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

Jason N. Luttrell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 8, 2021

Court of Appeals Case No. 21A-CR-343

Appeal from the Tippecanoe Circuit Court

The Honorable Sean M. Persin, Judge

Trial Court Cause No. 79C01-1903-F2-15

Brown, Judge.

[1] Jason N. Luttrell appeals his convictions for dealing in methamphetamine as a level 2 felony, unlawful possession of a syringe as a level 6 felony, possession of marijuana as a class B misdemeanor, operating a motor vehicle without ever receiving a license as a class C misdemeanor, and unlawful possession of a firearm by a serious violent felon as a level 4 felony and his status as an habitual offender. He raises two issues which we revise and restate as:

I. Whether the trial court abused its discretion by admitting evidence obtained as a result of a traffic stop; and

II. Whether the prosecutor withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963).

We affirm.

Facts and Procedural History

[2] On March 21, 2019, Lafayette Police Officer Michael Zambon was driving a fully marked police vehicle and noticed a maroon vehicle at a gas station. Officer Zambon observed an individual in the maroon vehicle continually looking at his police vehicle from the time he pulled in until he left, which Officer Zambon found odd. He notified other officers and relayed a description of the vehicle and the individual.

[3] Lafayette Police Officer Khoury Elias "went by and got the license plate of the vehicle as it was parked there . . . [a]nd checked the license plate and it came back to a different vehicle." Transcript Volume 3 at 54. Officer Elias observed

the driver fail to use a turn signal before pulling into a laundromat at the corner of 6th and Salem and initiated a traffic stop.

[4] Officer Elias approached the car and observed Luttrell in the driver seat, Luttrell's wife seated in the backseat, and another individual in the front passenger seat. Officer Elias asked Luttrell for his driver's license, and Luttrell handed him an Indiana ID card. Officer Elias asked Luttrell if it was his car, and Luttrell indicated he was purchasing the car. Officer Elias told Luttrell that he did not use his turn signal at all. Luttrell indicated that the car was his and he was making payments. Officer Elias took Luttrell's ID card back to his patrol vehicle, entered the information in his laptop, and learned that Luttrell had never been issued a driver's license. He also rechecked the license plate to confirm that the information he had initially checked was correct.

[5] Officer Elias exited his patrol vehicle and asked Luttrell if he ever had a license in any state. Luttrell indicated he did not. One of the officers asked the female passenger, Lysandra Luttrell ("Lysandra"), to exit the car, and she did so. Lafayette Police Sergeant Joshua Saxton, who had arrived at the scene with his canine, Boyka, about five minutes after the stop, patted down Lysandra.

[6] Officer Elias asked Luttrell to turn off the car, and he complied. Officer Elias explained to Luttrell that the other issue was that the plate did not come back to the car. Luttrell indicated he just received the car two days ago.

[7] Officer Elias asked Luttrell to step out of the vehicle. When asked if he had any weapons, Luttrell said, "No, I mean I got I got . . . ." State's Exhibit 2 at 11:43-

11:45.[1] After Luttrell exited the car, Officer Elias observed that he "had a knife that was actually visible as soon as he got out of the vehicle." Transcript Volume 3 at 59. Officer Elias and another officer conducted a pat down of Luttrell and discovered multiple knives. When asked why his pants were undone, Luttrell indicated they fall down all the time. After the pat down, Officer Elias asked Luttrell if he knew the person who sold him the car. Luttrell indicated that he knew the person only a little and the person lives in South Bend. Luttrell said he went to South Bend to obtain the car, he drove the car to determine what was wrong with the struts, and it was about a two and one-half hour drive from South Bend.

[8] Meanwhile, Sergeant Saxton retrieved Boyka to perform a sniff test around the car, and Boyka showed a change of behavior on the back passenger door seam and sat down indicating the presence of an odor of an illegal narcotic. Officer Elias told Luttrell that the police dog alerted to the odor of illegal drugs and that they were going to search the car.

[9] Sergeant Saxton searched the car and found a gun under the driver's seat; a blue soft lunch box cooler containing a glass pipe, a metal grinder,[2] numerous empty plastic baggies, and a "substantial quantity" of methamphetamine; a ledger with names and dollar amounts in the backseat; a wooden pipe used for smoking, a

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[1] The timestamp refers to the one shown in the display of the video itself.

