

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cody Heaster,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 19, 2023

Court of Appeals Case No.
22A-CR-630

Appeal from the
Hendricks Superior Court

The Honorable
Mark A. Smith, Judge

Trial Court Cause No.
32D04-2105-F2-19

Vaidik, Judge.

Case Summary

- [1] Cody Heaster appeals the trial court's denial of his motion to suppress evidence found after a search of his hotel room, arguing the search violated the Indiana Constitution. We affirm.

Facts and Procedural History

- [2] This Court addressed this case in the appeal of Heaster's co-defendant, Courtney Crabtree. *Crabtree v. State*, 199 N.E.3d 410 (Ind. Ct. App. 2022). The following facts are taken from that opinion:

Officer Logan Westerfield of the Plainfield Police Department was patrolling the parking lot of a local hotel in a high-crime area. The hotel has multiple levels, with each room opening directly outside rather than to an interior hallway. Officer Westerfield noticed a suspicious truck and approached it to look at its license plate. He found a temporary paper license plate showing a VIN that did not match the VIN on the truck. The VINs came back registered to two different people. He also saw items he associated with criminal activity inside the truck, including a saw, a ski mask, latex gloves, a knife, a black magnetic box, and baggies.

Corporal Jeremy Harris and Officer Chris Hepfer, also of the Plainfield Police Department, arrived on scene to assist Officer Westerfield. While they were investigating, two unknown males separately approached them about the truck. The first told officers he was staying next to the people associated with the truck, who he claimed were staying in Room 233. The second told officers that the truck was driven by a man with facial tattoos. Corporal Harris then went and spoke with a hotel

employee, who told him that Room 233 was registered to Courtney Crabtree and that an unknown male with facial tattoos was staying with her.

Corporal Harris conducted a dog sniff of the truck, and the dog alerted to the truck's rear door. The officers then conducted a dog sniff of the hotel's upstairs outdoor walkway, which included Room 233. The dog alerted to Room 233, and officers decided to do a "knock and talk." Officer Westerfield knocked loudly on Room 233's door for several minutes. When no one came to the door, he knocked again and loudly stated the truck would be towed. Crabtree opened the door, and Officer Westerfield instructed her to step out of the room. She did so, and Officer Westerfield then took a few steps into the room while asking Crabtree who else was there. She stated, "Hector," and the officers heard a male voice coming from the back of the hotel room where the restroom is located. Officer Westerfield walked to the restroom and instructed Crabtree's companion, later identified as [Heaster,] to dress. Heaster, who has facial tattoos, dressed and left the bathroom. Officers removed Heaster from the room and placed both him and Crabtree in handcuffs.

While in the room, officers saw a bong in between the beds. Officer Westerfield applied for search warrants for both the truck and hotel room. His affidavit included information about his investigation of the truck—the improper plate, suspicious items, and positive dog alert for narcotics—as well as the officers' conversations with the two unidentified male individuals and the hotel employee, the dog sniff of the hotel-room door, and the bong seen in the room. Search warrants were issued for the truck and hotel room.

A search of the truck revealed four separate baggies of white powder weighing 88 grams total. Field testing revealed the powder was positive for cocaine. Also in the truck was 14.7 grams of a "white crystal-like substance" that field-tested positive

for methamphetamine. Officers also found four oxycodone pills, a digital scale, twelve bullets, seven cell phones, and bank cards belonging to several people. A search of the hotel room disclosed white and brown powder on the nightstand (believed to be cocaine and heroin, although it appears from the record this powder was not tested), a digital scale, two handguns, and multiple cell phones, including one Crabtree identified to officers as hers. Both guns were later found to have been stolen.

Id. at 413-15 (internal citations omitted).

- [3] The State charged Heaster with Level 2 felony dealing in cocaine, Level 2 felony dealing in methamphetamine, Level 3 felony possession of cocaine, Level 4 felony possession of methamphetamine, two counts of Level 6 felony theft of a firearm, and Class C misdemeanor possession of paraphernalia. The State also alleged Heaster is a habitual offender. Crabtree was charged identically.
- [4] Heaster and Crabtree both moved to suppress the evidence seized during the execution of the search warrant for the hotel room, arguing the evidence was the product of an unreasonable search and seizure under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. A joint hearing was held in August 2021. The trial court denied the motions to suppress. Crabtree timely appealed, and we affirmed the trial court's denial of the motion to suppress.

[5] Heaster now belatedly appeals.¹

Discussion and Decision

[6] Heaster asserts two arguments on appeal: that the dog sniff of the hotel-room door and the warrantless entry of the hotel room violated Article 1, Section 11 of the Indiana Constitution, which protects against “unreasonable search or seizure[.]”² As noted above, we have previously addressed this factual scenario, and in fact these exact arguments, in the appeal of Heaster’s co-defendant, Crabtree.³

[7] In that case, we applied the analysis laid out in *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005), to both searches. In *Litchfield*, our Supreme Court stated:

[A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance of:
1) the degree of concern, suspicion, or knowledge that a violation

¹ After the trial court denied Heaster’s motion to suppress, Heaster timely moved to certify the order for interlocutory appeal, which was granted in November. Heaster thereafter failed to file a notice of appeal. In March 2022, Heaster asked this Court for permission to file a belated interlocutory appeal, which was granted the following month. However, he failed to file any briefing, and we dismissed his appeal with prejudice in July. Two months later, Heaster filed a petition for rehearing asking that the appeal be reinstated notwithstanding his untimeliness. We granted his petition and allowed him, for a second time, to file a belated interlocutory appeal. This appeal ensued.

² In the trial court, Heaster challenged the dog sniff and the warrantless entry under both the federal and state constitutions, but on appeal he limits his argument to the Indiana Constitution.

³ Unlike Crabtree, Heaster did not challenge the dog sniff of the hotel-room door in the trial court, although he does so now. As such, he has waived that argument for our review. *White v. State*, 772 N.E.2d 408, 411 (Ind. 2002) (“A party may not object on one ground at trial and raise a different ground on appeal.”). Waiver notwithstanding, for the reasons detailed further below, the dog sniff of the hotel-room door was not unreasonable.

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. at 361.

[8] As to the dog sniff of the hotel, we found that the officers had some degree of suspicion and need to investigate, given the incriminating evidence found in the truck and the information connecting the truck to the hotel room. While acknowledging the degree of suspicion and extent of officers' needs were "not the highest possible," we concluded that considering the low degree of intrusion, the dog sniff was reasonable under the totality of the circumstances. *Crabtree*, 199 N.E.3d at 417.

[9] As to the warrantless entry into the hotel room, we agreed with *Crabtree* that the search violated Article 1, Section 11—while the degree of suspicion may have been high given the positive dog sniff, so too was the degree of intrusion. And officers did not have a strong need to enter the room, as the record indicates there was time to get a warrant and there were no exigent circumstances. However, we held that because the affidavit supporting the subsequent search warrant contained sufficient probable cause even without the evidence obtained from the illegal warrantless entry, evidence discovered pursuant to that search warrant need not be suppressed. *See Perez v. State*, 27 N.E.3d 1144, 1154 (Ind. Ct. App. 2015) (search of defendant's home was reasonable under Indiana Constitution despite affidavit's inclusion of illegally obtained evidence because it also contained "substantial legally obtained

information”), *trans. denied*. As such, we affirmed the trial court’s denial of the motion to suppress.

[10] Heaster gives us no reason to depart from the above analysis. We affirm the trial court’s denial of his motion to suppress.

[11] Affirmed.

Crone, J., and Tavitas, J., concur.