

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andre George,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 6, 2023

Court of Appeals Case No.
23A-CR-397

Appeal from the
Marion Superior Court

The Honorable
Barbara Crawford, Senior Judge

Trial Court Cause No.
49D29-2104-MR-10105

Memorandum Decision by Senior Judge Baker
Judges Riley and Weissmann concur.

Baker, Senior Judge.

Statement of the Case

- [1] Andre George appeals from his murder conviction, challenging the trial court's decision to admit evidence discovered during a search of a purse he had been holding and interacting with prior to his arrest on a criminal recklessness charge. Evidence found during the search of the purse connected him to a murder that same evening. He claims the search violated the Fourth Amendment to the United States Constitution and article 1, section 11 of the Indiana Constitution because it was not a lawful search incident to arrest. Concluding the search was constitutionally sound, and thus the trial court did not err, we affirm.

Facts and Procedural History

- [2] At around 7:15 p.m. on March 30, 2021, surveillance cameras captured images of Andre George entering the convenience store at a Marathon gas station and leaving shortly thereafter. George crossed Georgetown Road on foot and went to a Kroger gas station where Yidam Prieto was buying a lottery ticket with his wife. They saw George, who was wearing a black hoodie and jeans, arguing with an older man. George displayed a handgun and threatened the older man with it. He then crossed the street and returned to the Marathon gas station. Surveillance video captured George walking and then running across the street with the handgun visible in his hands, passing the entrance to the Marathon

convenience store toward the side of the building. Meanwhile, Prieto and his wife began looking for a police officer to report what they had seen.

[3] At the same time, Marquis Zamora was at the Marathon gas station fueling his car. He heard several gunshots while he was at the gas pump. He heard an initial shot followed by several more gunshots and then a short stall. Zamora thought it sounded like the gun had jammed. He then heard a final gunshot and witnessed a car pulling out of the Marathon gas station lot, crossing the street, and crashing into a house. Surveillance cameras at the Marathon station captured images of George walking away from the gas station with his girlfriend, Tanea Hope, who was carrying a pink purse.

[4] Prieto and his wife also saw the car, a black Chevrolet Impala, cross the street and crash into a house. They observed George and a woman quickly walking away from the gas station toward the apartments located behind it. They then saw “a lot of police” and heard “sirens come to the Marathon” gas station. Tr. Vol. II, p. 143. They reported their observations to responding officers.

[5] The officers who responded to reports of shots fired at the Marathon gas station went to the crash site where they found Ryan Thomas seated in the driver’s seat, bleeding from the neck and making gurgling sounds. The front driver’s side window had been shattered and had a bullet hole in it. The left rear taillight had a bullet hole in it, and there was a lug wrench on the rear floorboard of the car. Emergency responders arrived and attempted to provide aid to Thomas, but he died from a gunshot wound to his neck.

- [6] In the parking lot of the Marathon gas station, officers found a black Chevrolet Malibu parked out of sight of any surveillance cameras. The back window was shattered, and a tire jack was near one of the tires, which was flat. There was an unfired bullet lying on the rear passenger floorboard behind the driver's seat. In a suitcase located in the trunk of the car, officers found a receipt for the purchase of a handgun from Shoot Point Blank in Merrillville. The receipt was dated February 19, 2021 and read "Customer: Andre George." *Id.* at 235. Officers also located three spent shell casings and three unfired casings on the ground of the parking lot near the car.
- [7] At 8:15 p.m., Officers responded to a separate report of a disturbance where they found George and his girlfriend Tanea Hope on the landing of a stairwell of the Covered Bridge Apartment Complex, a short distance from the Marathon gas station where Ryan Thomas was shot and killed. They saw George holding "a purse, sweatshirt, and some other stuff in his hands." *Id.* at 9. George bent down and placed some of the items out of sight behind a banister on the landing. And while speaking with officers, George placed the pink purse on top of the banister, later opening the purse and manipulating it or its contents.
- [8] The report of a disturbance was made by Demetria Hope, Tanea's sister. Demetria told officers that earlier that day George fired a handgun from within or into her apartment after arguing with her boyfriend. Officers arrested George for criminal recklessness and led him down the stairs to stand next to a patrol car.

