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IN THE COURT OF APPEALS OF INDIANA

Christian Triblet,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 25, 2021

Court of Appeals Case No. 20A-CR-1686

Appeal from the Marion Superior Court

The Honorable Jennifer Harrison, Judge

Trial Court Cause No. 49G20-1905-F4-019105

Bradford, Chief Judge

Case Summary

[1] On the evening of May 14, 2019, Indiana State Police Trooper Nathaniel Raney and two Indianapolis Metropolitan Police detectives were driving in a high-crime area in Indianapolis when Trooper Raney noticed a vehicle driving with an expired license plate. Trooper Raney stopped the vehicle, gathered the identifications of the three occupants, and ran their information. One passenger had a prior handgun without a license charge, another had an outstanding warrant for a parole violation, and the driver, Christian Triblet, had been charged with robbery in the past. Trooper Raney decided to tow the vehicle, and when Triblet exited the vehicle Trooper Raney observed a large bulge in Triblet's right pocket and that he was pinning that side of his body against the car. Trooper Raney, concerned that Triblet might have a firearm, patted him down and immediately detected a firearm tucked in Triblet's sweatpants.

[2] Triblet was charged with Level 4 felony unlawful possession of a firearm by a serious violent felon. On interlocutory appeal, Triblet contends that the trial court abused its discretion in denying his motion to suppress evidence of the handgun. Triblet argues that Trooper Raney's warrantless search and seizure was not founded on a "reasonable suspicion" and therefore violates both the United States' and Indiana's constitutions. Because we believe that Trooper Raney was justified in determining that Triblet presented a threat to officer safety, we affirm.

Facts and Procedural History[1]

[3] On the evening of May 14, 2019, Trooper Raney and two Indianapolis Metropolitan Police detectives were driving in a high-crime area in which Trooper Raney had conducted numerous criminal investigations in the past and was actively working cases concerning heroin and methamphetamine. Trooper Raney, who had been a police officer for twelve years, primarily worked firearms or narcotics cases. While patrolling the area, Trooper Raney stopped a vehicle that he noticed had expired plates. Trooper Raney noticed that the area which in he was stopping the vehicle was not well lit. Trooper Raney observed one passenger in the front passenger seat, another in a back seat, and Triplet in the driver's seat. Trooper Raney returned to his police vehicle with the three individuals' identifications to check for open warrants and to verify their identities. Trooper Raney discovered that passenger Alan Richardson had an open arrest warrant for a parole violation for robbery, passenger Phillip Rickets had a prior handgun without a license charge, and Triblet had been previously charged with robbery and possession of a firearm by a serious violent felon.

[4] Trooper Raney had been trained in a "mechanics of arrest" class at the Indiana Law Enforcement Academy, in which he learned that persons hide contraband by pinning themselves against a surface. Trooper Raney also knew from his

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[1] Oral argument was held in this case on April 27, 2021 in the Court of Appeals Courtroom. We would like to commend counsel for the quality of their oral presentations and written submissions.

experience that most persons carrying firearms are right handed and will carry the firearm on the right, in a pocket or waistband.

[5] While another officer detained Richardson, Trooper Raney decided to tow the vehicle due to the expired license plate and because the car was stopped in a lane of travel. Trooper Raney approached the vehicle and asked Triblet to exit the vehicle. When Triblet exited the vehicle, Trooper Raney noticed a rigid bulge on the right side of Triblet's pants that was larger than a mobile telephone. Trooper Raney later testified that, at this point, he believed it was "highly possible" that Triblet had had a firearm in his right pocket. Tr. Vol. II p. 13. Triblet then stood close to the vehicle and pinned the right side of his body to the car in what Trooper Raney believed was an effort to conceal the bulge. Trooper Raney saw this as a red flag, and asked Triblet to back up. Trooper Raney informed Triblet that he was going to conduct a pat-down for officer safety. When Trooper Raney conducted the pat-down, he "immediately" felt what he identified as a firearm, which he confirmed after opening the loose-fitting jeans that Triblet wore over his sweatpants and retrieving the firearm from the sweatpants. Tr. Vol. II p. 16.

