MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Maung Tway,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 24, 2021

Court of Appeals Case No. 20A-CR-1710

Appeal from the Hamilton Superior Court

The Honorable J. Richard Campbell, Judge

Trial Court Cause No. 29D04-1905-F6-3630

Tavitas, Judge.

Case Summary

[1] In this interlocutory appeal, Muang Tway appeals the trial court's denial of his motion to suppress evidence. Tway was the subject of a traffic stop, followed by a canine officer "dog sniff" inspection of Tway's car. Officers from the Fishers Police Department recovered methamphetamine, paraphernalia, and marijuana in Tway's vehicle and wallet. Tway moved to suppress the evidence, arguing that the evidence resulted from an illegal seizure, not justified by a particularized reasonable suspicion on the part of the officer that initiated the traffic stop. After a hearing, the trial court denied Tway's motion. Tway sought interlocutory appeal, which this Court accepted. Because the dog sniff occurred prior to the moment that the mission of the traffic stop was reasonably concluded, we affirm the trial court.

Issue

[2] Tway raises one issue for our review, which we restate as whether the trial court erred by denying Tway's motion to suppress evidence.

Facts

[3] On May 9, 2019, Officer Andrew Arndt of the Fishers Police Department observed a PT Cruiser that Officer Arndt believed was not properly displaying its license plate. Officer Arndt followed the vehicle on I-69 and observed the vehicle make a sudden lane change. The PT Cruiser then appeared to follow

the vehicle ahead of it too closely, and Officer Arndt initiated a traffic stop at approximately 12:03:45 p.m.[1]

[4] At approximately 12:06:24 p.m., Officer Arndt requested that the driver—Tway—exit his vehicle and sit in the passenger seat of Officer Arndt's police vehicle. Officer Arndt made this request in part for safety purposes, and in part to separate Tway from his passengers, thereby eliminating the possibility that a fabricated story might be concocted among them. Tway complied, and sat in the passenger seat of the police vehicle. At 12:08:15 p.m., while investigating Tway's license and vehicle registration via computer, Officer Arndt proceeded to ask Tway a series of questions regarding, among other things, Tway's reasons for travel, the identities of two other occupants in Tway's vehicle, and Tway's tattoos, one of which depicted a marijuana leaf. Tway answered all of Officer Arndt's questions.

[5] After inputting Tway's personal information, Officer Arndt proceeded to investigate Tway's vehicle ownership at approximately 12:16 p.m., by entering information from the car's title and registration into his police computer. One minute later, Officer Arndt informed Tway that Tway's license and registration "appear[ed]" to be valid, but that Officer Arndt was still checking. At 12:20:30 p.m., Officer Arndt contacted dispatch to determine whether Tway had any

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[1] There is a discrepancy in the record. The computer-aided dispatch report indicates that the stop was initiated at 12:01:39 p.m. Ex. Vol. III p. 5. The timestamp from the dashboard camera footage indicates that the stop was initiated at 12:03:45 p.m. For consistency, we will refer to the dash camera footage timestamp throughout this opinion.

outstanding warrants in Allen County, where Tway was heading. Approximately thirty seconds later, Officer Arndt's partner arrived on the scene and began speaking with the two passengers in Tway's car.

[6] At 12:22 p.m., Officer Arndt began explaining the nature of the warning being issued to Tway. Two minutes later, Officer Arndt printed the warning and removed it from the printer without giving it to Tway. With the warning in hand, Officer Arndt repeated a series of questions about whether there was anything illegal in Tway's car, asking specifically if Tway had any illegal drugs, weapons, or large amounts of currency. Tway denied that there was anything illegal in his car. Officer Arndt then informed Tway that a canine officer was going to inspect Tway's vehicle.

[7] At 12:26:30 p.m., Tway asked whether all of his papers were in order, and Officer Ardnt confirmed that they were. At 12:27:18 p.m., Tway asked for the warning, and Officer Arndt handed the warning to Tway eight seconds later. At 12:28:15 p.m., Officer Arndt received a radio call indicating that Tway had no outstanding warrants in Allen County. At 12:28:29 p.m., Officer Arndt exited his vehicle with the intention of asking questions of Tway's passengers regarding their itinerary and ownership of the PT Cruiser. Tway remained in the police vehicle. The dog sniff began at 12:28:43 p.m., and the canine officer alerted. Officer Arndt subsequently searched Tway's vehicle and discovered methamphetamine, marijuana, and glass pipes used for smoking methamphetamine, in addition to marijuana in Tway's wallet.

[8] On May 14, 2019, the State charged Tway with possession of methamphetamine, a Level 6 felony; possession of marijuana, a Class B misdemeanor; and possession of paraphernalia, a Class C misdemeanor. On June 5, 2020, Tway filed a motion to suppress evidence, arguing that the drugs and paraphernalia were obtained as a result of an illegal seizure in contravention of both the federal and state constitutions.[2] The trial court conducted a hearing on Tway's motion to suppress evidence on July 7, 2020.