[2] Sergeant Saxton testified that a grinder "is usually used to prepare marijuana to put into something to smoke it." Transcript Volume 3 at 33.

box of ammunition, and the barrel of a shotgun in the trunk. *Id.* at 28. Officers also found marijuana in Luttrell's jacket pocket and syringes in a purse. Officer Elias read him his Miranda rights, and he eventually took responsibility for the items. Officers impounded the car because no one could provide a valid registration or proof of insurance.

[10] On March 27, 2019, the State charged Luttrell with: Count I, dealing in methamphetamine as a level 2 felony; Count II, possession of methamphetamine as a level 3 felony; Count III, unlawful possession of a syringe as a level 6 felony; Count IV, carrying a handgun without a license as a class A misdemeanor; Count V, possession of marijuana as a class B misdemeanor; Count VI, operating a motor vehicle without ever receiving a license as a class C misdemeanor; Count VII, carrying a handgun without a license with a prior felony conviction; and Count VIII, unlawful possession of a firearm by a serious violent felon as a level 4 felony. On May 1, 2019, the State alleged that Luttrell was an habitual offender.

[11] On August 23, 2019, Luttrell filed a Motion to Suppress Evidence and Statements. On March 5, 2020, the court held a hearing and Luttrell's counsel argued that the traffic stop was improperly prolonged. On May 26, 2020, the court denied the motion.

[12] In July 2020, the court held a jury trial. Before the presentation of evidence, Luttrell's counsel objected to the evidence resulting from the stop based upon the assertion that the traffic stop was prolonged. Luttrell's counsel later

renewed his motion to suppress, and the court stated: "So noted, overruled." Transcript Volume 3 at 29. The jury found Luttrell guilty of Counts I through VI. Luttrell waived a jury trial for Counts VII and VIII as well as the allegation that he was an habitual offender.

[13] On August 3, 2020, Luttrell filed a Notice of *Brady* Violation and Motion for Mistrial. He alleged that an article in the Lafayette Journal & Courier was published nine days after the jury entered its verdict indicating that Officer Josh Saxton deployed his K9 during an investigation of Richard Bailey, Jr., Bailey was severely injured, and the Indiana State Police were investigating allegations of excessive force. He alleged that the allegations against Officer Saxton were known to the State, the State did not disclose these facts concerning Officer Saxton, and the "non-discovery of [Officer] Saxton's status constituted a *Brady* violation." Appellant's Appendix Volume III at 7. He asserted that "[h]ad [Officer] Saxton been deposed prior to trial about his practices, in the context of the Bailey incident, counsel could have developed a collateral attack on Saxton's training, practices and certifications." *Id.* at 8. On August 10, 2020, the State filed a Response to Defendant's Motion for Mistrial alleging that the information in the news article was not exculpatory or impeaching and did not prejudice Luttrell. On November 13, 2020, the court held a hearing and denied Luttrell's motion.

[14] The court found Luttrell guilty of Counts VII and VIII as well as being an habitual offender. It entered judgments of conviction for all counts except for

Counts II, IV, and VII due to double jeopardy concerns. The court sentenced Luttrell to an aggregate term of thirty-five years.

Discussion

I.

[15] The first issue is whether the trial court abused its discretion by admitting the evidence obtained as a result of the traffic stop. Although Luttrell originally moved to suppress the evidence, he now challenges the admission of the evidence at trial. Thus, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence. *See Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion and reverse only if a ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). The ultimate determination of the constitutionality of a search or seizure is a question of law that we consider *de novo*. *Id.* In ruling on admissibility following the denial of a motion to suppress, the trial court considers the foundational evidence presented at trial. *Id.* If the foundational evidence at trial is not the same as that presented at the suppression hearing, the trial court must make its decision based upon trial evidence and may consider hearing evidence only if it does not conflict with trial evidence. *Guilmette*, 14 N.E.3d at 40 n.1.

