

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Ronald Lemon,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 6, 2024

Court of Appeals Case No.
23A-CR-2121

Appeal from the Vanderburgh Circuit Court

The Honorable Kelli E. Fink, Magistrate

Trial Court Cause No.
82C01-2305-F2-002777

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] In May 2023, law enforcement officers had an active felony arrest warrant for Andrew Doalson. They also had information that Doalson would be returning from the Louisville, Kentucky, area in a grey Ford Edge with a large amount of illegal drugs. Law enforcement observed a silver Ford Edge driving westbound on Interstate 64 and began following it. As the Edge exited Interstate 64 toward Highway 65, for an unknown reason, it pulled off the road and stopped on the exit ramp. The two people inside, Ronald Lemon and Doalson, exited the vehicle. Law enforcement officers parked near the Edge and proceeded to detain Lemon and Doalson. A K-9 unit conducted a free-air sniff around the outside of the Edge and indicated the presence of illegal drugs therein. Officers searched the vehicle and found several illegal drugs. Lemon was charged with and ultimately convicted of multiple drug-related offenses. Lemon now appeals and raises one issue for our review, which we restate as follows: Whether the trial court abused its discretion in admitting certain evidence at trial.

[2] We affirm.

Facts and Procedural History

[3] In late April or early May 2023, the Evansville Vanderburgh County Drug Task Force (the “Task Force”) received information that Andrew Doalson would be returning to Vanderburgh County from Louisville with methamphetamine. At that time, Doalson had a felony warrant for his arrest. In the late afternoon and

early evening hours of May 5, 2023, law enforcement officers conducted moving surveillance along Interstate 64 for a grey Ford Edge in which Doalson was travelling and that they knew was associated with him. Officers saw a silver Ford Edge and decided to follow it. The Edge exited Interstate 64 at Highway 65 in Vanderburgh County. Evansville Police Department Officer Cliff Simpson and Task Force Officer James Budde, who were part of the surveillance team, followed the Edge onto the exit ramp in their unmarked vehicle. Once the Edge reached the stop sign at the top of the exit ramp, it pulled off on the shoulder. Officers Simpson and Budde parked near the Edge, which they observed had an expired registration.

[4] After the Edge parked, Lemon exited the driver seat and walked around the Edge to the rear passenger side. Doalson, who was in the front passenger seat, also exited the Edge. At that point, Officers Simpson and Budde exited their vehicle, approached Lemon and Doalson, identified themselves as law enforcement, and ordered Lemon and Doalson to the ground. Lemon started to move away from the Edge toward the ditch on the side of the road. Before he eventually got on the ground, he had moved “maybe 15 yards away from the vehicle down in the ditch and after several verbal commands.” Tr. Vol. III at 112. As Officers Simpson and Budde were taking Doalson and Lemon into custody, Vanderburgh County Sheriff’s Office Deputy Sheriff Joshua Patterson arrived on scene; he proceeded to assist Officers Simpson and Budde with detaining Doalson and Lemon. The officers later discovered that Lemon was driving on a suspended license.

- [5] After Doalson and Lemon were in custody and within 10 to 15 minutes of Detective Patterson arriving on scene, he had Ozzie, his K-9, conduct a free-air sniff of the Edge. Ozzie—who is trained to detect methamphetamine, cocaine, marijuana, and heroin—indicated there were likely illegal drugs in the Edge. Detective Patterson informed other officers on scene of Ozzie’s alert, and they proceeded to search the Edge. During the search, officers found two bags in the glovebox containing THC wrappers, a digital scale, baggies of narcotics, powder-filled foils, and pills. Officers also found a digital scale with white crystal residue on it and a glass pipe in the center console cup holder. Later testing by the Indiana State Police Laboratory revealed that Lemon and Doalson had 113.04 grams of methamphetamine, 4.36 grams of methylenedioxymethamphetamine (MDMA), 27.92 grams of fentanyl, and seven tablets of Clonazepam in the Edge that night.
- [6] The State charged Lemon with (1) dealing in methamphetamine as a Level 2 felony,¹ (2) possession of a narcotic drug as a Level 6 felony,² (3) possession of a controlled substance as a Class A misdemeanor,³ (4) possession of a controlled

¹ Ind. Code § 35-48-4-1.1(a)(2), (e)(1).

² *Id.* § 35-48-4-6(a).

³ *Id.* § 35-48-4-7(a).

substance as a Class A misdemeanor,⁴ and (5) dealing in a narcotic drug as a Level 2 felony⁵.

