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IN THE  
COURT OF APPEALS OF INDIANA

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Asher B. Hill,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 9, 2021

Court of Appeals Case No.  
20A-CR-1956

Appeal from the Morgan Superior  
Court

The Honorable Sara Dungan,  
Judge

Trial Court Cause No.  
55D03-1912-F4-2181

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Defendant, Asher B. Hill (Hill), appeals his conviction for possession of methamphetamine, a Level 6 felony, Ind. Code § 35-48-4-6.1; two Counts of counterfeiting, Level 6 felonies, I.C. § 35-43-5-2(a); identity deception, a Level 6 felony, I.C. § 35-43-5-3.5(a), and his adjudication as a habitual offender, I.C. § 35-50-2-8(a).

[2] We affirm.

## ISSUE

[3] Hill presents this court with one issue on appeal, which we restate as: Whether Hill's search and seizure violated the Fourth Amendment to the United States Constitution.

## FACTS AND PROCEDURAL HISTORY

[4] In the early morning hours of December 17, 2019, Shirley Waller (Waller) and another employee were working at a CVS in Mooresville, Indiana. Around 3:00 a.m., Hill entered the store and attempted to purchase items with counterfeit twenty-dollar bills. Waller followed CVS protocol for identifying counterfeit money, and directed her coworker to call the police after confirming the bills were counterfeited. While the coworker was on the phone with dispatch, Waller saw Hill enter the passenger side of a car, with the vehicle exiting the CVS parking lot. Waller proceeded to talk to dispatch and waited for an officer to arrive.

- [5] Approximately one minute after the 911 call, Captain Donald Kays (Officer Kays) and Lieutenant Daniel Whitley (Officer Whitley) of the Mooresville Police Department were alerted by dispatch that a 24-to-29-year-old male, wearing blue jeans, a dark colored jacket, and boots had passed counterfeit money at the CVS near State Road 67. They were also informed that “a bulldog logo” was located on the suspect’s “pants or jacket.” (Transcript Vol. III, p. 5).
- [6] As he reached an intersection near the CVS, Officer Kays noticed a lone vehicle on the roadway and he radioed Officer Whitley that a large, black, four-door sedan, which he suspected to be a Crown Victoria, was travelling toward Officer Whitley on State Road 67. Officer Kays continued to travel to CVS where Waller confirmed Hill’s description and clarified that the bulldog logo was located on the back of Hill’s pants. Meanwhile, Officer Whitley saw what he believed to be a Crown Victoria<sup>1</sup> travelling northbound on State Road 67 and observed it turn into a nearby gas station. Officer Whitley proceeded to the gas station and parked next to the vehicle. When the driver of the vehicle exited the car to enter the gas station, Officer Whitley saw that he did not resemble the description of the suspect provided by dispatch. The officer then approached the passenger’s window and noticed Hill in the passenger seat, wearing blue jeans, a dark colored jacket, and boots matching the description

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<sup>1</sup> The vehicle was actually a Chevrolet Caprice and both officers testified at trial that a Crown Victoria and a Chevrolet Caprice look similar. The type of vehicle is not at issue in these proceedings.

relayed earlier. The officer inquired where Hill had been before arriving at the gas station, to which Hill nervously replied with “vague” answers and “voluntary[ily] comment[ed] that he [didn’t] understand why I’m harassing him.” (Tr. Vol. III, p. 11). Officer Whitley stated a few times, “I just want to exclude you, you know, if you show me the back of your jacket, if you don’t have a bulldog logo, it’s not you.” (Tr. Vol. III, p. 12). Still speaking through the window, Hill showed Officer Whitley the back of his jacket, which lacked a bulldog logo. Officer Whitley walked away in the direction of the gas station.

- [7] While Officer Whitley spoke to the driver of the vehicle inside the gas station, Officer Kays pulled into the gas station parking lot and noticed the vehicle he has seen earlier on State Road 67. Unaware of the passenger’s identity and Officer’s Whitley’s previous interaction, Officer Kays approached the vehicle and after the officer explained that he was investigating a counterfeit case, asked Hill to identify himself. Hill responded by cursing at the officer and telling him that he did not have “probable cause.” (Tr. Vol. III, p. 69). Hill then gave his name as Brian Milton and a date of birth. Contacting dispatch, Officer Kays learned that the name and date of birth were not on file in Indiana. When Officer Kays shared this information with Hill, Hill advised that his license was through California. Again, dispatch informed Officer Kays that this license did not exist. Officer Kays asked Hill a second time to state his name to which Hill replied with Jeffrey Keys, Jr. with a date of birth. Upon receiving a photo from dispatch, Officer Kays confirmed that Hill was not Jeffrey Keys, Jr. After Hill provided the false names, Officer Kays repeatedly asked Hill, who

was still seated in the passenger seat, to exclude himself from the counterfeit investigation by showing the back of his pants. Hill eventually showed Officer Kays the waistline of his jeans by pulling them to the right, at which point Officer Kays observed a golden dog logo.

