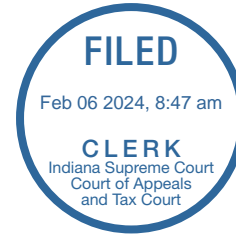


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Mandale Hamilton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 6, 2024

Court of Appeals Case No.
23A-CR-818

Appeal from the Hendricks Circuit
Court

The Honorable Daniel F. Zielinski,
Judge

Trial Court Cause No.
32C01-2202-F4-4

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] In this interlocutory appeal, Mandale Hamilton challenges the trial court’s denial of his motion to suppress. Hamilton raises three issues for review:

1. Did the conduct observed by the police officer constitute a traffic infraction?

2. Did the open-air sniff by a law enforcement canine impermissibly prolong the traffic stop in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution?

3. Did the dismantling of the vehicle’s dashboard to retrieve a gun that was visible constitute an unreasonable seizure in violation of Article 1, Section 11 of the Indiana Constitution?

[2] We affirm.

Facts & Procedural History

[3] On February 6, 2022, Brownsburg Police Department (BPD) K9 Officer David Shedrow was patrolling a Super 8 Motel parking lot and running license plate checks of cars parked in the lot “to see if there was anything out of place.”¹

Transcript Vol. 2 at 3. One of the license plates he checked was on a blue Cadillac that was registered to Jayella Jackson. “[A]fter doing some digging,”

¹ Officer Shedrow explained that “whenever I see local vehicles at a local hotel I just do some basic digging to see where they are from, if they have any kind of criminal history. . . . It’s typical in the course of my duties to see why somebody that is local would be at a local hotel.” *Transcript Vol. 2* at 8.

Officer Shedrow learned that Jackson had posted bond for Hamilton in Hamilton's pending drug case. *Id.* Officer Shedrow then spoke with the motel's manager, who told him that the driver of the Cadillac was registered to room 213 and that "there had been a lot of foot traffic coming and going from that particular room." *Id.* Officer Shedrow knew such behaviors to be closely associated with criminal activity.²

[4] Officer Shedrow drove to a nearby parking lot to watch the Cadillac, which was parked on the north side of the motel. He observed the Cadillac as it was driven to the south side of the motel. He did not see anyone exit the vehicle during the fifteen minutes the Cadillac was parked on the south side. When the Cadillac returned to the north side of the motel, Officer Shedrow observed Hamilton and an unidentified woman exit the vehicle. Hamilton eventually got back into the Cadillac and drove away. Officer Shedrow followed Hamilton onto Interstate 74, and after observing the Cadillac "move[] across the center line of the lane of travel without any form of signal," he initiated a traffic stop for a driving infraction. *Id.* at 4.

[5] BPD Officer Mark Christian assisted Officer Shedrow during the traffic stop. As observed from both Officer Shedrow's bodycam and the dashcam in his marked vehicle, Officer Shedrow approached the Cadillac on the passenger side, made contact with Hamilton, and asked Hamilton for his driver's license

² Officer Shedrow learned that the room was paid for by a third party, which practice he also knew to be indicative of criminal activity.

and the vehicle's registration. He observed that Hamilton seemed "unreasonably nervous." *Id.* at 13. Hamilton provided the requested documents, and Officer Shedrow returned to his vehicle so he "could run [Hamilton's] information through the BMV files." *Id.* at 4. As Officer Shedrow returned to his police car, he instructed Officer Christian to have Hamilton step out of the vehicle so he could have his K9 perform "a free air sniff" around the Cadillac. *Id.* at 19. Officer Shedrow then got into his car, examined the documents provided by Hamilton, and turned on his in-car computer.

[6] Meanwhile, Officer Christian approached the Cadillac and asked Hamilton to exit the vehicle so that a dog could sniff around the car. Hamilton initially refused, saying he was allergic to dogs and then asking to speak with a supervisor. Within about two minutes, however, Hamilton agreed to exit the vehicle. Officer Christian then patted him down and moved him to the front of Officer Shedrow's police vehicle.

