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IN THE COURT OF APPEALS OF INDIANA

Courtney Elizabeth Crabtree,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 1, 2022

Court of Appeals Case No.
21A-CR-2752

Appeal from the
Hendricks Superior Court

The Honorable
Mark A. Smith, Judge

Trial Court Cause No.
32D04-2105-F2-18

Vaidik, Judge.

Case Summary

[1] In *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005), our Supreme Court held that the reasonableness of a search or seizure under Article 1, Section 11 of the Indiana Constitution is generally determined by balancing three factors: 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. *Litchfield* went on to specify that trash searches require a specific degree of suspicion—reasonable suspicion, that is, "articulable individualized suspicion, essentially the same as is required for a '*Terry* stop.'" A few years later, in *Hoop v. State*, 909 N.E.2d 463 (Ind. Ct. App. 2009), *reh'g denied*, *trans. denied*, this Court similarly held reasonable suspicion is needed for law enforcement to conduct dog sniffs at the front door of a private residence, reasoning that, as with trash searches, dog sniffs of residences implicate serious concerns over police entering private property arbitrarily.

[2] Here, officers conducted a dog sniff in the outdoor walkway of a hotel and, in part using information from that sniff, obtained and executed a search warrant for one of the hotel rooms. Narcotics and firearms were found in the room, and the room's occupants were charged with a variety of drug and firearm offenses. One of these occupants, Courtney Elizabeth Crabtree, moved to suppress evidence found in the room, arguing in part that the dog sniff of her hotel-room door violated Article 1, Section 11 because the officers did not have the reasonable suspicion required under *Hoop* to conduct the dog sniff. The trial court denied the motion, and Crabtree now appeals.

[3] Because we do not believe *Hoop*'s reasoning extends to these circumstances, reasonable suspicion is not required here. Instead, using the comprehensive three-factor balancing test, we conclude the dog sniff was reasonable. While we

agree with Crabtree that other evidence used to procure the search warrant was illegally obtained, because the dog sniff and other evidence provided sufficient legally obtained information to support the issuance of a search warrant, we affirm.[1]

Facts and Procedural History

[4] Officer Logan Westerfield of the Plainfield Police Department was patrolling the parking lot of a local hotel in a high-crime area. The hotel has multiple levels, with each room opening directly outside rather than to an interior hallway. Officer Westerfield noticed a suspicious truck and approached it to look at its license plate. He found a temporary paper license plate showing a VIN that did not match the VIN on the truck. The VINs came back registered to two different people. He also saw items he associated with criminal activity inside the truck, including a saw, a ski mask, latex gloves, a knife, a black magnetic box, and baggies.

[5] Corporal Jeremy Harris and Officer Chris Hepfer, also of the Plainfield Police Department, arrived on scene to assist Officer Westerfield. While they were investigating, two unknown males separately approached them about the truck. The first told officers he was staying next to the people associated with the

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[1] We held oral argument on October 6, 2022, at Portage High School. We thank Portage High School, social-studies teacher Phil Mulroe, and the students for their hospitality, as well as counsel for their helpful advocacy.

truck, who he claimed were staying in Room 233. The second told officers that the truck was driven by a man with facial tattoos. Corporal Harris then went and spoke with a hotel employee, who told him that Room 233 was registered to Courtney Crabtree and that an unknown male with facial tattoos was staying with her.

[6] Corporal Harris conducted a dog sniff of the truck, and the dog alerted to the truck's rear door. The officers then conducted a dog sniff of the hotel's upstairs outdoor walkway, which included Room 233. The dog alerted to Room 233, and officers decided to do a "knock and talk." Officer Westerfield knocked loudly on Room 233's door for several minutes. When no one came to the door, he knocked again and loudly stated the truck would be towed. Crabtree opened the door, and Officer Westerfield instructed her to step out of the room. She did so, and Officer Westerfield then took a few steps into the room while asking Crabtree who else was there. She stated, "Hector," and the officers heard a male voice coming from the back of the hotel room where the restroom is located. Ex. 13 at 8:31. Officer Westerfield walked to the restroom and instructed Crabtree's companion, later identified as Cody Heaster, to dress. Heaster, who has facial tattoos, dressed and left the bathroom. Officers removed Heaster from the room and placed both him and Crabtree in handcuffs.

[7] While in the room, officers saw a bong in between the beds. Officer Westerfield applied for search warrants for both the truck and hotel room. His affidavit included information about his investigation of the truck—the improper plate,

suspicious items, and positive dog alert for narcotics—as well as the officers' conversations with the two unidentified male individuals and the hotel employee, the dog sniff of the hotel-room door, and the bong seen in the room. Search warrants were issued for the truck and hotel room.

