MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher Hardebeck,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 21, 2022

Court of Appeals Case No. 21A-CR-2580

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-2106-F2-3476

Bailey, Judge.

Case Summary

[1] Christopher W. Hardebeck ("Hardebeck") appeals his convictions, following a bench trial, of dealing in methamphetamine, as a Level 2 felony;[1] possession of methamphetamine, as a Level 6 felony;[2] possession of paraphernalia, as a Class C misdemeanor;[3] and possession of a controlled substance, as a Class A misdemeanor.[4] The sole dispositive issue on appeal is whether the trial court erred in admitting evidence obtained following a pat-down of Hardebeck's person because the search violated the Indiana and/or United States Constitutions.

[2] We affirm.

Facts and Procedural History

[3] On June 15, 2021, Officers Joseph Hancock and Cory Schalburg were on patrol with the Crime Reduction Unit of the Fisher Police Department. "[E]ither Detective David or Detective Kincaid" (Tr. at 13) of the Hamilton County-Boone County Drug Task Force notified the Crime Reduction Unit that, based on the Drug Task Force's "surveillance and prior investigation" (*id*. at 6),

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

[2] I.C. § 35-48-4-6.1(a).

[3] I.C. § 35-48-4-8.3(b)(1).

[4] I.C. § 35-48-4-7(a).

Hardebeck would be traveling northbound through Fishers in a white Ford Expedition vehicle that contained "approximately one ounce of methamphetamine" (*id*. at 16). The Drug Task Force also provided the license plate number of the suspect vehicle.

[4] While parked in "the 37 and I[-]69 northbound split" at approximately 7:00 p.m., Officer Hancock observed Hardebeck's vehicle traveling north, "moving back and forth within its lane," and "straddl[ing] two lanes of traffic." *Id*. at 7. Officer Hancock "ran the license plate [number] through [his] in-car computer and it showed that the registered owner … had a suspended driving status." *Id*. Officer Hancock then initiated a traffic stop of Hardebeck's vehicle. Officer Hancock approached the passenger side of the vehicle and asked the passenger and the driver—later identified as Hardebeck—"standardized" questions. *Id*. at 8. Hardebeck confirmed that he was the owner of the vehicle and that his license was suspended.

[5] Officer Schalburg arrived at the scene of the traffic stop moments after Officer Hancock initiated the stop. While Officer Hancock was talking to the vehicle occupants on the passenger side of the vehicle, Officer Schalburg approached Hardebeck at the driver's side. Hardebeck handed his identification to Officer Schalburg but the passenger refused to identify herself. Officer Schalburg observed that Hardebeck exhibited "several nervous behaviors, such as chattering speech, failure to make eye contact, and shaking hands." *Id*. at 17. Officer Hancock ordered Hardebeck to turn off the vehicle and step out of it.

Officer Schalburg observed that, before Hardebeck complied with the order, he placed a small bag that had been laying by his leg into the center console.

[6] Hardebeck exited the vehicle, and Officer Schalburg conducted a pat-down search of Hardebeck's person because he believed Hardebeck was likely to be armed with a weapon. This belief was based on Hardebeck's furtive behavior when he was approached and Officer Schalburg's experience that those who transport large amounts of drugs "often times" possess weapons. *Id*. at 18, 22. During the pat-down, Officer Schalburg felt a golf-ball sized bag of a hard substance that he "immediately thought would be consistent with a bag of methamphetamine." *Id*. Officer Schalburg asked Hardebeck what was in his pocket, but Hardebeck did not respond. Officer Schalburg placed Hardebeck in handcuffs and told Hardebeck it "felt like he had a bag of dope in his front right pocket." *Id*. Officer Schalburg again asked Hardebeck what was in his pocket, and Hardebeck replied that "it was what [Officer Schalburg] thought," i.e., a "bag of dope." *Id*. Officer Schalburg read Hardebeck the *Miranda* warnings and asked Hardebeck "what kind of dope" was in his pocket. *Id*. Hardebeck replied that it was "Ice," which is the common street name for crystal methamphetamine. *Id*. Officer Schalburg then conducted a further search of Hardebeck's person and removed from Hardebeck's front right pocket a clear plastic bag that contained what later testing confirmed to be "29.11 grams" of methamphetamine. State's Ex. 8.

[7] While Officer Schalburg handcuffed Hardebeck, Officer Hancock asked the passenger to step out of the vehicle. The passenger began to shift in her seat

and "reach around," and Officer Hancock ordered her to stop reaching around. *Id*. at 10. It appeared to Officer Hancock that the passenger was "attempting to hide something." *Id*. As the passenger stepped out of the passenger side door, Officer Hancock saw a clear plastic bag containing a "powder-type substance" on the seat where the passenger had been sitting. *Id*. The passenger reached back into the vehicle and swiped the bag onto the floorboard. Based on his training and experience, Officer Hancock believed the bag contained heroin. He placed the passenger in handcuffs, read her the *Miranda* warnings, and conducted a pat-down search of her person.