[7] On June 7, 2023, Lemon, who chose to proceed pro se, filed a motion to suppress any evidence discovered during the search of the Edge because law enforcement officers' seizure of Lemon and subsequent search of the Edge violated Lemon's rights under the Fourth Amendment to the United States Constitution. The trial court held an evidentiary hearing on Lemon's motion to suppress, at which Lemon chose once again to proceed pro se. On June 29, 2023, the trial court denied Lemon's motion to suppress.

[8] On July 19, 2023, Lemon's jury trial began, and Lemon proceeded pro se and with standby counsel. The jury ultimately found Lemon guilty as charged. The trial court sentenced Lemon to a total aggregate sentence of 22 years executed at the Indiana Department of Correction. This appeal ensued.

Discussion and Decision

[9] Lemon claims that the trial court abused its discretion in admitting certain evidence at trial. We review rulings on admissibility of evidence for an abuse of discretion and will reverse only "when admission is clearly against the logic and effect of the facts and circumstances." *Id.* (citing *Joyner v. State*, 678 N.E.2d 386, 390 (Ind. 1997)). "However, when a challenge to an evidentiary ruling is

⁴ *Id.* § 35-48-4-11(a)(1), (b).

⁵ *Id.* § 35-48-4-1(a)(2), (e)(1).

based on the constitutionality of the search or seizure of evidence, it raises a question of law that we review de novo.” *Combs v. State*, 168 N.E.3d 985, 990–91 (Ind. 2021) (internal quotation marks omitted) (quoting *Johnson v. State*, 157 N.E.3d 1199, 1203 (Ind. 2020), *cert. denied*), *cert. denied*.

[10] Lemon challenges the trial court’s admission of “drug evidence” because it was seized during an allegedly unconstitutional detention. Appellant’s Br. at 10. We initially observe that Lemon does not expressly state which “drug evidence” the trial court abused its discretion by admitting.⁶ Based on Lemon’s record citations, we limit our review to only the trial court’s admission of Exhibits 14, 15, 16, and 17. Exhibit 14 was foils that contained a brown or gray powder found in a black pouch in the glove compartment of the Edge; testing revealed the powder was fentanyl. Exhibit 15 was a bag containing a lavender powder found in a black pouch in the glove compartment of the Edge; testing revealed the powder was MDMA. Exhibit 16 was seven round yellow tablets found in a bag in the Edge; testing revealed the tablets were clonazepam.

⁶ We observe that pursuant to Indiana Appellate Rule 46(A)(8)(d), Lemon must cite “to the pages of the Transcript where the evidence was identified, offered, and received or rejected.” Lemon cites only to the pages of the Transcript where the State offered into evidence Exhibits 2 through 11 and the trial court took their admission under advisement, Appellant’s Br. at 10 (citing Tr. Vol. III at 139, 158), as well as where the State offered into evidence and the trial court admitted Exhibits 14 through 17, *id.* (citing Tr. Vol. IV at 10, 11–12, 14). Not only did Lemon fail to cite to the pages of the Transcript where these exhibits were identified, but he also fails to acknowledge in his briefing that the trial court originally did not admit Exhibits 2 through 11, Tr. Vol. IV at 48, and only admitted some of those exhibits after Lemon opened the door to their admission, *id.* at 154–55, 159–60. Further, Lemon failed to object at trial to Exhibits 2 through 11 based on the constitutionality of the search and seizure; instead, he objected to those exhibits based on only his allegation that he did not receive them in discovery. Tr. Vol. III at 140, 147–51, 158.

Exhibit 17 was a bag of white powder found in the black pouch in the glove compartment of the Edge; testing revealed the powder was fentanyl.

- [11] Lemon objected to the admission of Exhibits 14 and 17 under the Fourth Amendment to the United States Constitution, Tr. Vol. IV at 10, 14, and he objected to the admission of Exhibits 15 and 16 under Article 1, Section 11 of the Indiana Constitution, *id.* at 11–14. On appeal, Lemon appears to have dropped his argument that his rights under Article 1, Section 11 of the Indiana Constitution were violated and presents only alleged violations of the Fourth Amendment.

While both provisions preserve the right of people to be secure in their persons, houses, papers, and effects, from unreasonable search and seizure, U.S. Const. amend. IV; Ind. Const. art. 1, § 11, they are analyzed independently and differently. *Duran v. State*, 930 N.E.2d 10, 17 (Ind. 2010); *Mitchell v. State*, 745 N.E.2d 775, 785–86 (Ind. 2001).

Austin v. State, 997 N.E.2d 1027, 1034 (Ind. 2013).

