MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Philip W. Richardson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 25, 2022

Court of Appeals Case No. 21A-CR-1146

Appeal from the Franklin Circuit Court

The Honorable Clay M. Kellerman, Judge

Trial Court Cause No. 24C02-1901-F6-20

Crone, Judge.

Case Summary

[1] Philip W. Richardson appeals his conviction and sentence for level 6 felony possession of methamphetamine. He asserts that the trial court abused its discretion by admitting evidence allegedly seized in violation of his rights to be secure from unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. In addition, he argues that his sentence is inappropriate based on the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] On December 22, 2018, Franklin County Sheriff's Department Deputy Dustin Hill checked the license plate on a white Cadillac and learned that the plate was registered to a green Honda and had expired a year earlier. Tr. Vol. 2 at 14. Deputy Hill believed that the false license plate could indicate that the Cadillac was stolen. *Id*. at 187. The Cadillac pulled into a cemetery, and Deputy Hill initiated a traffic stop. When the Cadillac stopped, the driver of the vehicle, who was later identified as Richardson, "immediately jumped out of the vehicle and began walking away." *Id*. at 184. Richardson's conduct heightened Deputy Hill's concern that the Cadillac could be stolen. *Id*. Deputy Hill ordered Richardson to stop and show him his hands. Richardson complied and returned to the Cadillac. Deputy Hill observed that Richardson had a large knife hanging from his right side and directed him to place his hands on top of the vehicle, which he did. *Id*. at 185. Deputy Hill informed Richardson that he saw the knife, and Richardson explained that it was a hunting knife and asked if he

should remove it. Deputy Hill told him not to remove the knife and performed a patdown to make sure that Richardson had no other weapons. *Id*. at 216. Deputy Hill explained why he stopped Richardson and asked him whether he had an ID. *Id*. at 186. Richardson replied that his ID was in his wallet in his back pocket, and Deputy Hill said, "I'm going to take it out, alright?" Joint Ex. 1 at 00:57.[1] Deputy Hill removed the wallet from Richardson's back pants pocket and told Richardson, "Go ahead and take it out." *Id*. at 01:50; Tr. Vol. 2 at 216. Deputy Hill told Richardson that he was going to make sure that his driver's license was valid. While Deputy Hill was on the radio with dispatch, Richardson admitted that his driver's license was suspended. *Id*. at 02:17; Tr. Vol. 2 at 186. At some point, Richardson told Deputy Hill that he was at the cemetery to visit his parents' graves.

[3] After Deputy Hill received confirmation from dispatch that Richardson's driver's license was suspended, he placed Richardson in handcuffs and removed the knife. *Id*. at 4:27. Deputy Hill told Richardson that he was not under arrest and that he was going to "figure out what's going on with the vehicle." *Id*. at 04:53; Tr. Vol. 2 at 25. Deputy Hill escorted Richardson to the front of the police vehicle where he would be within the camera's view and instructed Richardson to wait there while Deputy Hill spoke to the person in the

[1] Joint Exhibit 1 is a recording admitted at trial of Deputy Hill and Richardson's encounter taken from the camera mounted on Deputy Hill's police vehicle. Tr. Vol. 2 at 195-96. The recording was admitted at the suppression hearing as Defendant's Exhibit 1. *Id*. at 22.

Cadillac's passenger seat, who was Richardson's wife.[2] After he obtained her identification and patted her down, he returned to Richardson. Deputy Hill informed him that he was going to pat him down and immediately put his hand into Richardson's left coat pocket. Joint Ex. 1 at 08:00. Deputy Hill retrieved a small clear plastic baggie that contained a crystal rock-like substance that appeared to be methamphetamine. Tr. Vol. 2 at 17. Laboratory testing confirmed that the substance was methamphetamine with a net weight of 0.49 grams. *Id*. at 250. Deputy Hill then read Richardson his *Miranda* rights.