[7] As soon as he heard over the police radio that Hamilton was refusing to get out of the car, Officer Shedrow stopped what he was doing and stepped outside of his car to observe the exchange between Hamilton and Officer Christian. As they moved toward the front of Officer Shedrow's car, Officer Christian told Officer Shedrow that he smelled the odor of marijuana coming from inside the Cadillac.³ Officer Shedrow then retrieved his K9 from the back of his vehicle

³ Officer Christian testified: "During the course of the stop I did smell the odor of marijuana from in the vehicle." *Id.* at 20.

and walked the K9 toward the Cadillac. The K9 alerted on the driver's side of the vehicle indicating the presence of narcotics or contraband. At the suppression hearing, Officer Shedrow testified that "Officer Christian did smell marijuana prior to ever deploying my narcotics detecting dog." *Id.* at 7.

[8] Officer Shedrow then searched the car and located a white pill, which he later identified as oxycodone,⁴ in the center console. Officer Christian assisted in the search of the car and observed a firearm in a small space in the dash of the vehicle, under the steering wheel. As officers went to place Hamilton in handcuffs, Hamilton tried to run from them. He was quickly subdued and placed under arrest. Marijuana was later found where Hamilton had been sitting in the transport vehicle and a methamphetamine pipe fell out of his pants at the jail.

[9] Due to the location of the gun, the officers did not believe that they could safely retrieve it at that time. The Cadillac was loaded onto a flatbed tow truck, and Officer Christian followed it to the tow lot. To safely retrieve the firearm, Officer Christian dismantled part of the dashboard by removing four screws and lowering the dashboard panel. He did not reattach the dashboard panel.

[10] On February 7, 2022, the State charged Hamilton with unlawful possession of firearm by a serious violent felon, a Level 4 felony; resisting law enforcement as a Level 6 felony; and possession of a narcotic drug, possession of marijuana,

⁴ Officer Shedrow identified the pill by looking up its markings on a website.

and possession of paraphernalia, all as Class B misdemeanors. The State later added a habitual offender allegation. On December 20, 2022, Hamilton filed a motion to suppress, challenging the traffic stop and subsequent search and seizure of evidence from the Cadillac on several bases. The court held a hearing on the motion, and the parties submitted post-hearing memoranda in support of their respective positions.

[11] On February 27, 2023, the trial court issued its order denying Hamilton’s motion to suppress. In its order, the trial court noted that it had reviewed the video from Officer Shedrow’s dash camera and that such “indicated that the blue Cadillac did, briefly, cross onto the center dotted line.” *Appellant’s Appendix Vol. 2* at 104. The court also found that “[o]nce the vehicle was pulled over, Officer Christian noticed an odor of marijuana coming from the vehicle, and it was decided that Officer Shedrow would conduct an air sniff with his canine.” *Id.* at 105.

[12] Hamilton filed a motion asking the trial court to certify its ruling for interlocutory appeal, which the trial court granted. This court accepted jurisdiction on May 5, 2023. Additional facts will be provided as needed.

Discussion & Decision

Standard of Review

Trial courts enjoy broad discretion in decisions to admit or exclude evidence. 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. However, we consider any substantial and uncontested evidence favorable to the defendant. If the trial court’s decision denying a defendant’s motion to suppress concerns the constitutionality of a search or seizure, then it presents a legal question that we review de novo.

Marshall v. State, 117 N.E.3d 1254, 1258 (Ind. 2019) (citations and quotations omitted).

1. Validity of Traffic Stop

[13] Hamilton argues that the traffic stop of the car he was driving violated Article 1, Section 11 of the Indiana Constitution. Specifically, he argues that Officer Shedrow did not have reasonable suspicion for the stop because the conduct he observed did not constitute a traffic violation.

