

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alonzo Fention Thomas, III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 16, 2023

Court of Appeals Case No.
22A-CR-3026

Appeal from the
Marion Superior Court

The Honorable
Sheila Carlisle, Judge

The Honorable
Matthew Symons, Magistrate

Trial Court Cause No.
49D29-2010-F4-33081

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] Alonzo Fention Thomas, III, appeals his conviction for Level 4 felony unlawful possession of a firearm by a serious violent felon. He argues the trial court erred in admitting the handgun into evidence because a police officer's warrantless search of his car was unreasonable and violated his rights under Article 1, Section 11 of the Indiana Constitution. Finding the search reasonable, we affirm.

Facts and Procedural History

- [2] Around 5 p.m. on October 27, 2020, Thomas was driving his girlfriend's car, a Dodge Charger, with two children in the backseat (one child was his son and the other was his girlfriend's son). Near the intersection of 38th Street and Mitthoeffer Road in Indianapolis, the Charger and another car collided. The Charger sustained heavy front-end damage, and its engine compartment caught fire.
- [3] Firefighters arrived on the scene and extinguished the fire. A firefighter, William Kirkpatrick, checked the passenger compartment of the Charger to make sure that the fire had not spread there. While looking in the car "from the driver's side," Firefighter Kirkpatrick spotted a handgun on the floorboard in front of the passenger seat. Tr. Vol. III p. 37; Exs. 2, 3.

[4] Meanwhile, Indianapolis Metropolitan Police Department Officer Patrick Scott arrived on the scene to start an accident investigation. The accident had shut down the road to traffic. Upon seeing the damage to the Charger, Officer Scott called for a tow truck. He then spoke with Thomas, who said the car belonged to his girlfriend and explained his recollection of how the accident occurred.

[5] As Officer Scott continued his investigation, Firefighter Kirkpatrick approached him and said there was a gun on the floor of the car. Ex. 8 at 4:48. Firefighter Kirkpatrick told Officer Scott about the gun because he “wanted to make sure that the gun was secured before it went to the tow yard.” Tr. Vol. III p. 37. Officer Scott then went to his patrol car to run Thomas’s information. Upon learning that Thomas had a felony conviction that prohibited him from possessing a gun, Officer Scott canceled the tow truck and asked for an evidence technician to come to the scene.¹

[6] Officer Scott went to the car and opened the driver’s door. He quickly looked in, but he did not see a gun and asked a different firefighter where the gun was. At about the same time, Officer Scott noticed that Thomas was walking away. Officer Scott summoned Thomas and asked him if there was a gun in the car. Ex. 8 at 8:50. Thomas responded that if there was a gun in the car, it belonged to his girlfriend. He said she had a license to carry a gun, but he did not. Officer

¹ At the time of the offense, Indiana Code section 35-47-2-1 required a license to carry a handgun. Thomas didn’t have a license and, due to his felony conviction, was ineligible for one. *See* Ind. Code § 35-47-2-3(h) (2020).

Scott handcuffed Thomas “until we get this figured out.” Ex. 8 at 9:12. While another officer watched Thomas, Officer Scott returned to the car and opened the passenger door. Ex. 8 at 10:48. The gun was in “open view” on the passenger-side floorboard. Tr. Vol. II p. 97.

[7] Soon after, Officer Scott returned to Thomas and read him his *Miranda* rights. When Officer Scott asked him about the gun on the floorboard, Thomas said it belonged to his girlfriend and he didn’t know it was in the car until after the crash. Ex. 8 at 18:10. He surmised that the gun slid out from underneath the passenger seat during the crash.

[8] When the evidence technician, Officer Craig Wagoner, arrived on the scene, Officer Scott again called for a tow truck. Officer Wagoner photographed and collected the gun, which had ten bullets in the magazine and one in the chamber. Ex. 8 at 44:44. The gun, which Thomas’s girlfriend had purchased a few weeks before the accident, was taken to the property room. The gun, cartridges, and magazine were later processed for fingerprints and DNA. Tr. Vol. III p. 52; Ex. 7. A DNA swab from the “lips” of the magazine was found to contain DNA that “matche[d]” Thomas’s DNA profile and was “estimated to occur once in 830 unrelated individuals.” Ex. 18; Tr. Vol. III pp. 131-32.

[9] The State charged Thomas with Level 4 felony unlawful possession of a firearm by a serious violent felon. *See* Ind. Code § 35-47-4-5. Before trial, Thomas moved to suppress the gun, arguing the warrantless search of the car violated

his rights under Article 1, Section 11 of the Indiana Constitution. The trial court denied the motion to suppress.

[10] A jury trial was held in September 2022. At trial, Thomas renewed his objection to the gun, and the trial court admitted it over his objection.² The jury convicted Thomas, and the court sentenced him to ten years.

