate opined that false allegations were not an issue in the case. The child appealed.

The Court found that it was unnecessary to remand the case so the juvenile court could explain its reasons for denying the suppression motion. *Id.* at 293. The child argued that the court offered no explanation for the constitutional basis of its suppression ruling and requested that the case be remanded so the juvenile court could explain its reasoning. The Court, citing Ind. Trial Rule 52(A), observed that a trial court need not enter findings of fact and conclusions of law in connection with a motion to suppress evidence. *Id.* The Court noted that the juvenile court properly based its ruling on the constitutionality of the officers' search, discussing case law with defense counsel before reaching its decision. *Id.* The Court therefore disagreed with the child's claim that the juvenile court offered "no explanation for the constitutional basis of its ruling." *Id.* The Court said that the juvenile court's comments admonishing Father for permitting the child to attend Black Expo with a loaded gun were irrelevant to the determination of reasonable suspicion and the constitutionality of the police officers' stop-and-frisk. *Id.* at 294.

The Court concluded that the police officers' stop was justified by reasonable suspicion; therefore the State's evidence which was seized and introduced did not violate the child's Fourth Amendment rights. *Id.* at 295. The Court said that the Fourth Amendment prohibits "unreasonable searches and seizures" by the Government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. *Id.* at 294. The Court, quoting *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968) said 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." *W.H.* at 294. The Court, citing *Campos v. State*, 885 N.E.2d 590 (Ind. 2008), opined that reasonable suspicion exists when the facts known to the detaining officer, together with the reasonable inferences arising therefrom, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur. *Campos* at 597. *W.H.* at 294. The Court also said: (1) in making a reasonable suspicion determination, reviewing courts examine the "totality of the circumstances" of the case to see whether the officer had a "particularized and objective basis" for suspecting legal wrongdoing; (2) officers are not required to rule out all possibility of innocent behavior before initiating a stop; (3) courts have "required less evidence when the stop is to intercept a man suspected of being armed with a gun." *Id.* at 294-95. The Court opined that the information from the spotter, including the child's act of displaying something from his waistband, furnished the officers with a particularized and objective basis for suspecting that the child had an illegal weapon on his person. *Id.* at 295. The Court also contrasted the facts in *Stalling v. State*, 713 N.E.2d 922 (Ind. Ct. App. 1999) and *Williams v. State*, 745 N.E.2d 241 (Ind. Ct. App. 2001), which were cited by the child to support his argument that the police lacked reasonable suspicion, noting that in the child's case there were between 50 to 100 people in the vicinity and the child was suspected to be carrying a dangerous weapon. *W.H.* at 296.

The Court concluded that the child’s stop-and-frisk did not violate Article 1, Section 11 of the Indiana Constitution, and the evidence obtained as a result thereof was properly admitted at his delinquency fact-finding. Id. at 297. Article 1, Section 11 provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.” The Court’s analysis of reasonableness under Article 1, Section 11 turns on “(1) the degree of concern, suspicion, or knowledge that a violation had 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). W.H. at 296. The Court has previously adopted the Terry rationale in determining the legality of investigatory stops under Article 1, Section 11, citing Carter v. State, 692 N.E.2d 464 (Ind. Ct. App. 1997). W.H. at 297. The Court concluded that the police officers in the child’s case did not act unreasonably in approaching the child and telling him to come with the police based on (1) the degree of suspicion and concern that the child had a firearm on his person, (2) the brevity and intrusive character of the stop, and (3) the need for law enforcement to maintain safety at a crowded city convention. Id.