[6] On May 16, 2019, the State charged Triblet with Level 4 felony unlawful possession of a firearm by a serious violent felon, and Triblet filed a motion to suppress the evidence raising the Fourth Amendment of the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution. At an April 7, 2020 hearing on the motion, Triblet argued that the pat-down was unconstitutional because Trooper Raney's articulable facts did not amount to reasonable

suspicion that he was armed and dangerous. On June 2, 2020, the trial court found that after Trooper Raney returned to his police vehicle to insert names into police databases, he believed Triblet had a predicate conviction that would allow him to be charged as a serious violent felon. The trial court elected not to consider Trooper Raney's knowledge of Triblet's criminal history because he had not known the specific facts underlying each case. Still, the trial court concluded that the pat-down for weapons was justified given Trooper Raney's other articulable facts. On August 18, 2020, Triblet petitioned for the certification of this interlocutory appeal, which was granted by the trial court, and we accepted jurisdiction on October 8, 2020.

Discussion and Decision

I. Fourth Amendment

[7] Triblet argues that the trial court abused its discretion in failing to suppress evidence obtained during the warrantless search of Triblet's person because Trooper Raney lacked reasonable suspicion that he was armed and dangerous.

> Our standard of review for the denial of a motion to suppress evidence is similar to other sufficiency issues. *Jackson v. State*, 785 N.E.2d 615, 618 (Ind. Ct. App. 2003), *trans denied*. We determine whether substantial evidence of probative value exists to support the denial of the motion. *Id.* We do not reweigh the evidence, and we consider conflicting evidence that is most favorable to the trial court's ruling. *Id.* However, the review of a denial of a motion to suppress is different from other sufficiency matters in that we must also consider uncontested evidence that

> is favorable to the defendant. *Id.* We review de novo a ruling on the constitutionality of a search or seizure, but we give deference to a trial court's determination of facts, which will not be overturned unless clearly erroneous. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008).

Westmoreland v. State, 965 N.E.2d 163, 165 (Ind. Ct. App. 2012). The Fourth Amendment to the United States Constitution protects an individual's privacy and possessory interests by prohibiting unreasonable searches and seizures. *Howard v. State*, 862 N.E.2d 1208, 1210 (Ind. Ct. App. 2007).

> Generally, a search warrant is a prerequisite to a constitutionally proper search and seizure. *Halsema v. State*, 823 N.E.2d 668, 676 (Ind. 2005). When a search is conducted without a warrant, the State has the burden of proving that an exception to the warrant requirement existed at the time of the search. *Malone* [*v. State*], 882 N.E.2d [784,] [] 786 [(Ind. Ct. App. 2008)]. One such exception is that a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted, and the officer has reasonable suspicion that criminal activity "may be afoot." *Moultry v. State*, 808 N.E.2d 168, 170–71 (Ind. Ct. App. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 21–22 , 88 [. . .] (1968)).
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> "In addition to detainment, *Terry* permits a reasonable search for weapons for the protection of the police officer, where the officer has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Malone,* 882 N.E.2d at 786–87 (citing *Terry*, 392 U.S. at 27). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be

> warranted in the belief that his safety or that of others was in danger." *Id.*

Washington v. State, 922 N.E.2d 109, 111–12 (Ind. Ct. App. 2010). A traffic stop presents sufficient concern for officer safety to justify the "minimal additional intrusion of ordering a driver and passengers out of the car" without violating the Fourth Amendment. *State v. Cunningham*, 26 N.E.3d 21, 26 (Ind. Ct. App. 2012). Additionally, as Justice Ginsburg noted in *Arizona v. Johnson*, "[M]ost traffic stops, this Court has observed, resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*. Furthermore, the Court has recognized that traffic stops are especially fraught with danger to police officers." 555 U.S. 323, 330 (2009) (quotations and citations omitted).