[4] The State charged Richardson with level 6 felony possession of methamphetamine and class A misdemeanor possession of a controlled substance. The State later dismissed the misdemeanor charge after Richardson produced a valid prescription for the controlled substance. Richardson filed a motion to suppress the methamphetamine found in his possession. At the suppression hearing, Deputy Hill testified that he placed Richardson in custody for driving while suspended and that he discovered the methamphetamine when he searched Richardson incident to that arrest. *Id*. at 29. Following a hearing, the trial court denied his motion. The parties submitted a plea agreement to the trial court, which the court rejected. Appellant's App. Vol. 2 at 47, 52; Tr. Vol. 2 at 43.

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[2] Deputy Hill and Richardson's interaction prior to this was not in the camera's view, but their conversation was recorded and can be heard.

[5] A jury trial was held. Richardson "object[ed] to any of the evidence of the methamphetamine … based on the reasons raised in the suppression motion." Tr. Vol. 2 at 159. The jury found Richardson guilty of level 6 felony possession of methamphetamine. The trial court sentenced him to an executed term of two and a half years. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not err by admitting the methamphetamine.

[6] Richardson contends that the trial court erred by admitting the methamphetamine because it was seized in violation of his rights to be secure from unreasonable searches and seizures guaranteed by the Fourth Amendment and Article 1, Section 11. We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Tinker v. State*, 129 N.E.3d 251, 255 (Ind. Ct. App. 2019), *trans. denied*. A trial court abuses its discretion when the admission of the evidence is clearly against the logic and effect of the facts and circumstances. *Id*. In reviewing the trial court's ruling, we will not reweigh the evidence and will view conflicting evidence in the light most favorable to the trial court's ruling, deferring to the trial court's factual determinations unless clearly erroneous. *Hansbrough v. State*, 49 N.E.3d 1112, 1114 (Ind. Ct. App. 2016), *trans. denied*. However, when the admissibility of the evidence turns on whether it was obtained by an unconstitutional search or seizure, it raises a question of law that we review de novo. *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). "[W]e may affirm a trial court's decision regarding the admission

of evidence if it is sustainable on any basis in the record." *Holloway v. State*, 69 N.E.3d 924, 931 n.5 (Ind. Ct. App. 2017) (citing *Barker v. State*, 695 N.E.2d 925, 930 (Ind. 1998)), *trans. denied*.

Section 1.1 – Richardson waived his claim that his initial detainment and patdown search violated the Fourth Amendment.

[7] The Fourth Amendment "protects persons from unreasonable search and seizure by prohibiting, as a general rule, searches and seizures conducted without a warrant supported by probable cause." *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). As a deterrent mechanism, evidence obtained in violation of this rule is generally not admissible in the absence of evidence of a recognized exception. *Id.* "The 'fruit of the poisonous tree' doctrine operates to bar not only evidence directly obtained, but also evidence derivatively gained as a result of information learned or leads obtained during an unlawful search or seizure." *Hill v. State*, 956 N.E.2d 174, 179 (Ind. Ct. App. 2011), *trans. denied* (2012). The State bears the burden to prove that the evidence is admissible pursuant to an exception to the warrant requirement. *Clark*, 994 N.E.2d at 260.

[8] "The *Terry stop*, perhaps the most popular exception to [the warrant requirement], permits an officer to 'stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot, even if the officer lacks probable cause.'" *Robinson v. State*, 5 N.E.3d 362, 367 (Ind. 2014) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)) (quotation marks omitted). Richardson does not challenge the legality of the initial traffic stop, conceding

that there was reasonable suspicion that he violated a traffic law by driving his car with a license plate that belonged to a different vehicle.[3] *See Peak v. State*, 26 N.E.3d 1010, 1014-15 (Ind. Ct. App. 2015) (stating that under the Fourth Amendment, a "warrantless traffic stop and limited search is permissible where an officer has at least a reasonable suspicion that a traffic law has been violated."). Rather, he challenges the legality of what happened after he stopped the Cadillac and started to walk away.