[8] A search of the truck revealed four separate baggies of white powder weighing 88 grams total. Field testing revealed the powder was positive for cocaine. Also in the truck was 14.7 grams of a "white crystal-like substance" that field-tested positive for methamphetamine. Appellant's App. Vol. II p. 17. Officers also found four oxycodone pills, a digital scale, twelve bullets, seven cell phones, and bank cards belonging to several people. A search of the hotel room disclosed white and brown powder on the nightstand (believed to be cocaine and heroin, although it appears from the record this powder was not tested), a digital scale, two handguns, and multiple cell phones, including one Crabtree identified to officers as hers. Both guns were later found to have been stolen. Officers applied for and received a search warrant for the cell phones found in the hotel room. On Crabtree's cell phone, the officers found several text messages in which she appears to reference selling drugs.

[9] The State charged Crabtree with Level 2 felony dealing in cocaine, Level 2 felony dealing in methamphetamine, Level 3 felony possession of cocaine, Level 4 felony possession of methamphetamine, two counts of Level 6 felony

theft of a firearm, and Class C misdemeanor possession of paraphernalia. The State also alleged Crabtree is a habitual offender.[2]

[10] Crabtree moved to suppress the evidence seized during the execution of the search warrant for the hotel room, arguing the evidence was the product of an unreasonable search and seizure under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. A hearing was held in August 2021. At the hearing, Officer Westerfield and Corporal Harris testified about their investigation of the truck and hotel room. Both officers testified that they entered the hotel room to secure the scene and preserve evidence.

[11] The trial court denied the motion to suppress, stating:

> Additionally, the Court finds that the officers had a reasonable suspicion for a free air K-9 sniff outside Room 233. Once the police possessed knowledge that the dog alerted to both the truck and room, coupled with the knowledge linking Crabtree to Room 233, knowledge linking the occupants of Room 233 to the truck, and that weapons were possibly in play, probable cause existed to search the room. The police did not rely solely on information from anonymous persons in this case. Instead, they performed actions independently which led to reasonable suspicion and probable cause. The Court further finds their decision to enter the room without a warrant based on exigent circumstances was reasonable because of the possibility of weapons being involved, the other items viewed inside the truck including a full face mask, the length of time it took to open the door after repeated loud

[2] The State charged Heaster identically, including his own habitual-offender enhancement.

> attempts to get someone to answer the door, the possible destruction of evidence, and the unknown status of the other person(s) in the room once Crabtree opened the door.

Id. at 73.

[12] Following the denial of her motion to suppress, Crabtree sought and received permission to bring this interlocutory appeal.[3]

Discussion and Decision

[13] Crabtree's argument is three-fold. She contends: (1) the dog sniff of the hotel-room door violated Article 1, Section 11, (2) the officers' warrantless entry into the hotel room violated Article 1, Section 11, and (3) without this illegally obtained evidence, the search warrant for the hotel room was not supported by sufficient probable cause and any evidence obtained should be excluded.[4]

[14] Our review of a trial court's denial of a motion to suppress is like other sufficiency matters. *McIlquham v. State*, 10 N.E.3d 506, 511 (Ind. 2014). That is, the record must disclose substantial evidence of probative value that supports the trial court's decision. *Id.* We do not reweigh the evidence and we consider

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[3] Heaster joined the motion to suppress but is appealing separately, and that appeal is still being briefed. *See* No. 22A-CR-630.

[4] In the trial court, Crabtree challenged the dog sniff and warrantless entry under both the federal and state constitutions, but on appeal she limits her argument to the Indiana Constitution. Additionally, in her motion to suppress, Crabtree challenged the search warrant for the truck, which the court also denied. She does not renew this challenge on appeal.

conflicting evidence most favorably to the trial court's ruling. *Id.* If the trial court made any findings of fact, we will review them only for clear error, but the ultimate ruling on the constitutionality of a search is a legal conclusion that we review de novo. *Id.*