- [12] As our Supreme Court has explained:

The Fourth Amendment—incorporated against the states through the Fourteenth Amendment—protects people against unreasonable searches and seizures. U.S. Const. amend. IV; *Berry v. State*, 704 N.E.2d 462, 464–65 (Ind. 1998). Because it “generally requires warrants for searches and seizures,” *Johnson*, 157 N.E.3d at 1203, “a warrantless search or seizure is per se unreasonable, and the State bears the burden to show that one of the ‘well-delineated exceptions’ to the warrant requirement applies,” *Osborne v. State*, 63 N.E.3d 329, 331 (Ind. 2016) (quoting

Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)).

Combs, 168 N.E.3d at 991.

[13] The parties agree that law enforcement officers detained Lemon on May 5, 2023, such that the Fourth Amendment prohibition against unreasonable seizure applies. Appellant’s Br. at 12; Appellee’s Br. at 13 n.2. The parties also agree that officers did not stop Lemon while he was driving the Edge; instead, Lemon voluntarily stopped and got out of the Edge. Appellant’s Br. at 12; Appellee’s Br. at 14 n.4. The question is thus whether Officers Simpson and Budde had reasonable suspicion to conduct an investigatory stop of Lemon after he exited the Edge.

[14] An investigatory stop, commonly referred to as a *Terry* stop, “must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *Marshall v. State*, 117 N.E.3d 1254, 1259 (Ind. 2019) (quoting *Robinson v. State*, 5 N.E.3d 362, 367 (Ind. 2014)); see also *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). “Although a mere ‘hunch’ does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *Glover*, 140 S. Ct. at 1187 (quoting *Navarette v. California*, 572 U.S. 393, 397, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014)) (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). “[T]he reasonable-suspicion standard takes into account the totality of the circumstances—the

whole picture.” *Marshall*, 117 N.E.3d at 1261 (internal quotation marks omitted) (quoting *Navarette*, 572 U.S. at 397).

[15] Here, Officers Simpson and Budde knew the Edge that Lemon had just been driving had an expired registration, Tr. Vol. II at 75; Tr. Vol. III at 109, which is a Class C infraction under Indiana Code section 9-18.1-11-2(c). Lemon’s illegal operation of the Edge was sufficient to support a reasonable suspicion that Lemon had been engaging in criminal activity immediately prior to parking the Edge. See *Glover*, 589 U.S. at 381–82; *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006) (citing *Black v. State*, 621 N.E.2d 368, 370 (Ind. Ct. App. 1993)). Lemon also appeared to be preparing to flee when Officers Simpson and Budde identified themselves as law enforcement, and his passenger, who was standing near him when the officers approached, had a felony arrest warrant. Because Officers Simpson and Budde had reasonable suspicion to conduct an investigatory stop of Lemon, their seizure of Lemon is not barred by the Fourth Amendment.

[16] Nevertheless, Lemon contends that the duration of the investigatory stop violated the Fourth Amendment. Lemon makes this argument for the first time on appeal. It is well established that issues raised for the first time on appeal are waived, including constitutional issues. *Hite v. Vanderburgh Cnty. Off. of Fam. & Children*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006) (citing *McBride v. Monroe Cnty. Off. of Fam. & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003)); see *Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (“[A]ppellate

review presupposes that a litigant's arguments have been raised and considered in the trial court.”).

[17] Waiver notwithstanding, in considering the merits of this argument, the totality of the circumstances shows that the officers did not unnecessarily prolong the investigatory stop. Within 10 to 15 minutes of Lemon parking the Edge, Detective Patterson and Ozzie were conducting a free-air sniff of the Edge. This free-air sniff—which is not a search protected by the Fourth Amendment and for which no degree of suspicion is required, *State v. Hobbs*, 933 N.E.2d 1281, 1286 (Ind. 2010) (citing *Illinois v. Caballes*, 543 U.S. 405, 409 (2005); *United States v. Place*, 462 U.S. 696, 707 (1983))—gave officers probable cause to search the Edge. Officers also ran Lemon's information to determine the status of his driver's license, and that search revealed Lemon was driving while suspended. All of this necessarily prolonged the time officers detained Lemon until that detainment was converted into an arrest.

[18] Based on the foregoing, law enforcement officer's investigatory stop of Lemon did not constitute an unreasonable seizure under the Fourth Amendment to the United States Constitution. Therefore, the trial court did not abuse its discretion by admitting Exhibits 14 through 17, and we affirm.

[19] Affirmed.

Altice, C.J., and Bradford, J., concur.

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