[9] Officer Arndt testified that he noticed the following during the course of the traffic stop: (1) Tway had tattoos that included a marijuana leaf and others that Officer Ardnt believed were gang-related; (2) Tway left the door to the police vehicle open when he got into it; (3) Tway's driver's license was broken in half and taped back together; (4) Tway's license plate was partially obscured; (5) Tway's glove compartment was locked; (6) Tway appeared to be breathing rapidly and trembling when he was initially pulled over; (7) Tway's t-shirt featured a marijuana leaf; (8) Tway asked questions about the warning citation while Officer Arndt was processing it; (9) Tway's name was not on the vehicle registration; (10) Tway did not have a bill of sale for the PT Cruiser; and (11) Officer Arndt believed Tway could not recite the names of his passengers. Additionally, Officer Arndt observed inconsistencies in Tway's answers to Officer Arndt's questions

[2] U.S. const. amend IV; Ind. Const. art. 1 § 11.

[10] Officer Arndt further testified that, while Tway was being held in the police car, Officer Arndt was attempting to ascertain whether Tway had outstanding warrants and whether the PT Cruiser had been reported stolen. Officer Arndt determined that Tway had no outstanding warrants and did not discover anything indicating that the car had been stolen.[3] Finally, Officer Arndt testified to his ongoing questions about whether Tway was the owner of the vehicle. Tr. Vol. II p. 26. Tway told Officer Arndt that he had just purchased the vehicle, but he did not have a bill of sale. Officer Arndt was unable to verify that Tway was the owner from either the registration or the car's title.

[11] The trial court denied Tway's motion to suppress on August 14, 2020, and found that: "In the case here, there were no articulable facts that the police had reasonable suspicion of criminal activity in order to proceed after the traffic stop thereafter with an investigatory detention." Appellant's App. Vol. II p. 64. The trial court further found that:

> Based upon the video in the case here, it appears that the officer concluded the traffic stop at 12:23 pm, and that the officer and Defendant had sporadic conversation for the next three minutes before than [sic] canine unit arrived. Another two minutes expired before the canine sniff began. The officer never told the Defendant that he was free to leave. Accordingly, the canine sniff prolonged the traffic stop for three to five minutes.

[3] The PT Cruiser, which was subsequently impounded, was later released to Tway.

Id. at 65. The trial court concluded:

> In the case here, the officer's conversation did extend the traffic stop by a few minutes. But relying on the *Curry*[4] case above, this Court rules that the officer's inquiries into matters unrelated to the justification for the traffic stop did not convert the traffic stop into something other than a lawful seizure, because the inquiries did not significantly extend the duration of the stop.

Id. at 66.

[12] On August 17, 2020, Tway moved to certify the trial court's order for interlocutory appeal, and the trial court granted the motion the same day. We accepted jurisdiction over the appeal pursuant to Indiana Appellate Rule 5(B).

Analysis

[13] Tway argues his rights under the Fourth Amendment of the United States Constitution and Article 1, section 11 of the Indiana Constitution were violated during the traffic stop; and, therefore, the trial court erred by denying Tway's motion to suppress evidence discovered while Tway's person was seized. "When a trial court denies a motion to suppress evidence, we necessarily review that decision 'deferentially, construing conflicting evidence in the light most favorable to the ruling.'" *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019) (quoting *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014)), *cert. denied*, 140 S. Ct. 113 (2019). We, however, consider any substantial and uncontested

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[4] *Curry v. State*, 90 N.E.3d 677, 684 (Ind. Ct. App. 2017), *trans. denied*.

evidence favorable to the defendant. *Id.* We review the trial court's factual findings for clear error, and we decline invitations to reweigh evidence or judge witness credibility. *Id.* We consider "'afresh any legal question of the constitutionality of a search and seizure[,]'" *O'Keefe v. State*, 139 N.E.3d 263, 267 (Ind. Ct. App. 2019) (quoting *Hansbrough v. State*, 49 N.E.3d 1112, 1114 (Ind. Ct. App. 2016), *trans. denied*), which is to say we review such questions under a de novo standard. *Marshall*, 117 N.E.3d 1258 (citing *Robinson*, 5 N.E.3d at 365).

I. Federal Constitutional Challenge

[14] "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." *Ertel v. State*, 928 N.E.2d 261, 264 (Ind. Ct. App. 2010) (citing *Moultry v. State*, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004)), *trans. denied*. "Evidence obtained in violation of the Fourth Amendment may not be used against a defendant at trial." *Id*. (citing *Rice v. State*, 916 N.E.2d 296, 301 (Ind. Ct. App. 2009), *trans. denied*). A law enforcement official may detain a person for a short period of time for purposes of investigation without a warrant or probable cause, but official intrusion must be reasonably warranted, and the official must have "'reasonable suspicion'" that criminal activity "'may be afoot.'" *See, e.g., id.* (quoting *Moultry*, 808 N.E.2d at 170-71). That reasonable suspicion must be "based upon specific and articulable facts together with rational inferences from those facts." *Id*.