[15] Article 1, Section 11 of the Indiana Constitution requires probable cause for the issuance of a search warrant. *Mehring v. State*, 884 N.E.2d 371, 376 (Ind. Ct. App. 2008), *reh'g denied*, *trans. denied.* Probable cause is "a fluid concept incapable of precise definition . . . [and] is to be decided based on the facts of each case." *Id.* (citation omitted). In deciding whether to issue a search warrant, the issuing magistrate's task is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. *Id.* at 376-77. The reviewing court's duty is to determine whether the issuing magistrate had a "substantial basis" for concluding that probable cause existed. *Id.* at 377. A substantial basis requires the reviewing court, with significant deference to the magistrate's determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the finding of probable cause. A "reviewing court" for this purpose includes both the trial court ruling on a suppression motion and an appellate court reviewing that decision. *Id.* Although we review de novo the trial court's substantial-basis determination, we afford the magistrate's determination significant deference as we focus on whether reasonable inferences drawn from the totality of the evidence support that determination. *Id.* In determining whether an affidavit

provided probable cause for the issuance of a search warrant, doubtful cases are to be resolved in favor of upholding the warrant. *Id.*

I. Dog Sniff of Hotel Room

[16] Crabtree first challenges the dog sniff of her hotel-room door, arguing it violated Article 1, Section 11's protection against "unreasonable search or seizure[.]" While the language of Article 1, Section 11 tracks the Fourth Amendment of the United States Constitution, "Indiana has explicitly rejected the expectation of privacy as a test of the reasonableness of a search or seizure." *Litchfield*, 824 N.E.2d at 359. Instead, the legality of a search "turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances." *Id.* The *Litchfield* Court held:

> [A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance 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. at 361.

[17] As an initial matter, the parties disagree on how to analyze the dog sniff of a hotel-room door. As noted above, we generally determine the reasonableness of a search under Article 1, Section 11 using the three-factor balancing test

articulated in *Litchfield*, and the State contends we should do so here.[5] However, Crabtree argues in this situation, as a matter of law, the degree of suspicion required is reasonable suspicion. She cites *Hoop*, 909 N.E.2d at 470, where we addressed the reasonableness of a dog sniff conducted at the front door of a private residence. In doing so, we noted that our Supreme Court in *Litchfield* required police to have reasonable suspicion to search a citizen's trash due to concerns over police entering private property arbitrarily. We found the same concerns present for purposes of dog sniffs of private residences, and therefore held such searches require a showing of reasonable suspicion.

[18] But the reasoning in *Hoop* centered on the sniff occurring at a private residence, which is distinguishable from this case. And although we have held the inside of a hotel room is akin to the home for purposes of Article 1, Section 11, *Harper v. State*, 963 N.E.2d 653, 658 (Ind. Ct. App. 2012), *trans. denied*, we do not believe this extends to a hotel's exterior walkway. Thus, we distinguish *Hoop* and hold *Terry*-level reasonable suspicion is not an absolute necessity for a dog sniff of a hotel-room door. Instead, the degree of suspicion is just one factor to be considered under the general *Litchfield* balancing test.

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[5] The State also argues dog sniffs are not "searches" under Article 1, Section 11, citing cases in which we held a dog sniff of a validly stopped car does not constitute a search. *See Tinker v. State*, 129 N.E.3d 251, 255 (Ind. Ct. App. 2019) ("[I]t is well settled that a dog sniff is not a search protected by . . . Article 1, Section 11 of the Indiana Constitution."), *trans. denied*. But we have not extended this holding to other contexts, and indeed have previously analyzed a dog sniff of a hotel hallway as a search under Article 1, Section 11. *See Blankenship v. State*, 5 N.E.3d 779, 783 (Ind. Ct. App. 2014). As such, we reject this argument.

[19] Crabtree concedes the sniff was "minimally intrusive"—it occurred in the outdoor walkway of a hotel, and by all accounts Crabtree was completely unaware it was occurring. Appellant's Br. p. 9. However, she asserts that the officers' degree of suspicion and the extent of their needs were both low. We disagree. The officers had a high degree of suspicion that the truck was linked to criminal activity, as it was displaying an improper license plate and contained suspicious items, and most importantly, the dog sniff of the truck was positive for the odor of narcotics. And further investigation linked the truck with Crabtree's room. Multiple occupants of the hotel voluntarily approached officers during the investigation and reported the truck was being driven by a man with facial tattoos staying in Room 233. Officers then corroborated these tips through the hotel employee, who confirmed Room 233 was registered to Crabtree and that a man with facial tattoos was staying with her. *See J.J. v. State*, 58 N.E.3d 1002, 1006 (Ind. Ct. App. 2016) (finding officers acted reasonably in stopping defendant based on a store employee's description of suspect). Thus, officers had at least a moderate degree of suspicion in the hotel room.