[8] To determine whether Trooper Raney was justified in searching Triblet, we must determine "whether the facts available to the officer at the moment . . . would warrant a reasonable caution in believing the action taken was appropriate." *Pearson v. State*, 870 N.E.2d 1061, 1065 (Ind. Ct. App. 2007), *trans. denied*. The State argues that because an officer "need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger" and that Trooper Raney was therefore justified in searching Triblet because he reasonably held that belief. *Terry*, 392 U.S. at 27. Specifically, the State points to the location of the stop in a high-crime area, the lack of adequate lighting, the fact that Trooper Raney knew the area had prevalent firearm and drug activity, that the other two occupants of the vehicle

had an open arrest warrant for a parole violation for robbery and had a prior handgun without a license charge, and Triblet's past acts which Trooper Raney discovered through the background search. The State cites *Pearson*, in which a pat-down was found to be justified where an officer knew that the otherwise cooperative defendant had been reported during one past incident and reported as "possibly armed" in another. *Pearson*, 870 N.E.2d at 1063, 1065–66 n.5. The State argues that, because Trooper Raney checked Triblet's criminal history and found he was a serious violent felon, he was aware that Triblet had committed past acts that are statutorily qualified as violent. (Tr. 15–16; Ex. A. at 11).

> Q: Backing up just slightly, you indicated you knew some of Mr. Triblet's criminal history – with that history did you believe he would be able to legally have a firearm?
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> A: No, just the prior felony convictions alone he would not be able to have a firearm in the state of Indiana plus the previous charge of serious violent felon is obviously – he's a serious violent felon and I know just from knowin[g] Indiana law that robbery is a predicate to serious violent felon.

Tr. Vol. I p. 15–16. The State argues that the violent conduct is inherent in Triblet's criminal history, and therefore Trooper Raney was justified in considering that information when concluding that Triblet might potentially be armed and dangerous. Further, the State argues that, even if Trooper Raney could not have gleaned a history of violent actions from Triblet's criminal history, Triblet's resulting status as a serious violent felon created a logical explanation for why and what Triblet might be pinning his body against a

vehicle, *i.e.*, to hide an illegally possessed firearm. *See* Ind. Code § 35-47-4-5(c) (criminalizing the possession of a firearm by a serious violent felon.)

[9] Triblet argues that Trooper Raney's reliance on his criminal history should not be considered when determining whether the search was reasonable to ensure officer safety because he did not know the specific facts of Triblet's criminal past and therefore cannot rely on his assumptions about Triblet. Triblet also argues that the police did not have the requisite reasonable suspicion that "criminal activity may be afoot." *Terry*, 392 U.S. at 30. Triblet, relying on *Pinner* and *Terry*, argues that Trooper Raney may not merely rely on an observation that Triblet might have a gun to make a search necessary and the traffic stop alone does not satisfy the need for Trooper Raney to be conducting a search while investigating a potential crime. Triblet cites *Pinner v. State*, a case in which two police officers were dispatched to a movie theater and searched Pinner on a tip from a cab driver who had transported Pinner and observed that he had a gun. 74 N.E.3d 226, 227 (Ind. 2017). Triblet argues that his case is analogous, pointing to our supreme court's language concerning the protection of the right to bear arms:

> Recognizing the Second Amendment right to bear arms, all states permit the exercise of this constitutional right under certain prescribed circumstances. Some jurisdictions have found that, where an individual is reported as having visibly displayed a firearm in public contrary to state law, the requirement that police have reasonable suspicion of criminal activity is satisfied. But in instances where, as in this jurisdiction, possession of a weapon is not *per se* illegal, states are reluctant to permit a

> "firearm or weapons exception" to the constitutional limitations already imposed by *Terry*.