[15] In the particular context of a traffic stop, we first note that Tway does not contest the validity of the initial seizure of his person; nor could he do so successfully. "'It is unequivocal under our jurisprudence that even a minor traffic violation is sufficient to give an officer probable cause to stop the driver of a vehicle.'" *O'Keefe*, 139 N.E.3d at 267 (quoting *Tinker v. State*, 129 N.E.3d 251, 255 (Ind. Ct. App. 2019), *trans. denied*). "A narcotics dog sweep, however, becomes 'an unreasonable investigatory detention if the motorist is held for longer than necessary to complete the officer's work related to the traffic violation and the officer lacks reasonable suspicion that the motorist is engaged in criminal activity.'" *Tinker*, 129 N.E.3d at 256 (quoting *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013)).

[16] The United States Supreme Court defined the acceptable duration of a traffic stop in *Rodriguez v. United States*, 575 U.S. 348, 135 S. Ct. 1609 (2015), wherein it held that the outer limit of the seizure is determined by the "mission" of the traffic stop.

> In the context of a traffic stop, an officer's mission is to address the underlying traffic violations that warranted the stop and attend to related safety concerns. This includes checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the vehicle's registration and proof of insurance. While these checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly, a canine sniff, by contrast, is a measure aimed at detecting evidence of ordinary criminal wrongdoing. Thus, a traffic stop prolonged beyond the time reasonably required to complete the stop's mission is unlawful. The critical question, then, is not whether

> the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff prolongs—i.e., adds time to—the stop. The burden is on the State to show that the time for the traffic stop was not increased due to a canine sniff.

Tinker, 129 N.E.3d at 256 (internal citations and quotations omitted). "The United States Supreme Court recently re-emphasized that a police officer cannot 'incremental[ly]' lengthen a traffic stop by even a de minimis amount beyond the time needed to complete the mission of the stop." *Browder v. State*, 77 N.E.3d 1209, 1214 (Ind. Ct. App. 2017) (quoting *Rodriguez*, 575 U.S. at 357, 135 S. Ct. at 1616), *trans. denied*. A traffic stop ends when a reasonable person, having been previously seized, would believe herself free to leave, or "whether a reasonable person would have felt free to decline the officers' requests or otherwise terminate the encounter," *Florida v. Bostick*, 501 U.S. 429, 438, 111 S. Ct. 2382, 2388 (1991), though an officer is not required to inform a person that he or she is free to go for the seizure to terminate. *Ohio v. Robinette*, 519 U.S. 33, 35, 117 S. Ct. 417, 419 (1996).

[17] We emphasize that such traffic stop cases require highly fact-sensitive inquiries. *See, e.g., Ertel*, 928 N.E.2d at 265 (referring to the "fact-sensitive nature of each case"). For example, in *Curry v. State*, 90 N.E.3d 677, 684 (Ind. Ct. App. 2017), we first noted that "'no degree of suspicion is required to summon the canine unit to the scene to conduct an exterior sniff of the car or to conduct the sniff itself.'" (quoting *State v. Hobbs*, 933 N.E.2d 1281, 1286 (Ind. 2010)). We then observed that: (1) the stop was brief in duration; (2) the officer was "still waiting for a response to his criminal history and warrant request when the dog

alerted;" and (3) "[n]o additional time was expended to summon the canine unit to the scene." *Curry*, 90 N.E.3d at 684-86. We concluded that neither the officer's questions nor the dog sniff unconstitutionally prolonged the traffic stop.

[18] More recently, in *Thayer v. State*, 144 N.E.3d 843, 847-48 (Ind. Ct. App. 2020), we noted that the officer was still in the process of inputting the information into the ticket-issuing software when the dog sniff occurred. We also observed that sometimes additional steps will need to be taken in order to verify a driver's identity if questions still remain after documentation has—or has not—been produced. *Id*. Again, we concluded that the traffic stop was not unconstitutionally prolonged.

[19] In the case at bar, the trial court found that "the officer's inquiries into matters unrelated to the justification for the traffic stop did not convert the traffic stop into something other than a lawful seizure, because the inquiries did not significantly extend the duration of the stop." Appellant's App. Vol. II p. 66. On that point, we agree. Additionally, however, the trial court held that the traffic stop should have concluded prior to the dog sniff. If that were the case, then the trial court's ultimate conclusion—that the subsequent de minimis extension of the stop was permissible—would plainly run afoul of the Fourth Amendment. *See, e.g.*, *Browder*, 77 N.E.3d at 1214 (quoting *Rodriguez*, 575 U.S. at 357, 135 S. Ct. at 1616).