[9] Officers who remained in the stairwell saw a black hoodie, red cap, pink purse, a handgun, and a gun magazine loaded with live ammunition on the ground in a corner of the stairwell landing and waited with the items until a gun liaison officer arrived. Because it began raining outside, officers led George inside the apartment complex to the stairwell. George was later placed in the back of a patrol car.

[10] IMPD Officer Ryan Bowersox, the gun liaison officer, secured the handgun, which was loaded with a magazine, as well as another magazine loaded with live ammunition that was underneath the purse. When Officer Bowersox opened the purse, he found it contained two cards. One of the cards, a black Cash App card, bore the name “Ryan Thomas” on it. Tr. Vol. 3, p. 75. Fingerprints from the card and the magazine matched George’s fingerprints. And an examination of the three spent casings found at the Marathon gas station revealed they had been fired by the handgun found at the Covered Bridge Apartment Complex.

[11] The State charged George with murder. The trial court denied George’s motion to suppress evidence discovered during the search of the purse and its contents. And the trial court overruled his objection at trial to the admission of evidence discovered during the search of the purse, which incorporated his arguments made in his motion to suppress that the search was not a valid search incident to arrest. A jury convicted George of one count of murder for Thomas’ death.

Discussion and Decision

- [12] On appeal, George challenges the admission of evidence discovered during the search of the purse on grounds that the search was conducted in violation of the Fourth Amendment of the United States Constitution and article 1, section 11 of the Indiana Constitution. We address these arguments in turn.
- [13] Although George presents this issue as the denial of his motion to suppress, his case proceeded to trial where he renewed his objection to the admission of this evidence. “We will only reverse a trial court’s ruling on admission of evidence if the decision is clearly against the logic and effect of the facts and circumstances before the court.” *Porter v. State*, 82 N.E.3d 898, 901 (Ind. Ct. App. 2017). “In conducting our review, we will neither reweigh the evidence nor assess witness credibility, but we apply a de novo standard of review to matters of law.” *Id.* “In other words, when a defendant contends that the trial court admitted evidence alleged to have been discovered as the result of an illegal search or seizure, an appellate court will generally assume the trial court accepted the evidence as presented by the State and will not reweigh that evidence, but we owe no deference as to whether that evidence established the constitutionality of the search or seizure.” *Id.*
- [14] Additionally, “we will consider the foundational evidence from the trial as well as the evidence from the motion to suppress hearing which is not in direct conflict with the trial testimony.” *Kelley v. State*, 825 N.E.2d 420, 427 (Ind. Ct. App. 2005).

Fourth Amendment

- [15] The Fourth Amendment to the United States Constitution provides in pertinent part: “The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. CONST. amend. IV. “If a search is conducted without a warrant, the State bears the burden to show that one of the well-delineated exceptions to the warrant requirement applies.” *State v. Crager*, 113 N.E.3d 657, 661 (Ind. Ct. App. 2018), *trans. denied*. The parties and the trial court addressed the claims here under the exception for searches incident to arrest. *See Fentress v. State*, 863 N.E.2d 420, 423 (Ind. Ct. App. 2007) (“[A] search incident to a lawful arrest is an exception to the warrant requirement under the Fourth Amendment.”). We conclude that the search was constitutionally sound under the Fourth Amendment for a different reason.
- [16] “The Fourth Amendment protects persons from unreasonable search and seizure and this protection has been extended to the states through the Fourteenth Amendment.” *Mays v. State*, 719 N.E.2d 1263, 1266 (Ind. Ct. App. 1999), *trans. denied*. “Federal Fourth Amendment rights are personal and may not be vicariously asserted.” *Id.* Thus, in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched and that his expectation is reasonable.” *Id.*