[14] A police officer may, consistent with Article 1, Section 11 of the Indiana Constitution, “stop a vehicle when they observe any traffic violations.” *Chauncey v. State*, 204 N.E.3d 311, 315 (Ind. Ct. App. 2023). That is, “any traffic violation, however minor, creates probable cause to stop the driver of the vehicle.” *Id.* A decision to stop a vehicle is valid so long as the officer’s “on-the-spot evaluation reasonably suggests that lawbreaking occurred.” *State v. Lynch*, 961 N.E.2d 534, 537 (Ind. Ct. App. 2012). The determination of reasonable suspicion requires de novo review on appeal. *Id.*

[15] Ind. Code § 9-21-8-11.5 provides:

Whenever a roadway has been divided into two (2) or more clearly marked lanes for traffic, a vehicle:

(1) shall be driven as nearly as practicable entirely between the lines marking the single lane; and

(2) may not be moved from the lane until the person who drives the vehicle has first ascertained that the movement can be made with safety.

A violation of I.C. § 9-21-8-11.5 is a Class C infraction. I.C. § 9-21-8-49.

[16] Officer Shedrow testified that he believed Hamilton committed a traffic infraction when he observed Hamilton “move[] across the center line of the lane of travel without any form of signal.” *Transcript Vol. 2* at 4. On cross-examination, Officer Shedrow agreed with the characterization of what he saw as “a brief crossing of the center line.” *Id.* at 11, 28. The video from Officer Shedrow’s in-car dash camera was admitted into evidence at the suppression hearing. The trial court reviewed the video and found that “the blue Cadillac did, briefly, cross onto the center dotted line.” *Appellant’s Appendix Vol. 2* at 104.

[17] We have likewise reviewed the video from Officer Shedrow’s dash camera. The Cadillac is seen merging onto the interstate and then briefly drifting into the passing lane. Thus, the Cadillac was not being driven “as nearly as practicable *entirely* between the lines marking the single lane.” See I.C. § 9-21-8-11.5(1)⁵ (emphasis supplied). There was no snow or object in the roadway that

⁵ We reject Hamilton’s argument that a driver must fail to comply with both subsections (1) *and* (2) in order to commit a driving infraction. I.C. § 9-21-8-11.5 sets out the manner in which one must operate their vehicle when a roadway is divided into two or more clearly marked lanes. Failure to comply with either subsection (1) or (2) is a violation of the statute.

compelled Hamilton to drift across the line dividing the lanes of travel, even if only briefly. Based on his observations, Officer Shedrow reasonably believed the driver committed a traffic infraction and thus, he had probable cause (and therefore reasonable suspicion) to initiate a traffic stop. The trial court did not err in finding that Officer Shedrow had “legal authority” to pull over the driver of the Cadillac. *Appellant’s Appendix Vol. II* at 104.

2. Search of Vehicle

[18] Hamilton argues that the open air sniff of the Cadillac by Officer Shedrow’s K9 was improper because it impermissibly prolonged the traffic stop. “It is well settled that a dog sniff is not a search protected by the Fourth Amendment or Article 1, Section 11 of the Indiana Constitution.” *Tinker v. State*, 129 N.E.3d 251, 256 (Ind. Ct. App. 2019) (citing *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013)), *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. In *Rodriguez v. United States*, [575 U.S. 348] (2015), the United States Supreme Court explained that the tolerable duration of a seizure is dictated by the seizure’s particular “mission.” 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 “[t]hese 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 ‘detect[ing] 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.

Id. (some internal citations and quotations omitted).

[19] Hamilton insists that because he was pulled over for a traffic violation, any activity by the officers that was not consistent with issuing a traffic citation necessarily meant that the officers had abandoned the original purpose of the stop in violation of the Fourth Amendment and Article 1, Section 11. Specifically, Hamilton suggests that because Officer Shedrow asked Officer Christian to get him out of the car so he could deploy his K9 for an open air sniff before Officer Christian had even approached the car necessarily meant that Officer Shedrow had decided to forego proceeding with actions in furtherance of issuing a traffic citation. He maintains that no effort in furtherance of the traffic stop was in progress when Officer Christian smelled marijuana.

[20] Hamilton mischaracterizes the record. Officer Shedrow made contact with Hamilton and secured his identification and registration. He then returned to his police cruiser and stated that his intention was to “run [Hamilton’s] information through the BMV files.” *Transcript Vol. II* at 4. Indeed, from his

body camera, Officer Shedrow is seen getting into his police car, reviewing the documentation provided by Hamilton, and then his in-car computer turns on.