[20] Nevertheless, unlike the trial court, we find that the mission of the stop was not concluded when the canine sniff was conducted. Some inquiries incident to the authorized aims of ensuring traffic and officer safety fall within the boundaries of a stop's mission. *Tinker*, 129 N.E.3d at 256. In addition, though not enjoying categorical permissibility, many courts have held that questions pertaining to a traveler's itinerary may also further the mission. *See, e.g., United States v. Cortez,* 965 F.3d 827, 838 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 1250; *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020), *cert. denied*, 141 S. Ct. 687; *United States v. Dion*, 859 F.3d 114, 125 (1st Cir. 2017), *cert. denied*, 138 S. Ct. 346. Questions about a driver's itinerary and registration "rarely offend our Fourth Amendment jurisprudence." *United States v. Lyons*, 687 F.3d 754, 770 (6th Cir. 2012); *see also United States v. Collazo*, 818 F.3d 247, 258 (6th Cir. 2016), *cert. denied*, 137 S. Ct. 169; *United States v. Alcaraz-Arellano,* 441 F.3d 1252, 1259 (10th Cir. 2006) ("Such limited questioning is proper, because an officer may routinely ask about travel plans and ownership during a lawful traffic stop."); *United States v. Childs*, 277 F.3d 947, 949 (7th Cir. 2002) (en banc) ("[Q]uestions that do not increase the length of detention (or that extend it by only a brief time) do not make the custody itself unreasonable."), *cert. denied*, 123 S. Ct. 126.

[21] When Officer Arndt stepped out of his vehicle, his intent was to speak with Tway's passengers. Officer Arndt initially separated Tway from his passengers "[t]o avoid the potential for a fabricated story between them and the other people." Tr. Vol. II p. 13. At the time of the dog sniff, Officer Arndt was still attempting to verify that Tway owned the PT Cruiser. At the time, Officer

Arndt was not able to match the temporary registration and car title to Tway, and believed that Tway's story as to when the car was purchased was inconsistent. Officer Arndt asked the passengers "what the[ ] relationship [was] between them and Mr. Tway and the *purpose of their trip* with him and *if they knew who the vehicle belonged to*." *Id*. at 25 (emphasis added). Thus, the questions pertained to the travelers' itinerary and the ownership of the vehicle.

[22] We recognize that a simple records check will not always be dispositive of a car registration's provenance and that, on occasion, additional inquiry will be necessary. "An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 788 (2009).

[23] We conclude that Officer Arndt was still engaged in an "inspection" of the car's registration when he asked the passengers about the ownership of said car. *Tinker*, 129 N.E.3d at 256. Officer Arndt was, therefore, continuing to fulfill the mission of the stop. Given that the dog sniff occurred contemporaneously with those questions, the dog sniff did not prolong the stop. Because we conclude that the dog sniff occurred prior to the moment when the traffic stop was constitutionally required to end, we need not address the arguments pertaining to reasonable suspicion. We hold that, under the Fourth Amendment, the trial court did not err in denying Tway's motion to suppress evidence.

II. State Constitutional Challenge

[24] Tway's challenge, however, is not concluded. Our Indiana Constitution provides protection against unreasonable searches and seizures as well. *See* Ind. const. art. 1 § 11. "Even though the Fourth Amendment and Article 1, Section 11 share parallel language, they part ways in application and scope. The Indiana Constitution sometimes affords broader protections than its federal counterpart and requires a separate, independent analysis from this Court." *Marshall,* 117 N.E.3d at 1258 (citing *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018)). Given our conclusion that the traffic stop was not prolonged by the dog sniff, however, Tway is not benefitted by the protections of our State Constitution.

[25] Tway concedes that the justification for pulling him over was legitimate. Tway also recognizes that a dog sniff is not a "search" for constitutional purposes. Appellant's Br. p. 10 (citing *Wilson v. State*, 847 N.E.2d 1064, 1067 (Ind. Ct. App. 2006)). We further note that, in this case, the amount of time that passed between Tway being pulled over and the beginning of the dog sniff was approximately twenty-five minutes. Tway argues that Officer Arndt lacked reasonable suspicion to continue to hold Tway past that point. We have already found, however, that Officer Arndt *did not need* reasonable suspicion, because the mission of the traffic stop was ongoing. Thus, Tway's argument under the State Constitution is moot.

[26] Accordingly, given that our de novo review of the legality of the traffic stop finds that the stop was constitutional, we conclude that the trial court did not err in denying Tway's motion to suppress.

Conclusion

[27] The traffic stop did not violate either the United States Constitution or the Indiana Constitution. Accordingly, we affirm the denial of the motion to suppress evidence.

[28] Affirmed.

Najam, J., and Bradford, J., concur.