

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Merriweather,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 10, 2022

Court of Appeals Case No.
21A-CR-2322

Appeal from the Hendricks
Superior Court

The Honorable Rhett M. Stuard,
Judge

Trial Court Cause No.
32D02-2102-F4-9

Weissmann, Judge.

[1] Michael Merriweather appeals his convictions, arguing that they rested on a Fourth Amendment violation and insufficient evidence. Finding his constitutional claim without merit and the evidence sufficient, we affirm.

Facts

[2] Merriweather left an Avon Best Buy, carrying Myles Johnson's identification and driving a Lincoln Navigator registered to Johnson. A Best Buy employee called 911, believing Merriweather was the same man who used a stolen credit card in the store the day before. An off-duty police officer happened to be in the area taking his canine partner, Lance, to the vet. He quickly located Merriweather, who had barely left the store parking lot. The officer initiated a traffic stop after observing two traffic violations: Merriweather was not wearing a seatbelt, and the Lincoln's license plate was obstructed.

[3] Merriweather presented Johnson's ID to the officer, who later testified, "I knew right away that the identification given to me did not match the individual sitting in the driver's seat." Tr. Vol. II, p. 173. Merriweather insisted he was Johnson and proffered Johnson's social security card to prove it. But Merriweather could not recite the last four digits on the card, nor could he recall the listed address on the ID.

[4] Eventually, the officer decided to detain Merriweather on suspicion of identity deception. Handcuffed in a police vehicle, Merriweather continued to insist he was Myles Johnson. The officer continued questioning Merriweather about his identity, then deployed Lance to conduct a free air sniff around the Lincoln.

Lance indicated for narcotics. The officer then searched the Lincoln, where he discovered raw marijuana shake in the center console, several wallets and IDs under the driver's seat, a traffic ticket bearing Merriweather's name in the trunk, and a handgun in the locked glovebox.

- [5] A jury ultimately found Merriweather guilty of Level 4 felony unlawful possession of a firearm by a serious violent felon, Class A misdemeanor theft, and Level 6 felony identity theft and determined he was a habitual offender. The trial court sentenced him to an aggregate of 20 years of imprisonment. Merriweather now appeals.

Discussion and Decision

- [6] Merriweather raises two issues. First, he claims that the search of his car violated the Fourth Amendment to the United States Constitution, so evidence stemming from that search should have been suppressed. Second, he claims that the evidence was insufficient to support his conviction for possession of a firearm. We disagree and affirm Merriweather's convictions.

I. Search and Seizure

- [7] Merriweather argues that the police lacked reasonable suspicion to investigate his identity and search his vehicle, in violation of the Fourth Amendment. Though he did not object at trial to the admission of evidence discovered during the search, Merriweather argues the admission of the evidence constituted fundamental error. Though Merriweather waived his argument by failing to object, we discern no error on this record, let alone fundamental error.

[8] According to Merriweather, the search of his vehicle was unconstitutional because the investigation of his alleged traffic infractions was immediately abandoned, insufficient circumstances supported the officer’s suspicion of identity deception, and Lance’s sniff illegally extended the traffic stop. To evaluate Merriweather’s claim, we split his encounter with police into phases: (1) the initial stop, (2) his extended detention, and (3) the search of his vehicle. “When a challenge to an evidentiary ruling is based on the constitutionality of search and seizure evidence, it raises a question of law that we review *de novo*.” *Combs v. State*, 168 N.E.3d 985, 991 (Ind. 2021).

A. Initial Stop

[9] A brief investigatory stop, often called a *Terry* stop, does not violate the Fourth Amendment when the officer has a reasonably articulable suspicion of lawbreaking. *Sellmer v. State*, 842 N.E.2d 358, 360 (Ind. 2006) (citing *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). We look to the totality of the circumstances to determine whether the detaining officer has a “particularized and objective basis” to suspect legal wrongdoing. *Id.* (quoting *State v. Burlington*, 802 N.E.2d 435, 438 (Ind. 2004)). Reasonable suspicion requires more than a mere hunch but less than probable cause. *Marshall v. State*, 117 N.E.3d 1254, 1259 (Ind. 2019). Probable cause exists when the totality of circumstances establishes a fair probability of criminal activity, contraband, or evidence of a crime. *Combs v. State*, 168 N.E.3d at 993.

[10] Here, the officer observed two traffic violations before he stopped Merriweather. These observations—that Merriweather was not wearing his seatbelt and that the Lincoln’s license plate was obstructed—not only constituted reasonable suspicion, but they established probable cause. “A traffic violation, however minor, creates probable cause to stop the driver of the vehicle.” *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006).

B. Extended Detention

[11] Merriweather argues that the investigating officer “immediately abandoned any concern with traffic infractions” and began focusing on his identity without reasonable suspicion. Appellant’s Br., p. 12. That is not so. “[Q]uestions concerning a suspect’s identity are a routine and accepted part of many *Terry* stops.” *Hiibel v. Sixth Jud. Dist. Ct. Nev.*, 542 U.S. 177, 186 (2004). In Merriweather’s case, these questions uncovered illegal activity beyond traffic infractions.