[16] Luttrell cites the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. The Fourth Amendment provides, in pertinent part: "[t]he 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. Although its text mirrors the Fourth Amendment, we interpret Article 1, Section 11 of our Indiana Constitution separately and independently. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). "When a defendant raises a Section 11 claim, the State must show the police conduct 'was reasonable under the totality of the circumstances.'" *Id.* (quoting *State v. Washington*, 898 N.E.2d 1200, 1205-1206 (Ind. 2008), *reh'g denied*). Generally, "[w]e consider three factors when evaluating reasonableness: '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 v. State*, 824 N.E.2d 356, 361 (Ind. 2005)).

A. *The Traffic Stop*

[17] Luttrell asserts that officers had no valid excuse to stop his vehicle and the reasons of an improper plate, the failure to use his turn signal, and plate obstruction were not valid reasons to conduct the traffic stop. Luttrell did not challenge the validity of the initial decision to conduct a traffic stop in his motion to suppress and did not raise a contemporaneous objection with respect

to the basis for the stop when the evidence was offered at trial. At the suppression hearing, the following exchange occurred:

> THE COURT: But break it down for me, are you challenging this initial traffic stop, are you challenging the warrantless search after the dog alerted, what exactly are you challenging?
>
> [Defense Counsel]: No, the prolongation of the traffic stop while the canine handler was available rather than securing the vehicle, getting the people away and having him run while the –
>
> THE COURT: But that's the only basis?
>
> [Defense Counsel]: Uh---
>
> THE COURT: There were a lot of questions about the reason for the stop, and again, maybe I just understand that's not being challenged today.
>
> [Defense Counsel]: Well, I think the law is pretty clear on protectoral traffic stops that although it, it's probably not the traffic of the century, the question is, is there an ostensible reason to stop the vehicle.
>
> THE COURT: I would agree.
>
> [Defense Counsel]: And I don't think I can argue that there wasn't.
>
> THE COURT: Right.

Transcript Volume 2 at 95-96. Defense counsel then stated in part: "He did signal the turn onto 6th Street but almost immediately he's turning into the laundry mat. I don't know whether that would be enough time to actually signal, realistically, so I may raise that as a side issue." *Id.* at 96. In arguing about whether the stop was prolonged, Luttrell's counsel stated:

> But there's some indication already before the stop was done that there was an awareness that the license plate was bad. So I don't know how much further investigation was required. I'm not really sure at what point Officer Elias had confirmed that the, that the, I guess it would be the VIN number and the license plate, the registration and the license plate didn't match. It seemed like, my watching it seemed like that was known fairly early and then he had enough information to issue a citation fairly early.

Id. at 97. In his Brief on Suppression of Evidence, which was filed on April 7, 2020, Luttrell stated that the issue was "whether the traffic stop was unreasonably prolonged by the officers" and also stated that there was not "reasonable suspicion of criminal activity afoot *beyond the traffic violation* to justify extending the traffic investigation." Appellant's Appendix Volume II at 120 (emphasis added). At trial, Luttrell's counsel argued that the traffic stop was improperly prolonged, but did not argue that that there was an insufficient basis for the traffic stop. Under these circumstances, we conclude that Luttrell has waived this argument. *See Saunders v. State*, 848 N.E.2d 1117, 1122 (Ind. Ct. App. 2006) (observing a defendant may not object on one ground at trial and raise another on appeal and that any such claim is waived), *trans. denied*; *see also Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) ("Grounds for objection must be specific and any grounds not raised in the trial court are not available on appeal."); *Mullins v. State*, 646 N.E.2d 40, 44 (Ind. 1995) (noting that the defendant argued on appeal that the State offered no evidence of the approved procedure for administering the breath test, that while the defendant had objected to the admission of the test results on other bases, he had not objected

on that basis at trial, and that failure to state the specific basis for objection waives the issue for appeal).

B. *Alleged Delay*

[18] Luttrell argues that the stop was unnecessarily extended because there was no reasonable suspicion to extend the stop. He asserts that a ticket could have been issued after Officer Elias determined that the plate was incorrectly registered and he did not have a license.

