

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed May 6, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-1484

Lower Tribunal No. 06-4713

L.P., a juvenile,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Johnson, Judge.

Carlos J. Martinez, Public Defender, Howard K. Blumberg, Assistant Public Defender, and Rochelle Nunez and Christina Kirou, Certified Legal Interns, for appellant.

Bill McCollum, Attorney General, and Heidi Milan Caballero, Assistant Attorney General, for appellee.

Before GERSTEN, C.J., and COPE and SUAREZ, JJ.

PER CURIAM.

L.P., a juvenile, appeals his adjudication of delinquency for possession of cannabis, claiming error in denying his motion to suppress. We reverse.

At about 2 a.m., a police officer stopped a driver for speeding on a public road. The officer observed L.P. in the passenger seat. After noticing that L.P. looked young, the officer asked L.P. his age and his relationship to the driver. In response, L.P. stated he was fifteen years old and that the driver was his friend.

Based upon L.P.'s statement, the officer determined that L.P. violated Miami-Dade County, Florida, Code sections 21-201 to 21-211 ("the curfew ordinance"). Therefore, the officer ordered L.P. out of the car and told him to place his hands on the car and to stay put. L.P. complied with the officer's order. Then, as the officer approached him, L.P. stated that he had marijuana in his pocket. The officer removed the marijuana from L.P.'s pocket and arrested him.

At the adjudicatory hearing, L.P. moved to suppress the incriminating statement and the physical evidence arguing that they were the fruits of an unconstitutional seizure. The trial court denied the motion, adjudicated L.P. delinquent, and placed him on probation. L.P. appealed.

On appeal, L.P. asserts that the trial court erred in denying his motion to suppress because the officer failed to comply with the curfew ordinance. The officer did not ascertain L.P.'s reason for being in public after curfew hours. Thus, the officer did not have reasonable grounds to believe that L.P. violated the curfew

ordinance. The State contends that the trial court correctly denied L.P.'s motion because the officer had reasonable suspicion to conduct an investigatory stop, and, during his investigation, L.P. volunteered the fact that he had marijuana. We agree with L.P.

In determining whether an encounter is a seizure, the court looks to the totality of the circumstances to decide if the police conduct would make a reasonable person believe that he or she was free to terminate the encounter. Dante v. State, 971 So. 2d 938, 939 (Fla. 3d DCA 2007). A seizure must be supported by probable cause, which exists when an officer has reasonable grounds to believe that the suspect has committed a crime. Chavez v. State, 832 So. 2d 730, 747 (Fla. 2002).

Here, the officer clearly testified that he asked L.P. to step out of the car because he believed L.P. was violating the curfew ordinance. Further, the officer admitted that, when he ordered L.P. out of the car, L.P. was no longer free to go. Thus, the sole issue is whether the officer had probable cause to seize L.P. for a curfew violation, before L.P. admitted possessing marijuana.

The curfew ordinance provides that any person under the age of seventeen shall not be in any public place during curfew hours. § 21-204. However, the ordinance also contains twelve exceptions or circumstances under which a juvenile may be out during curfew hours. Some of the exceptions include returning from

work, responding to an emergency, or attending a school activity. § 21-205. Therefore, the ordinance requires that an officer who suspects a violation ask the apparent offender's age and reason for being in a public place during curfew hours. § 21-206.

Apparently, the officer here believed that the mere fact that the fifteen-year-old juvenile was out at 2:00 a.m. was enough probable cause to seize him. Consequently, the officer seized L.P. without determining through further inquiry, as required by the curfew ordinance, whether any exception applied. Without such inquiry, there can be no probable cause that a juvenile violated the curfew ordinance.¹

¹ The curfew ordinance prohibits the officer from taking the apparent offender into custody without completing the required inquiry:

Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer, upon finding a person suspected to be in violation of this chapter, shall ask the apparent offender's age and reason for being in a public or semi-public place during curfew hours. The law enforcement officer shall immediately attempt to verify statements or other information provided by the juvenile through contact with the parent, legal guardian or others. The officer shall not issue a written warning to appear or take into custody any person pursuant to this article unless the officer reasonably believes that an offense has occurred and that, based on any response or circumstance, no defense in Section 21-205 is present.

§ 21-206.

In determining if statements and other evidence obtained after an illegal arrest should be excluded, the question is whether, after finding the primary illegality, the officer obtained the evidence at issue by exploiting the primary illegality or, instead, by means sufficiently attenuated to be purged of the primary taint. See State v. Frierson, 926 So. 2d 1139, 1143 (Fla. 2006). To properly undertake this inquiry, a court must consider three factors: “(1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct.” Frierson, 926 So. 2d at 1143.

Applying the first factor here, a brief time elapsed between L.P.’s illegal seizure and the incriminating statement. This weighs against finding that the officer obtained the evidence by means sufficiently attenuated from the illegality of the seizure, but this factor is not dispositive. Turning to the second factor, there is no evidence or argument regarding an intervening circumstance, which also weighs against attenuation. Finally, applying the third factor, there was an unacceptable disregard of constitutional protections.

Stated simply, the officer decided to arrest L.P. before asking the questions required to determine if he violated the law. This “cart before the horse” approach to effectuating an arrest is anathema to our constitutional guarantees. Therefore, the trial court erroneously denied L.P.’s motion to suppress.

Accordingly, we reverse the trial court's adjudication of guilty and remand with instructions to proceed without the incriminating statement or the physical evidence.

Reversed and remanded.