MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE COURT OF APPEALS OF INDIANA

Addam Blake Rushton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 28, 2021

Court of Appeals Case No. 20A-CR-1731

Appeal from the St. Joseph Superior Court

The Honorable Jane Woodward Miller, Judge

Trial Court Cause No. 71D01-1712-F6-1148

Mathias, Judge.

[1] Addam Rushton was convicted in St. Joseph Superior Court of Level 6 felony possession of methamphetamine, Level 6 felony possession of a narcotic drug,

and Level 5 felony possession of a narcotic drug. He now appeals his convictions, arguing that the trial court abused its discretion when it admitted evidence law enforcement discovered after opening a container found on his person during a lawful search incident to his arrest. Specifically, Rushton claims that by opening the container, law enforcement violated his rights under Article 1, Section 11 of the Indiana Constitution. Because there was probable cause to arrest Rushton at the time law enforcement opened the container, we conclude that the search of the container was reasonable and that the evidence obtained from the search was therefore admissible.

We affirm.

Facts and Procedural History

[2] On December 8, 2017, a Wal-Mart security guard observed Rushton attempting to take merchandise without paying for it. The security guard, who was also a police officer and worked part-time at the Wal-Mart, called Mishawaka Police Department Officer Brian Long and explained that Rushton had been "concealing and stealing items." Tr. p. 18. Meanwhile, a Wal-Mart loss prevention officer called 911, and Officer Long was then dispatched to the Wal-Mart to investigate the reported theft.

[3] Rushton, who had been stopped by loss prevention officers near the store's exit, provided Officer Long with an identification card that was not his. However, the person to whom the identification card belonged was familiar to Officer Long, so the officer "was very skeptical" of Rushton. *Id.* at 20.

[4] As Officer Long spoke with the store's loss prevention and security employees to determine what had happened, he noticed that Rushton was fumbling around in his pockets. Officer Long believed he had probable cause to arrest Rushton at that point because Wal-Mart employees had watched Rushton pass through all points of sale without paying for his merchandise. So, Officer Long escorted Rushton to the store's loss prevention office. Before entering the office, Officer Long patted Rushton down. At that point, Rushton was not free to leave. *Id.* at 21.

[5] During the pat-down search, Officer Long checked Rushton's waistband and discovered a small tin container. Officer Long opened the container and found "two small plastic baggies with a grayish white powder in them." *Id.* at 22. He believed the powdery substance "to be possibly Heroin or Methamphetamine." *Id.* at 70.

[6] On December 14, 2017, the State charged Rushton with Level 6 felony possession of methamphetamine, Level 6 felony possession of heroin, and Class A misdemeanor theft.[1] Appellant's App. pp. 25–27. On October 30, 2019, Rushton filed a motion to suppress the evidence Officer Long discovered inside the tin container.[2] *Id.* at 63–64. After holding a hearing on the motion the next day, the trial court denied Rushton's motion, finding that Officer Long had

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[1] The theft charge was later dropped. Tr. pp. 4–5.

[2] Although Rushton's motion was titled "Motion in Limine," Rushton's counsel conceded that "it's really a Motion to Suppress." Tr. pp. 6, 7.

probable cause to arrest Rushton and that the evidence was discovered during a lawful search incident to arrest. Tr. pp. 31–32.

[7] Following a jury trial, Rushton was convicted of Level 6 felony possession of methamphetamine, Level 6 felony possession of a narcotic drug, and Level 5 felony possession of a narcotic drug. Appellant's App. p. 172. He now appeals his convictions, arguing that the trial court erred in admitting the evidence discovered inside the tin container.

Discussion and Decision

[8] Rushton argues that the evidence found inside the tin container was inadmissible.[3] Specifically, he argues that opening the container was unreasonable under Article 1, Section 11 of the Indiana Constitution. We do not agree.

[9] We review a trial court's ruling on the admissibility of evidence for an abuse of discretion, and we will reverse only when admission of the evidence was clearly against the logic and effect of the facts and circumstances and the error affects a

[3] Although Rushton presents his claim as a challenge to the trial court's denial of his motion to suppress, the case proceeded to trial. Thus, "the question of whether the trial court erred in denying a motion to suppress is no longer viable." *Cochran v. State*, 843 N.E.2d 980, 982 (Ind.Ct.App.2006), *trans. denied*, *cert. denied*. "[A] ruling on a pretrial motion to suppress is not intended to serve as the final expression concerning admissibility." *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013) (quoting *Joyner v. State*, 678 N.E.2d 386, 393 (Ind.1997)). "Direct review of the denial of a motion to suppress is only proper when the defendant files an interlocutory appeal." *Clark*, 994 N.E.2d at 259 (citing *Kelley v. State*, 825 N.E.2d 420, 424 (Ind.Ct.App.2005)). Rushton's appeal is therefore best framed as a challenge to the admission of evidence at trial.

party's substantial rights. *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). When a challenge to the admission of evidence is based on a contention that the search or seizure of the evidence was unconstitutional, it raises a question of law which we review de novo. *Guilmette v. State*, 14 N.E.3d 38, 41 (Ind. 2014).