[8] Officer Kays ordered Hill to exit the vehicle and Hill responded by calling the officer racist and taking a video with his phone. Only after Officer Whitley returned to the vehicle and aimed his taser at Hill, did Hill exit the vehicle. Hill was placed in restraints and Officer Whitley searched Hill's jacket for identification. Officer Whitley located a driver's license that did not belong to Hill, a plastic bag containing methamphetamine, and counterfeit currency. Officer Kays located a large bundle of counterfeit money between the front passenger seat and center console, as well as a loaded handgun under the passenger seat.

[9] On December 17, 2019, the State filed an Information, charging Hill with Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 5 felony possession of methamphetamine, two Counts of Level 6 felony counterfeiting, Level 6 felony identity deception, Class A misdemeanor resisting arrest, Class A misdemeanor carrying a handgun without a license, and Level 5 felony carrying a handgun without a license. The State added a habitual offender enhancement and at the request of the State, the trial court dismissed the charge for carrying a handgun without a license.

[10] On August 5, 2020, the trial court conducted a suppression hearing. At the hearing, Hill argued that the officers' conduct violated search and seizure protections pursuant to the United States and Indiana Constitutions. On August 19, 2020, the trial court denied Hill's suppression motion. On September 23, 2020, the trial court conducted a two-day jury trial. During the proceedings, the suppression issue was preserved with a continuing objection, and the evidence was admitted over that objection. At the close of the evidence, the jury found Hill guilty of Level 6 felony possession of methamphetamine, as a lesser included offense; two Counts of counterfeiting; and identity deception. During the second phase of the trial, Hill entered an admission to the habitual offender enhancement, and the trial court granted the State's motion to dismiss the charge for unlawful possession of a firearm by a serious violent felon. On October 30, 2020, during the sentencing hearing, the trial court imposed concurrent two-year terms for each conviction, enhanced by five years for the habitual offender adjudication, for an aggregate sentence of seven years.

[11] Hill now appeals. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

### *I. Standard of Review*

[12] Although Hill originally challenged the admission of the evidence through a motion to suppress, he appeals following a completed jury trial and challenges the admission of such evidence at trial. "Thus, the issue is ... appropriately

framed as whether the trial court abused its discretion by admitting the evidence at trial.” *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. *Ackerman v. State*, 774 N.E.2d 970, 974–75 (Ind. Ct. App. 2002), *trans. denied*. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*. However, we must also consider the uncontested evidence favorable to the defendant. *Id.* In this sense, the standard of review differs from the typical sufficiency of the evidence case where only evidence favorable to the verdict is considered. *Fair v. State*, 627 N.E.2d 427, 434 (Ind. 1993).

## II. *Fourth Amendment*

[13] Although his meeting with Officer Kays commenced as a consensual encounter, Hill maintains that the interaction with the officer became an investigatory stop during which he was detained and no longer free to leave when the officer asked Hill to show the back of his pants. Because he was no longer free to leave, Hill contends that the request to see the back of his pants amounted to an illegal search.

[14] The Fourth Amendment to the U.S. Constitution protects persons from unreasonable search and seizure by prohibiting, as a general rule, searches and seizures conducted without a warrant supported by probable cause. U.S.

Const. amend. IV; *Berry v. State*, 704 N.E.2d 462, 464–65 (Ind. 1998). As a deterrent mechanism, evidence obtained in violation of this rule is generally not admissible in a prosecution against the victim of the unlawful search or seizure absent evidence of a recognized exception. *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). It is the State’s burden to prove that one of these well-delineated exceptions is satisfied. *Id.*

[15] Encounters between law enforcement officers and public citizens take a variety of forms, some of which do not implicate the protections of the Fourth Amendment and some of which do. *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003). Consensual encounters in which a citizen voluntarily interacts with an officer do not compel Fourth Amendment analysis. *Id.* Nonconsensual encounters do, though, and typically are viewed in two levels of detention: a full arrest lasting longer than a short period of time, or a brief investigative stop. *Id.* The former of these requires probable cause to be permissible; the latter requires a lower standard of reasonable suspicion. *Id.* Although Hill’s encounter initially commenced as consensual, it quickly evolved into an investigatory stop and became supported by probable cause.