[8] Officer Hancock then requested a K-9 unit, which arrived at the scene approximately one minute later. The dog alerted at the driver's side door. The officers then conducted a search of Hardebeck's vehicle and discovered a black bag in the center console which contained "approximately 2.36 grams of methamphetamine, a half a gram of what was thought to be Suboxone, and a clear bag containing approximately 3.06 grams of MDMA, … also known as Ecstasy." *Id*. at 19. The officers also discovered in the vehicle a digital scale, a glass pipe, and a cut straw with residue.

[9] The State charged Hardebeck with dealing in methamphetamine, as a Level 2 felony; possession of methamphetamine, as a Level 6 felony; possession of paraphernalia, as a Class C misdemeanor; and possession of a controlled substance, as a Class A misdemeanor. Hardebeck filed a motion to suppress the evidence obtained from the searches of his person and his vehicle as allegedly conducted in violation of his state and federal constitutional rights.

Following a suppression hearing, the trial court denied Hardebeck's motion. Hardebeck waived his right to a jury trial and, following a bench trial at which Hardebeck renewed his objections to the admission of the evidence of illegal drugs, the court found Hardebeck guilty as charged. The court sentenced him to eighteen years in the Department of Correction, with eight years executed and ten years suspended. This appeal ensued.

Discussion and Decision

[10] Hardebeck contends that the trial court erred in admitting the evidence obtained from the searches of his person and his vehicle because the searches were conducted in violation of his constitutional rights. Because Hardebeck appeals following a completed trial, his appeal "is best framed as challenging the admission of evidence at trial," rather than a denial of a motion to suppress. *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). We review the admission of evidence for an abuse of discretion, which occurs only when the admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Id*. at 260. "We neither reweigh the evidence nor reevaluate the witnesses' credibility; rather, we view the evidence in the light most favorable to the [judgment], and we will affirm that [judgment] unless we cannot find substantial evidence of probative value to support it." *Pierce v. State*, 29 N.E.3d 1258, 1265 (Ind. 2015). However, whether the facts establish a constitutional violation is a question of law that we review de novo. *See, e.g.*, *Pinner v. State*, 74 N.E.3d 226, 229 (Ind. 2017).

[11] Hardebeck asserts that Officer Schalburg's pat-down of his person violated his right to be free from unreasonable searches under both the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution. Although the Fourth Amendment and Article 1, Section 11, contain parallel language, each requires a separate, independent analysis. *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019).

Fourth Amendment

[12] The Fourth Amendment[5] prohibits warrantless searches and seizures unless the State can prove that an exception to the warrant requirement existed at the time of the search. *See, e.g.*, *Edmond v. State*, 951 N.E.2d 585, 588 (Ind. Ct. App. 2011). One such exception is an investigatory stop that we often call a "*Terry* Stop," in reference to *Terry v. Ohio*, 392 U.S. 1 (1968). *Marshall*, 117 N.E.3d at 1259. Under this exception, police may, "without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity 'may be afoot.'" *Edwards*, 951 N.E.2d at 588 (quoting *Terry*, 392 U.S. at 27). Hardebeck does not challenge the initial stop of his vehicle, which was a permissible *Terry* stop based on the officer's reasonable suspicion that

[5] The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

Hardebeck committed a traffic violation, was driving with a suspended license, and had a large amount of illegal drugs in his vehicle.

[13] Rather, Hardebeck challenges the constitutionality of Officer Schalburg's pat-down of his person, which was conducted during the permissible *Terry* stop. A pat-down search is justified during an investigatory *Terry* stop

> when the officer is concerned for her safety; it is not to discover evidence of crime, but rather to allow the officer to pursue her investigation without fear of violence. *Shinault v. State*, 668 N.E.2d 274, 277 (Ind. Ct. App. 1996). A pat[-]down search for weapons may be conducted if the officer is "justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others." *Jackson v. State*, 669 N.E.2d 744, 747 (Ind. Ct. App. 1996) (quoting *Terry v. Ohio*, 392 U.S. 1, 24, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

Bell v. State, 13 N.E.3d 543, 545 (Ind. Ct. App. 2014), *trans. denied*. The officer need not be absolutely certain that the individual is armed with a weapon; rather, "the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Johnson v. State*, 157 N.E.3d 1199, 1205 (Ind. 2020) (quoting *Terry*, 392 U.S. at 27). In determining that issue, "we consider the specific, reasonable inferences that the officer, in light of his experience, can draw from the facts." *Id*.

[14] As the Indiana Supreme Court recently noted, Indiana courts "have often considered evidence of drug involvement as part of the totality of the circumstances contributing to an officer's reasonable belief that a subject is

armed and dangerous." *Id*. (quoting *Patterson v. State*, 958 N.E.2d 478, 486 (Ind. Ct. App. 2011)). Thus, while "evidence of marijuana **use** alone may not create a reasonable fear that a suspect is armed," evidence of other criminal activity that often involves weapons—such as drug dealing—can create such a fear. *Id*. (emphasis original). So, in *Johnson*, the Indiana Supreme Court held that an officer's pat-down during a *Terry* stop was reasonable under the Fourth Amendment in part because the defendant was suspected of selling drugs, "a crime for which [the defendant] could possibly be armed." *Id*.