[10] The language of Article 1, Section 11—the search and seizure provision of the Indiana Constitution—is virtually identical to its federal Fourth Amendment counterpart. Section 11 provides:

> 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.

The purpose of this provision is to protect Hoosiers from unreasonable police activity, and we thus construe it liberally. *Herron v. State,* 991 N.E.2d 165, 170 (Ind. Ct. App. 2013), *trans. denied.*

[11] We evaluate the totality of the circumstances to determine whether a search comports with Article 1, Section 11. *Saffold v. State,* 938 N.E.2d 837, 840 (Ind. Ct. App. 2010), *trans. denied.* Although there may well be other relevant considerations, the reasonableness of a search or seizure under Section 11 generally 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 citizen's ordinary activities; and (3) the

extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[12] It is well established that a search may be conducted without a warrant if the search is incident to a lawful arrest. *Townsend v. State*, 460 N.E.2d 139, 140 (Ind. 1984). And our supreme court has recognized that "once a lawful arrest has been made, authorities may conduct a full search of the arrestee for weapons or concealed evidence." *Garcia v. State*, 47 N.E.3d 1196, 1200 (Ind. 2016) (quoting *Edwards v. State*, 759 N.E.2d 626, 629 (Ind. 2001). Moreover, "[n]o additional probable cause for the search is required, and the search incident to arrest may involve a relatively extensive exploration of the person." *Garcia*, 47 N.E.2d at 1200.

[13] Here, Rushton acknowledges that Officer Long had probable cause to arrest him. He further concedes that the warrantless pat-down search was conducted incident to that arrest. Rushton challenges only the scope of the search, arguing that it was unreasonable for Officer Long to open the tin container without first obtaining a warrant.

[14] Our supreme court confronted a virtually identical claim in *Garcia*. There, a motorist was lawfully arrested for driving without a valid license. *Garcia*, 47 N.E.3d at 1201. Like Rushton, the motorist in *Garcia* did not dispute that the warrantless pat-down search of his person was a lawful search incident to arrest. *Id.* at 1200. Rather, the motorist challenged the scope of the search, contending that Article 1, Section 11 did not permit officers to open a pill container found

on his person absent a warrant or additional suspicion of illegal activity. *Id.* The supreme court disagreed and held that "the search of [the motorist's] person, which included opening the container, was within the scope of a search incident to a lawful arrest and reasonable under Article 1, Section 11 of the Indiana Constitution." *Id.* at 1205.

[15] In this case, our review of the circumstances under the analysis set forth in *Litchfield*, 824 N.E.2d at 361, leads us to the conclusion that it was reasonable for Officer Long to open the tin container he seized during the pat-down search incident to Rushton's arrest. As in *Garcia*, the circumstances in this case present no basis for requiring an officer to obtain a warrant to search an item that was already lawfully seized. *See Guilmette*, 14 N.E.3d at 41 (holding that "evidence properly seized by police may be examined . . . without further warrant).

[16] After speaking with Wal-Mart employees, receiving a false identification card from Rushton, and observing Rushton dig through his pockets, Officer Long had a justifiably strong suspicion that Rushton had committed theft. And given that there was probable cause to arrest Rushton, Officer Long's brief pat-down of Rushton's clothing was no more than a minimal intrusion. *See Edmond v. State*, 951 N.E.2d 585, 592 (Ind. Ct. App. 2011) (explaining that "a police officer is authorized to conduct a thorough search of an arrestee," and where an officer "conducted only a pat-down search of [the arrestee's] clothing . . . the degree of intrusion was minimal"). Finally, although there was likely no exigency requiring Officer Long to immediately open the tin container and inspect its contents, it would be exceedingly cumbersome to require law

enforcement to apply for an independent warrant each time they wish to further examine a piece of evidence they have already lawfully seized. *See Guilmette*, 14 N.E.3d at 42.

[17] In short, there was probable cause to arrest Rushton, and the tin container was seized during a lawful pat-down search incident to his arrest. The subsequent search of the container's contents was therefore reasonable under Article 1, Section 11, and the trial court did not abuse its discretion in admitting that evidence at trial.

Conclusion

[18] For all of these reasons, we conclude that the trial court did not abuse its discretion when it admitted the evidence Officer Long obtained through his search of the tin container.

Affirmed.

Riley, J., and Crone, J., concur.