[16] Whether Hill’s initial encounter with Officer Kays amounted to a consensual encounter or some level of detention “turns on an evaluation, under all the circumstances, of whether a reasonable person would feel free to disregard the police and go about his or her business.” *Id.* (citing *California v. Hodari D.*, 499 U.S. 621, 628, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)). The test is objective—not whether the particular citizen actually felt free to leave, but “whether the



officer's words and actions would have conveyed that to a reasonable person.” *Hodari D.*, 499 U.S. at 628, 111 S.Ct. 1547 (citing *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)). Examples of facts and circumstances that might lead a reasonable person to believe that he or she was no longer free to leave could include “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Overstreet v. State*, 724 N.E.2d 661, 664 (Ind.Ct.App.2000) (citing *Mendenhall*, 446 U.S. at 554, 100 S.Ct. 1870), *trans. denied*.

- [17] When Officer Kays first approached Hill, Hill was seated in the passenger seat of the vehicle. The officer arrived at the parked car alone and on foot, after Officer Whitley had left to talk to the driver of the vehicle in the gas station. He did not display a weapon, did not request to see Hill’s driver’s license, and did not use compelling language. In these circumstances, a reasonable person in Hill’s position would have felt free to end the encounter with Officer Kays and the Fourth Amendment was not implicated. *See, e.g., Negash v. State*, 113 N.E.3d 1281, 1288 (Ind. Ct. App. 2018) (Fourth Amendment was not implicated when two officers approached a parked vehicle on foot, were not intimidating, did not display their weapons, and did not use compelling language or a similar tone of voice when asking the occupants about the report of shots fired).

[18] However, as soon as Officer Kays determined that Hill fit the description—minus the dog emblem—of the suspect who had purchased items with counterfeit currency, as provided by Waller, Officer Kays had “reasonable suspicion” that “criminal activity may be afoot” and the consensual encounter became an investigatory stop. *Armfield v. State*, 918 N.E.2d 316, 319 (Ind. 2009) (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)) (A *Terry* stop, or investigatory stop, permits an officer to stop and briefly detain a person for investigative purposes if the officer has reasonable suspicion supported by articulable facts that criminal activity may be afoot even if the officer lacks probable cause). Officer Kays’ suspicion was more than a “hunch” or “unparticularized suspicion” as it was supported by the observations of a credible witness and immediately relayed to dispatch when the 911 call was initiated. *State v. Murray*, 837 N.E.2d 223, 225-26 (Ind. Ct. App. 2005) (the reasonable suspicion must be comprised of more than hunches or unparticularized suspicions), *trans. denied*.

[19] During the investigatory stop and while Hill was still seated in the vehicle, Officer Kays asked Hill to identify himself. After providing the officer with a name and birthday, dispatch advised Officer Kays that this person was not on file in Indiana or California. Hill then proceeded to give Officer Kays a second name and date of birth, which was also determined to be incorrect after dispatch forwarded Officer Kays a photo of the individual whose name Hill had used. Class A misdemeanor false identity occurs when a person, intending to mislead public servants in an official investigation, knowingly make at least two

material statements about his or her identity that are inconsistent to the degree that one is necessarily false. *See* I.C. § 35-44.1-2.4(a). After Officer Kays determined that both identities provided by Hill proved to be false, it became clear that Hill had committed the crime of false identity and Officer Kays had probable cause to arrest Hill. *See* I.C. § 35-33-1-1(a)(4) (a law enforcement officer may arrest a person when the officer has probable cause to believe the person is committing a misdemeanor in the officer's presence).<sup>2</sup> Because Officer Kays had probable cause to arrest Hill, he could order Hill to exit the vehicle and conduct a warrantless search of his person.<sup>3</sup> Therefore, Hill's Fourth Amendment rights were not violated and the trial court properly admitted the evidence over Hill's objection.

## CONCLUSION

[20] Based on the foregoing, we hold that Hill's search and seizure did not violate his rights pursuant to the Fourth Amendment to the United States Constitution.

[21] Affirmed.

[22] Mathias, J. and Crone, J. concur

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<sup>2</sup> We note that the State ultimately charged Hill with identity deception, a level 6 felony.

<sup>3</sup> Hill contends that he should have been provided with a *Pirtle* warning prior to the search of his person. We disagree. When probable cause is absent, *Pirtle* requires police officers to inform persons in custody of their right to have counsel present prior to consenting to a search. *Dycus v. State*, 108 N.E.3d 301, 305 (Ind. 2018). Here, on the other hand, Officer Kays had probable cause to conduct the search and no consent was necessary.