[11] Thomas now appeals.³

Discussion and Decision

[12] Thomas contends the trial court erred in admitting the handgun into evidence because Officer Scott’s “warrantless search of [the car] was unreasonable and violated [his] rights under Article 1, Section 11 of the Indiana Constitution.” Appellant’s Br. p. 8. The constitutionality of a search or seizure is a question of law that we review de novo. *Kelly v. State*, 997 N.E.2d 1045, 1050 (Ind. 2013).

[13] Article 1, Section 11 provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated” Automobiles are among the “effects” protected by Article 1, Section 11. *Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006). Although Article 1, Section 11 is worded similarly to the Fourth Amendment, we

² The State says Thomas waived review of the admission of the gun because he only objected to the gun and not to any earlier testimony about the gun. Since we find for the State on the merits, we do not address the waiver issue.

³ We held oral argument on October 2, 2023. We thank counsel for their helpful advocacy.

interpret it independently and “ask whether the State has shown that a particular search or seizure was reasonable based on the totality of the circumstances.” *Ramirez v. State*, 174 N.E.3d 181, 191 (Ind. 2021). In doing so, we employ the framework provided in *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005). *Id.* Although there may be other relevant considerations, we evaluate the reasonableness of a law-enforcement officer’s search or seizure by 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.” *Litchfield*, 824 N.E.2d at 361.

[14] As for the first factor, Thomas admits that there was “some suspicion of criminal activity” based on Firefighter Kirkpatrick’s statement to Officer Scott that there was a gun in the car. Appellant’s Br. p. 9. Thomas was the only adult in the car at the time of the accident. Officer Scott then ran Thomas’s information and learned that he had a felony conviction that prohibited him from possessing a gun. The police had a high degree of suspicion that Thomas was in unlawful possession of a firearm.

[15] As for the second factor, “when examining the degree of intrusion into [a] citizen’s ordinary activities, we consider the intrusion into both the citizen’s physical movements and the citizen’s privacy.” *Hardin v. State*, 148 N.E.3d 932, 944 (Ind. 2020). Here, the car had been in a collision, had caught fire, was inoperable, and was blocking traffic on a busy road. When Officer Scott arrived, Thomas and the children were out of the car and waiting for a ride. It is

undisputed that the car couldn't be driven and had to be towed. In addition, the gun was on the passenger-side floorboard and not in a hidden location. The degree of intrusion was low. *Cf. id.* at 946 (finding moderate degree of intrusion where police searched defendant's car, which was parked in his driveway at home).

[16] As for the final factor, "law-enforcement needs exist not only when officers conduct investigations of wrongdoing but also when they provide emergency assistance or act to prevent some imminent harm." *Id.* Here, the accident closed a busy road at evening rush hour, and the police, who were engaged in a community-caretaking function, had a pressing need to make the car safe so that it could be towed and traffic could be restored.

[17] That a warrant wasn't obtained doesn't make the search unreasonable. As our Supreme Court has explained, "the use of a valid warrant does not necessarily result in a search which is reasonable in the constitutional sense, and the failure to use a warrant does not necessarily result in a search which is unreasonable in the constitutional sense." *Brown v. State*, 653 N.E.2d 77, 79 (Ind. 1995); *see also Hardin*, 148 N.E.3d at 943 ("And, while the existence of a valid warrant certainly plays an important role in our review [under *Litchfield*], a warrant does not necessarily make all law-enforcement action related to the warrant reasonable."). Thomas says this case is "like *Brown* in every way that matters" and therefore we should find the warrantless search of the car here to be unreasonable, too. Appellant's Br. p. 13. But the facts in *Brown* are markedly different from the facts here. In that case, the police were investigating a drug-

store robbery that occurred the day before and found the suspect’s car parked in a residential neighborhood. The police impounded the car and “inventory-searched” it, finding evidence of the robbery. *Brown*, 653 N.E.2d at 79. Our Supreme Court held that the warrantless search of the car was unreasonable under Article 1, Section 11 of the Indiana Constitution. *Id.* at 80. The Court emphasized that a day had passed since the robbery, the police had no search warrant, the car was parked in a residential neighborhood and surrounded by the police, there was no “emergency,” and the police “were not engaged in a community caretaking function.” *Id.* at 80. This case is clearly distinguishable from *Brown* given that Thomas’s car had just been in accident, was blocking traffic on a busy road at evening rush hour, and had to be towed.⁴ The extent of law-enforcement needs was high.

[18] Balancing the three *Litchfield* factors, we find the search was reasonable and therefore affirm the trial court.

[19] Affirmed.

Mathias, J., and Pyle, J., concur.

⁴ Thomas also cites *Fox v. State*, 797 N.E.2d 1173 (Ind. Ct. App. 2003), *trans. denied*, which relied on *Brown*. *Fox* is distinguishable for the same reasons that *Brown* is distinguishable.