- [17] The parties presented their positions to the trial court focusing on the search incident to arrest exception to the warrant requirement. We find the trial court’s decision should be affirmed on other grounds. *See Wilkinson v. State*, 70 N.E.3d 392, 401-02 (Ind. Ct. App. 2017) (“As an appellate court we will sustain the trial court if it can be done on any legal ground apparent in the record.”).
- [18] Here, we evaluate the evidence George advanced in support of his argument that he had an expectation of privacy in the purse. During the suppression hearing counsel for George made this qualified concession to the trial court: “It was not his purse, but it was in his possession, and he had an expect—he had a privacy interest in that—or expectation in that purse.” Tr. Vol. 2, p. 4. And on cross-examination of Officer Bowersox, George’s counsel established that the purse “look[ed] like a purse that a woman would carry instead of a man.” *Id.* at 57. Thus, George tried to distance himself from the purse and its contents. And the surveillance cameras at the Marathon gas station captured images of George walking away with Tanea Hope, who was carrying a pink purse shortly before the officers’ encounter with George and Tanea at the apartment complex. We conclude that George failed to establish that he had a reasonable and personal expectation of privacy in the purse. “Mere claim of ownership was alone not enough to confer the right to challenge a search.” *Lee v. State*, 419 N.E.2d 825, 828 (Ind. Ct. App. 1981). Thus, the search of the purse did not violate George’s Fourth Amendment rights, and the trial court’s admission of the evidence, though on other grounds, was proper.

Indiana Constitution

- [19] George also challenges the constitutionality of the search under article 1, section 11 of the Indiana Constitution. “Although Article 1, Section 11 contains language nearly identical to the Fourth Amendment, we interpret Article 1, Section 11 independently.” *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). “In cases involving this provision of our Constitution, the State must show that the challenged police action was reasonable based on the totality of the circumstances.” *Id.*
- [20] Our Supreme Court “provided a framework for conducting this totality-of-the-circumstances test for reasonableness in *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).” *Id.* at 943. Although there may be “‘other relevant considerations under the circumstances,’ . . . the reasonableness of a law-enforcement officer’s search or seizure requires 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.’” *Id.* (quoting *Litchfield*, 824 N.E.2d at 361).
- [21] The record shows that the officers were informed by Demetria Hope that George had fired a handgun from within or into her apartment during a disagreement with her boyfriend. When officers arrived at the apartment complex, they saw a firearm and a separate spare magazine with live rounds in it on the floor of the stairwell near other items George had placed there. Officer

Bowersox, a trained ATF firearms liaison, testified at the suppression hearing that he also observed a purse “sitting like on the edge of the firearm and another magazine.” Tr. Vol. II, p. 51. He stated that the purse was the size “capable of carrying a firearm . . . ammunition . . . and additional magazines[.]” *Id.* at 52. He explained that he emptied the purse because he “was looking to see if there [were] any other elements of the firearm . . . in there.” *Id.* at 53. Plus, he was looking for “any identifying documents that [tie] the individual back to the purse.” *Id.* During cross-examination, Officer Bowersox reiterated that he was “searching for identification[] and anything related to the shots-fired investigation.” *Id.* at 59.

[22] As for the degree of intrusion in George’s everyday activities, he was already in handcuffs based on the probable cause supplied by Demetria Hope for the crime of criminal recklessness. George did not ask that the purse or any of the other items be brought with him to the station. And George’s counsel attempted to distance him from ownership of the purse during the suppression hearing. However, to the extent the items could be considered his, as he argues on appeal, caselaw has established that “‘it is difficult to perceive what is *unreasonable* about the police’s examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest.’” *Guilmette v. State*, 14 N.E.3d 38, 42 (Ind. 2014) (quoting *U.S. v. Edwards*, 415 U.S. 800, 806 (1974)).

[23] And the extent of law enforcement needs was great. The officers brought George, Tanea Hope, and Demetria Hope to the police station. Thus, releasing

the items to someone was implausible. The items were on the floor of the stairwell landing of the apartment complex. People could move freely about that area. And George's claims under the Indiana constitution suffer the same lack of an expectation of privacy in the purse as did his Fourth Amendment claims. In sum, we conclude that the search of the purse did not violate the Indiana Constitution.

Conclusion

[24] Based on the foregoing, we affirm the decision of the trial court.

[25] Affirmed.

Riley, J., and Weissmann, J., concur.