[20] As for law enforcement needs, officers needed to continue pursuing their investigation, as at this point they were reasonably certain criminal activity was occurring. So while the degree of suspicion and extent of law enforcement needs here were not the highest possible, we believe they were sufficient to conclude the dog sniff was reasonable, especially considering the low degree of intrusion.

[21] The trial court did not err in determining the dog sniff of the hotel-room door did not violate Article 1, Section 11.

II. Warrantless Entry

[22] Crabtree also contends the officers' warrantless entry into the hotel room violated Article 1, Section 11. We agree with Crabtree that, under *Litchfield*, the warrantless entry was unreasonable: while the officers' degree of suspicion was high, so too was the degree of intrusion, and their need to enter was low, considering they had time to secure a warrant. No exigent circumstances support the officers' entry—there was no indication in the record that there was a threat to officer or public safety, and while the officers may have reasonably feared Crabtree would destroy evidence, this fear was unfounded until officers knocked and alerted Crabtree to their presence. *See Hawkins v. State*, 626 N.E.2d 436, 439 (Ind. 1993) (police's warrantless entry into a suspected drug house was not reasonable as there was time to apply for a warrant and no exigent circumstances existed **before** police forcibly entered the building). And officer-created exigencies cannot justify a warrantless entry. *Id.*

III. Search of the Hotel Room

[23] Crabtree argues that the evidence obtained from the hotel room should be suppressed because, without the dog sniff and warrantless entry, there is not enough information to support the search warrant. This argument presupposes the illegality of the dog sniff, which we have held was reasonable. Thus, the

question is whether the warrantless entry alone requires the exclusion of evidence obtained pursuant to the search warrant. We conclude it does not.

[24] This court has upheld the admission of evidence obtained pursuant to a search warrant where, despite the illegally obtained evidence, the affidavit contained sufficient probable cause. *See Johnson v. State*, 32 N.E.3d 1173, 1178 (Ind. Ct. App. 2015), *trans. denied*; *see also Perez v. State*, 27 N.E.3d 1144, 1154 (Ind. Ct. App. 2015) (search of defendant's home was reasonable under Indiana Constitution despite affidavit's inclusion of illegally obtained evidence because it also contained "substantial legally obtained information"), *trans. denied*. That is the case here. Excluding the illegally obtained evidence, the bong found between the beds, the probable-cause affidavit still contains sufficient evidence to support the issuance of the search warrant—the investigation of the truck, the anonymous tips, and most importantly, the dog sniff of the room. *See Hoop*, 909 N.E.2d at 463 (noting the "dog sniff alone would provide probable cause for a warrant").

[25] While the warrantless entry violated Article 1, Section 11, the later search was done pursuant to a search warrant supported by sufficient legally obtained information. Thus, we find the search of the hotel room reasonable under the Indiana Constitution.

[26] Affirmed.

Crone, J., concurs.

Tavitas, J., concurs in result with separate opinion.

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Courtney Crabtree,
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State of Indiana,
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Tavitas, Judge, concurring in result.

[27] I agree with the majority that the trial court properly denied Crabtree's motion to suppress, but I do so on a different basis. Accordingly, I concur in result.

[28] Although Article 1, Section 11 contains language nearly identical to the Fourth Amendment, Indiana courts interpret Article 1, Section 11 independently. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). In cases involving Article 1, Section 11 of the Indiana Constitution, the State must show that the challenged police action was reasonable based on the totality of the circumstances. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). "The totality of the circumstances requires consideration of both the degree of intrusion into the

subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind. 2005). In *Litchfield*, our Supreme Court summarized this evaluation as follows:

> [A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance 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. at 361.

[29] In my view, the dog sniff of the outdoor hotel walkway was not a search or seizure at all. To be sure, a dog sniff of a porch of a private home has been held to be a "search" within the meaning of the Fourth Amendment. *See Florida v. Jardines*, 569 U.S. 1, 11-12, 133 S. Ct. 1409, 1417-18 (2013) ("The government's use of trained police dogs to investigate the home and its immediate surroundings is a 'search' within the meaning of the Fourth Amendment); *Perez v. State*, 27 N.E.3d 1144, 1152 (Ind. Ct. App. 2015) (holding that warrantless canine sniff of defendant's front door physically intruded onto the curtilage[6] of

[6] Black's Law Dictionary defines "curtilage" as "The land or yard adjoining a house, usu. within an enclosure." CURTILAGE, Black's Law Dictionary (11th ed. 2019); *see also State v. Neanover*, 812 N.E.2d 127, 130 (Ind. Ct. App. 2004) ("'A home's "curtilage" is the area outside the home itself but so close to and intimately connected with the home and the activities that normally go on there that it can reasonably be considered part of the home.'") (quoting *United States v. Pace*, 898 F.2d 1218, 1228 (7th Cir. 1990)).

his home and, therefore, was an unconstitutional search in violation of the Fourth Amendment) (citing *Jardines*, 569 U.S. at 10, 133 S. Ct. at 1416).