[15] Here, Officer Schalburg believed, based on the surveillance and investigation of the Drug Task Force,[6] that Hardebeck was traveling in his vehicle while in possession of a large amount of methamphetamine—approximately one ounce (or twenty-eight grams), which is a large enough amount that its possession shows an intent to deliver constituting the crime of dealing in methamphetamine.[7] I.C. § 35-48-4-1.1(a)(2), (b)(2). Moreover, Officer Schalburg was aware from his training and experience that those involved in "the distribution and transportation of illegal narcotics" often are armed with weapons. Tr. at 18. Based on those facts, in addition to Hardebeck's furtive behavior when he was approached in his vehicle, a reasonably prudent officer

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[6] An officer conducting an investigatory stop and/or a search is entitled to do so in reliance on information obtained from a fellow officer, whose credibility is presumed under the "collective-or imputed-knowledge doctrine." *McGrath v. State*, 95 N.E.3d 522, 529-30 (Ind. 2018).

[7] Thus, Hardebeck's assertion that "there was no evidence at the time of the pat-down that [Hardebeck] intended to sell the drugs in his possession" is incorrect. Reply Br. at 6.

in Officer Schalburg's position would be justified in his belief that his safety was potentially in danger. *See Johnson*, 157 N.E.3d at 1205 (stating "officers know that it is common for there to be weapons in the near vicinity of narcotic transactions" (quotations omitted)) (citing *Ill. v. Wardlow*, 528 U.S. 119, 122 (2000)); *see also Swanson v. State*, 730 N.E.2d 205, 211 (Ind. Ct. App. 2000) ("We also acknowledge that it is not uncommon for drug dealers to carry weapons."), *trans. denied*; *Bell*, 13 N.E.3d at 237-38 (holding a pat-down for weapons was reasonable, in part because of the defendant's furtive movements).

[16] The pat-down of Hardebeck did not violate the Fourth Amendment prohibition against unreasonable searches.

Article 1, Section 11

[17] Hardebeck also asserts that the pat-down search violated his rights under Article 1, Section 11, of the Indiana Constitution.[8]

> "While almost identical to the wording in the search and seizure clause of the federal constitution, Indiana's search and seizure clause is independently interpreted and applied." *Baniaga v. State*, 891 N.E.2d 615, 618 (Ind. Ct. App. 2008). Under the Indiana Constitution, the legality of a governmental search turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). Although other relevant

[8] Article 1, Section 11, states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized." Ind. Const. Art. 1, § 11.

> considerations under the circumstances may exist, our Supreme Court has determined that the reasonableness of a search or seizure turns 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 citizens' ordinary activities, and 3) the extent of law enforcement needs. *Baniaga*, 891 N.E.2d at 618. The burden is on the State to show that under the totality of the circumstances, the intrusion was reasonable. *Id*.

Hathaway v. State, 906 N.E.2d 941, 945 (Ind. Ct. App. 2009), *trans. denied*.

[18] Here, the degree of suspicion weighs in favor of the State. Officer Schalburg believed, based on the Drug Task Force's surveillance and prior investigation, that Hardebeck was transporting a large amount of methamphetamine. As discussed above, Indiana courts have recognized that weapons are often involved in the transportation and dealing of illegal drugs. *See Johnson*, 157 N.E.3d at 1205, and cases cited therein. Therefore, Officer Schalburg reasonably had a high degree of suspicion that Hardebeck was armed and dangerous.

[19] The degree of intrusion the pat-down imposed upon Hardebeck was minimal, as it was merely a pat-down of his outer clothing. *See Belle v. State*, 81 N.E.3d 233, 238 (Ind. Ct. App. 2017) (noting a pat-down of outer clothing imposes only a minimal intrusion), *trans. denied*. And law enforcement needs were high, as Officer Schalburg justifiably believed that Hardebeck—who was suspected of transporting a large amount of illegal drugs—was armed and dangerous. *See id.* at 238-39; *see also Triblet v. State*, 169 N.E.3d 430, 437 (Ind. Ct. App. 2021)

(holding law enforcement needs were high because an armed person poses a risk to officer safety), *trans. denied*.

[20] The pat-down of Hardebeck did not violate Article 1, Section 11's prohibition against unreasonable searches.[9]

Conclusion

[21] The police pat-down of Hardebeck following the *Terry* stop was not an unreasonable search under either the federal or state constitutions. The trial court did not err in admitting evidence obtained from Hardebeck's person and vehicle following the pat-down.

[22] Affirmed.

Mathias, J., and Altice, J., concur.

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[9] Because we find the pat-down to be constitutional, we need not address Hardebeck's further claim that the subsequent searches of his person and vehicle were unconstitutional because they were "tainted" by the illegal pat-down. *See* Appellant's Br. at 8.