- [21] His actions in furtherance of the traffic stop were interrupted when Hamilton refused to exit the vehicle and Officer Shedrow turned his attention to the exchange between Officer Christian and Hamilton. This delay of the purpose of the traffic stop was brought about by Hamilton's refusal to exit the vehicle, not any actions in furtherance of conducting an open-air sniff. Within two minutes, Hamilton exited the vehicle. As seen on the video from Officer Christian's body camera, as Officer Christian moved Hamilton to the front of Officer Shedrow's car, he communicated to Officer Shedrow that he smelled the odor of marijuana coming from inside the vehicle.
- [22] It was only at this point that Officer Shedrow deployed his K9 for an open air sniff, and, from the time Officer Christian announced he smelled marijuana to when the K9 was placed back into Officer Shedrow's vehicle amounted to less than two minutes. Once Officer Christian detected the smell of marijuana, the purpose of the traffic stop fundamentally changed. Indeed, the smell of marijuana coming from the vehicle gave the officers probable cause to search the vehicle. *See Bunnell v. State*, 172 N.E.3d 1231 (Ind. 2021) (holding that the odor of raw marijuana coming from premises or a vehicle provides probable cause to search the premises or vehicle). Under these circumstances, the use of the K9 for an open-air sniff cannot be said to have prolonged the traffic stop, and thus, the dog sniff did not implicate the Fourth Amendment or Article 1, Section 11.

3. Reasonableness of Seizure

- [23] Hamilton argues that the “dismantling of the Cadillac’s dashboard to remove the gun” rendered the seizure of the firearm unreasonable in violation of Article 1, Section 11 of the Indiana Constitution. *Appellant’s Brief* at 25.
- [24] Under the Indiana Constitution, our inquiry “is not whether officers faced ‘exigency’ hindering them from obtaining a warrant ... but whether on the totality of the facts their decision to” alter or even damage property “was reasonable under *Litchfield’s* three factors.” *Washburn v. State*, 121 N.E.3d 657, 662 (Ind. Ct. App. 2019). A reasonableness determination is made from a balancing of “1) the degree of concern, suspicion, or knowledge that a violation has 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.” *Id.*
- [25] Here, Officer Christian discovered the gun during a search of the interior of the car. He testified that the gun was visible from a particular spot within the vehicle and described the gun’s location as being in a “tight space” located about ten inches under the steering wheel in an approximate one-inch gap between a trim panel and the steering column. *Transcript Vol. 2* at 21. Neither Officer Shedrow nor Officer Christian believed the gun could be safely retrieved at the time of the traffic stop while the Cadillac was parked on the side of the interstate.

[26] Firearms are inherently dangerous objects. Here, the officers knew there was a handgun located in a “tight space” in the dash of the Cadillac and they were rightly concerned for safety of themselves and others if they tried to retrieve it. Officer Shedrow testified that some handguns do not have external safeties and may be fired by simply moving the trigger. And here, other than its location, the officers did not know whether the gun in the Cadillac was equipped with a safety or whether it was loaded. Thus, after Hamilton was taken into custody, Officer Christian followed behind as it was transported to a tow yard. There, he removed four screws and lowered the panel on the dash to retrieve the gun.

[27] When the owner of the Cadillac came to pick up the vehicle, she was provided with the four screws that Officer Christian removed when securing the gun. At most, the evidence presented at the suppression hearing is consistent with Officer Christian’s testimony that he simply removed four screws and lowered a panel on the dash to retrieve the gun. There is nothing that supports Hamilton’s claim that Officer Christian’s removal of four screws amounted to “destruction” of the dash. *Appellant’s Brief* at 25.

[28] The officers knew where the gun was located and there was no reason to allow the firearm to remain accessible to anyone who might encounter the Cadillac either on the roadside, in transit, or at the tow lot. Balancing the *Litchfield* factors, we cannot say that Officer Christian’s removal of four screws to lower a panel on the dash to retrieve a gun that the officers knew was located in a “tight space” rendered the seizure of the gun unreasonable under Article 1, Section 11.

[29] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.