[12] Over the course of the traffic stop, the officer developed reasonable suspicion to detain Merriweather for identity deception.¹ The officer testified that he “knew right away” the identification Merriweather proffered “did not match the individual sitting in the driver’s seat.” Tr. Vol. II, p. 173. Merriweather argues that it would be impossible to tell he was not the man pictured on the ID

¹ “[A] person who, with intent to harm or defraud another person, knowingly or intentionally obtains, possesses, transfers, or uses identifying information to profess to be another person, commits identity deception, a Level 6 felony.” Ind. Code § 35-43-5-3.5.

because Merriweather's face mask and beanie obstructed most of his face. This argument asks us to reweigh evidence, which we will not do. *See Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). Moreover, Merriweather could not recite the address on the ID or the last four digits of the social security card he provided. A Best Buy employee had called police because he suspected Merriweather was the same man who had bought merchandise with stolen credit cards the day before. Altogether, the totality of circumstances established a fair probability of criminal activity. *See Combs*, 168 N.E.3d at 993.

C. Vehicle Search

[13] Merriweather next asserts that the search of his vehicle was unconstitutional; therefore, the subsequently seized evidence should not have been admitted at trial. We disagree because the search was permitted under the automobile exception to warrantless searches.

[14] The Fourth Amendment generally prohibits warrantless searches. *State v. Hobbs*, 933 N.E.2d 1281, 1284 (Ind. 2010). But the automobile exception "allows police to search a vehicle without obtaining a warrant if they have probable cause to believe evidence of a crime will be found in the vehicle," the vehicle is readily mobile, and it is found in a non-residential area. *Id.* at 1285. The vehicle in question was clearly readily mobile and found in a non-residential area, as Merriweather was pulled over near the highway. *See, e.g., id.* at 1285-87 (applying automobile exception where dog indicated for narcotics, defendant

was not unconstitutionally seized, car was admittedly operational, and it was parked in a parking lot).

[15] The State maintains that Lance's indication for narcotics gave the investigating officer probable cause to search the entire vehicle. Merriweather argues that Lance's sniff illegally extended the stop, rendering the subsequent search illegal. The evidence shows otherwise.

[16] Police can detain a person stopped under reasonable suspicion of a crime only as long as is required to resolve the suspicion. *Hobbs*, 933 N.E.2d at 1284; *Caballes*, 543 U.S. at 407. Dog sniffs do not violate the Fourth Amendment unless they prolong this process. *Hobbs*, 933 N.E.2d at 1286; *Caballes*, 543 U.S. at 409. Here, Lance was deployed while the investigation into Merriweather's identity was ongoing. At the time of the sniff, police had been unable to determine who Merriweather actually was, and thus, had not resolved their reasonable suspicion that Merriweather had committed identity deception. The sniff did not prolong this investigation.

[17] Merriweather has not shown that the investigating officer committed a Fourth Amendment violation. Accordingly, even if Merriweather had not waived his Fourth Amendment claim, he would not prevail.

II. Sufficiency

[18] Merriweather also asserts that he was unaware of the weapon in his car. Therefore, he argues, the evidence was insufficient to support his conviction for Level 4 felony unlawful possession of a firearm by a serious violent felon.

When reviewing sufficiency claims, we consider only the evidence and reasonable inferences that support the trial court’s finding of guilt. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). Likewise, we consider conflicting evidence in the light most favorable to that finding. *Id.* The evidence need not overcome every reasonable hypothesis of innocence. *Id.* Rather, we affirm unless no reasonable trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *Id.*

[19] A conviction for possession can rest on proof of actual or constructive possession. *Id.* “A person actually possesses contraband when she has direct physical control over it.” *Id.* Constructive possession occurs when a person (1) can maintain dominion and control over the item and (2) intends to do so. *Id.* To establish intent, the State must prove that Merriweather had knowledge of the firearm. *See Crocker v. State*, 989 N.E.2d 812, 822 (Ind. Ct. App. 2013). “[Such] knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband.” *Id.* (internal quotation omitted).

[20] Merriweather contends he had no knowledge of the gun, rendering intent impossible. But this counternarrative does not prove that the evidence was insufficient to support his conviction. First, Merriweather appears to rely on evidence outside of the record to assert his lack of knowledge. We cannot consider such evidence. *See, e.g., Chesterfield Mgmt., Inc. v. Cook*, 655 N.E.2d 98,

101 (Ind. Ct. App. 1995) (“[W]e are bound by [the trial court’s record] on appeal.”).

[21] Second, Merriweather argues the absence of “additional circumstances” indicating knowledge supports reversal. Incriminating statements, furtive gestures, proximity to the contraband, and more may support an inference that Merriweather knew about the presence and nature of the gun. *Gray*, 957 N.E.2d at 175. But these factors are irrelevant because Merriweather had exclusive dominion and control over the vehicle in which the gun was discovered. *See Crocker*, 989 N.E.2d at 822 (holding defendant’s exclusive control over vehicle in which marijuana was found was sufficient to establish constructive possession). Merriweather attempts to argue that someone else *had* been in the car to whom the gun *could* have belonged. But this argument improperly encourages us to abandon our standard of review. Again, the evidence need not overcome every reasonable hypothesis of innocence. *Gray*, 957 N.E.2d at 174.

[22] Merriweather failed to show both that the search violated the Fourth Amendment and that no reasonable trier of fact could have found the elements of the crime proven beyond a reasonable doubt. We affirm his conviction.

Robb, J., and Pyle, J., concur.