[30] Similarly, under Article 1, Section 11 of the Indiana Constitution, this Court has held that a dog sniff of the front porch of a private home is a search. *Hoop v. State*, 909 N.E.2d 463, 469-70 (Ind. Ct. App. 2009), *trans. denied*. For a dog sniff of a private residence to be reasonable under Article 1, Section 11, the officers must have a reasonable suspicion of criminal activity.[7] The key difference here is that the police did not conduct a dog sniff of the front porch or curtilage of a private residence. Instead, they conducted a dog sniff of the common area of a hotel.

[31] This court was faced with a similar situation in *Blankenship v. State*, 5 N.E.3d 779 (Ind. Ct. App. 2014), in which the police conducted a dog sniff of the hallway of a hotel at the request of the hotel manager. The defendant challenged the sniff of the hotel hallway as a violation of her rights under Article 1, Section 11, and claimed that the police did not have reasonable suspicion, as required by *Hoop*, to conduct the search. *Id*. at 783. We assumed *arguendo* that reasonable suspicion was required to conduct such a search, *id*. at 784, but ultimately concluded that the police acted in good-faith reliance on the search warrant to search the defendant's hotel room. *See id*. at 785 ("[W]e need

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[7] *Hoop* was decided before *Jardines*. Accordingly, in *Hoop*, this Court cited then-current cases for the proposition that a dog-sniff of a private home was *not* a search under the Fourth Amendment. Under *Jardines*, however, a dog-sniff of a private home is a search. 569 U.S. at 10, 133 S. Ct. at 1416.

not reach Blankenship's argument that Article 1, Section 11 prohibited the officers from walking canine units in the common area of the hotel, at the hotel management's request, absent reasonable suspicion. The officers searched Blankenship's hotel room while objectively and reasonably relying on a search warrant."). Notably, Judge Baker concurred in result in *Blankenship* and concluded that there was no need for the good-faith exception because, under the *Litchfield* analysis, the dog sniff in the hotel hallway was not a violation of Article 1, Section 11. *Blankenship*, 5 N.E.3d at 785-86 (Baker, J., concurring).

[32] The search of a hotel common area, as opposed to the curtilage of a private home, involves a completely different set of expectations and interests. Anyone can typically access a hotel common area. Hotel customers, their guests, and hotel employees routinely travel hotel common areas. Accordingly, a dog sniff of a hotel hallway is a significantly less-intrusive activity than a dog sniff of the front door of a private residence.

[33] A dog sniff of a hotel common area is also less intrusive than a trash search, which must be supported by reasonable suspicion of criminal activity under Article 1, Section 11. *See Litchfield*, 824 N.E.2d at 364-65. A search of trash has the potential to reveal information about the residents' intimate personal information that, even if not criminal, could be embarrassing. A dog sniff of a hotel hallway, on the other hand, would reveal only the potential presence of contraband. In this sense, it is more akin to a dog sniff of a car, which is generally not considered a search under Article 1, Section 11. *See Tinker v. State*, 129 N.E.3d 251, 255 (Ind. Ct. App. 2019) (noting that a dog sniff of a

vehicle is generally not considered a search under Article 1, Section 11 or the Fourth Amendment) (citing *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013)); *State v. Hobbs*, 933 N.E.2d 1281, 1287 (Ind. 2010) (holding that warrantless search of vehicle based in part on dog sniff was reasonable under Article 1, Section 11). Similarly, a dog sniff of luggage at an airport is not a search for Fourth Amendment purposes. *See United States v. Place*, 462 U.S. 696, 706-07, 103 S. Ct. 2637, 2645 (1983). The hotel common area was not part of a protected curtilage, and the dog sniff of the common area was not a search under Article 1, Section 11.

[34] I also conclude that the alert by the police dog when sniffing the truck, plus the items seen inside the truck and the anonymous tip, were sufficient to establish probable cause for a search warrant to search the hotel room. Accordingly, I concur with the majority that the search of the hotel room did not violate Article 1, Section 11.