[19] In *Rodriguez v. United States*, the United States Supreme Court held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." 575 U.S. 348, 350, 135 S. Ct. 1609, 1612 (2015). In analyzing a defendant's claim under Article 1, Section 11, the Indiana Supreme Court held that a dog sniff "is an unreasonable investigatory detention if the motorist is held for longer than necessary to complete the officer's work related to the traffic violation and the officer lacks reasonable suspicion that the motorist is engaged in criminal activity." *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013). Ind. Code § 34-28-5-3 provides that an officer may detain a person for a time sufficient to inform the person of the alleged infraction and obtain the person's personal information, including name, address, date of birth, and identification, if any. Ind. Code § 9-18.1-2-3 provides that a vehicle may not be operated on a highway unless the vehicle is registered and displays proof of registration. Ind. Code § 9-18.1-1-5 provides that proof of registration includes a license plate, a

decal or sticker issued by the bureau to indicate registration, a certificate of registration, or any other indication of registration issued by the bureau or the motor carrier services division of the department of state revenue. Ind. Code § 9-18.1-2-10 provides that a law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle that "is operated in violation of this chapter may . . . take the vehicle into the officer's custody . . . until the proper certificate of registration and license plates for the vehicle are procured or the legal owner of the vehicle is found."

[20] The video recording of the stop reveals that Office Elias stopped his vehicle at a timestamp of 5:05. After speaking with Luttrell and obtaining his ID card, Officer Elias entered Luttrell's information in his computer, learned that Luttrell had never been issued a driver's license, and rechecked the license plate. He then exited his patrol vehicle at a timestamp of 10:15. Officer Elias spoke with Luttrell regarding his license status, had Luttrell exit the vehicle, patted him down after observing a knife, and spoke with him about the individual from which Luttrell claimed he was purchasing the vehicle. Approximately thirteen minutes after he initially stopped his patrol vehicle, Officer Elias told Luttrell at a timestamp of 18:09 that the police dog alerted to the odor of illegal drugs and that they were going to search the car. Further, officers impounded the car because no one could provide a valid registration or proof of insurance. We conclude the officers did not extend the stop beyond the duration necessary to investigate the infractions. We cannot say Luttrell

has demonstrated a violation of his rights under the Fourth Amendment or Article 1, Section 11.

II.

[21] The next issue is whether the prosecutor withheld evidence in violation of *Brady v. Maryland*. Under *Brady*, the State has an affirmative duty to disclose material evidence favorable to the defendant. *State v. Hollin*, 970 N.E.2d 147, 153 (Ind. 2012). "To prevail on a *Brady* claim, a defendant must establish: (1) that the prosecution suppressed evidence; (2) that the evidence was favorable to the defense; and (3) that the evidence was material to an issue at trial." *Id.* (quoting *Minnick v. State*, 698 N.E.2d 745, 755 (Ind. 1998) (citing *Brady*, 373 U.S. at 87, 83 S. Ct. 1194), *reh'g denied*, *cert. denied*, 528 U.S. 1006, 120 S. Ct. 501 (1999)). Evidence is material when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Id.*

[22] At the November 13, 2020 hearing, the trial court stated:

> I think this issue is different if they had been investigating the dog as unreliable. If it had false positives, it wasn't performing searches appropriately and they retire a dog because it is just unreliable. I think if you were to go through trial then find out after the fact that this dog is no longer in service because it is not doing effective searches then it would be like, okay, we should have known that before trial. But to long [sic] about a use of force issue with a dog after trial, I just don't see a connection. I don't see how it is exculpatory or how it changes the outcome of the trial. Even if I allowed questions about it, I think the result

> remains the same. And again, I don't know that the jurors watched the video. I did. I watched a dog walk around, sit, alert and had a very limited role in this case. Again, I don't see how any evidence or questions with the regard to use of force changes the outcome. So, a difficult way to find out for sure. Right? You read the paper and see it on T.V. and go, "Hey. I would have liked to have known that." But I don't think you have met your burden. I don't believe it is exculpatory evidence and I don't see any prejudice to [Luttrell] in this particular case so motion for a mistrial is denied.

Transcript Volume 4 at 100-101. On appeal, Luttrell asserts that "if the dog's training is called into question – then certainly there would be a question about the ability of the dog to properly display a reaction to the odor of narcotics." Appellant's Brief at 29-30. However, Luttrell does not contend that the newspaper article specifically related to the dog's ability to alert to the odor of narcotics. We cannot say that reversal is warranted on this basis.

[23] For the foregoing reasons, we affirm Luttrell's convictions.

[24] Affirmed.

Najam, J., and Riley, J., concur.