74 N.E.3d at 230–31. The *Pinner* court concluded that, without independent investigation or personal experience, merely having a gun does not create a reason to believe that possession of a gun is in violation of Indiana law. *Id.* at 232. Triblet argues that "unlike in *Terry*, in Mr. Triblet's case, the troopers stopped him for a purely administrative purpose: because his car license plate was six weeks out of date." Appellant's Reply Br. p. 5. Trooper Raney conducted a search after stopping Triblet for driving with an expired license plate which, though only Class C infraction, was still a justifiable reason for stopping Triblet. *See Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009) ("An officer's decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking has occurred.") Further, we believe this case to be distinct from *Pinner*: while Pinner was approached and searched simply because he was reported to have a gun, Triblet was searched following a valid traffic stop, where one of the occupants of the vehicle was handcuffed and arrested, and where the vehicle was set to be towed, all of which are escalating events which suggest that a reasonable officer might be concerned for his safety during the course of the interaction. *Pinner* stands for the proposition that police will not be able to unreasonably harass gun owners lawfully exercising their rights; here, Trooper Raney was well aware that Triblet could not legally possess a firearm due to his statutory classification as a serious violent felon. Further, the size and shape of the bulge in Triblet's pocket as well as Triblet's attempts to conceal the firearm from Trooper Raney all support Trooper

Raney's deduction that Triblet was armed and dangerous. We are unpersuaded that Trooper Raney was not justified in searching Triblet based on his reasonably held beliefs about the situation.

[10] The trial court decided to avoid the issue of whether Trooper Raney was justified in relying on a criminal history search, concluding that Trooper Raney had articulable facts to believe that Triblet was armed and dangerous, even without considering the criminal history search. We agree with this conclusion, but would add that, in our view, Trooper Raney was fully justified in relying on his criminal history to determine if Triblet might be armed and dangerous.[2] Police officers should be able to rely on all relevant factors when deciding to search someone they suspect to be armed and dangerous.

A. Indiana Constitution Article I, § 11

[11] The Indiana Supreme Court has noted that Article I, § 11 of the Indiana Constitution provides certain protections against unreasonable search and seizure:

> This section is identical in text to the Fourth Amendment but Indiana has developed a distinct approach to search and seizure. "Instead of focusing on the defendant's reasonable expectation of privacy, we focus on the actions of the police officer," and employ a totality-of-the-circumstances test to evaluate the

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[2] *See Pearson v. State*, 870 N.E.2d 1061, 1065-66 (Ind. Ct. App. 2007) (stating that an officer who stopped and patted-down Pearson, that relied on his knowledge of two previous incidents in which Pearson had been violent or possibly armed, was justified in relying on only that information) *rev'd on other grounds.*

> reasonableness of the officer's actions. *Trimble* [*v. State*], 842 N.E.2d [798,] [] 803 (Ind. 2006). Reasonableness is assessed by balancing: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of 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).

Duran v. State, 930 N.E.2d 10, 17–18 (Ind. 2010). Although the text closely follows the Fourth Amendment, we interpret the language under the Indiana Constitution separately and independently. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014).

[12] The trial court did not abuse its discretion in concluding that the State satisfied the requirements of *Litchfield*. Trooper Raney did have a high degree of suspicion based on the information he learned about Triblet during the background check, the high crime area where the stop was made, and the visible bulge that Triblet attempted to conceal on his right side. *See Berry v. State*, 121 N.E.2d 633, 638 (Ind. Ct. App. 2019) (including the facts that the stop was made in a high crime area and the bulge in a suspect's pocket as factors that an officer reasonably relied on in forming suspicion that a violation had occurred). Moreover, the degree of intrusion was minimal, as Trooper Raney only conducted a pat-down before identifying that Triblet had a firearm. *See Bell v. State*, 81 N.E.3d 233, 239 (Ind. Ct. App. 2017) (stating that pat-downs are minimally intrusive). Finally, law enforcement needs were high because an armed person poses some risk to officer safety regardless of how many other officers are present. The trial court did not abuse its discretion in finding

Trooper Raney's search of Triblet to be reasonable pursuant to the Indiana Constitution.

[13] The judgment of the trial court is affirmed.

Kirsch, J., and May, J., concur.