[9] "An investigatory stop allows a police officer to 'temporarily freeze the situation in order to make an investigative inquiry.'" *Billingsley v. State*, 980 N.E.2d 402, 406 (Ind. Ct. App. 2012) (quoting *Johnson v. State*, 766 N.E.2d 426, 429 (Ind. Ct. App. 2002), *trans. denied*), *trans. denied* (2013). An investigatory stop "is a lesser intrusion on the person than an arrest and may include a request to see identification and inquiry necessary to confirm or dispel the officer's suspicions." *Id*. When conducting a traffic stop, "[l]aw enforcement officers may, as a matter of course, order the driver and passengers to exit a lawfully stopped vehicle." *Tumblin v. State*, 736 N.E.2d 317, 321 (Ind. Ct. App. 2000), *trans. denied* (2002). Other "[t]asks that an officer may undertake related to the traffic stop typically 'involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.'" *Browder v. State*, 77 N.E.3d

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[3] Indiana Code Section 9-18.1-4-5(a)(1) provides that a person who uses or operates a vehicle that displays a license plate belonging to any other vehicle on a highway commits a class C infraction.

1209, 1214 (Ind. Ct. App. 2017) (quoting *Rodriguez v. United States*, 575 U.S. 348, 355 (2015)), *trans. denied*. In addition, an officer conducting an investigatory stop may "take reasonable steps to ensure his own safety." *Reinhart v. State*, 930 N.E.2d 42, 46 (Ind. Ct. App. 2010).

[10] In contrast to an investigatory stop, a full-blown arrest or a detention that lasts for more than a short period must be justified by probable cause to be valid under the Fourth Amendment. *D.Y. v. State*, 28 N.E.3d 249, 255 (Ind. Ct. App. 2015). "Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Shotts v. State*, 53 N.E.3d 526, 532 (Ind. Ct. App. 2016) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)), *trans. denied*. "A *Terry* stop may qualify as an arrest if it becomes so intrusive that it 'interrupts the freedom of the accused and restricts his liberty of movement.'" *D.Y.*, 28 N.E.3d at 255 (quoting *Reinhart*, 930 N.E.2d at 45). However, "there is no 'bright line' for determining when an investigatory detention moves beyond merely a *Terry* stop and becomes an arrest[.]'" *Shotts*, 53 N.E.3d at 532 (quoting *Jones v. State*, 655 N.E.2d 49, 55 (Ind. 1995)).

[11] Richardson asserts that "[t]he traffic stop became non-consensual detainment when [he] exited the vehicle and attempted to walk towards his parents' grave site" and that Deputy Hill's subsequent acts of shouting commands, limiting the use of Richardson's hands by ordering him to place them on his vehicle, patting him down, and reaching into his back pocket for identification constituted an arrest without probable cause of a crime. Appellant's Br. at 17. The State

contends that Richardson waived this issue because he did not argue to the trial court that the initial detainment and patdown were unconstitutional. "It is well-settled law in Indiana that a defendant may not argue one ground for objection at trial and then raise new grounds on appeal." *Turner v. State*, 953 N.E.2d 1039, 1058 (Ind. 2011) (quoting *Gill v. State*, 730 N.E.2d 709, 711 (Ind. 2000)). "In order to preserve a claim of trial court error in the admission or exclusion of evidence, it is necessary at trial to state the objection together with the specified ground or grounds therefore at the time the evidence is first offered." *Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) (quoting *Williams v. State*, 690 N.E.2d 162, 173 (Ind. 1997)). Richardson argues that he is not foreclosed from presenting this argument on appeal because he raised a Fourth Amendment objection at trial, and "he is not arguing a new issue but simply a different aspect of a Fourth Amendment claim raised below." Reply Br. at 11. In support, he cites *Bielat v. Folta*, 141 Ind. App. 452, 454, 229 N.E.2d 474, 475 (1967), wherein the court stated,

> The rule that parties will be held to trial court theories by the appellate tribunal does not mean that no new position may be taken, or that new arguments may not be adduced; all that it means is that substantive questions independent in character and not within the issues or not presented to the trial court shall not be first made upon appeal.

[12] To determine whether Richardson preserved this issue for appeal, we must review the parties' arguments at the suppression hearing because that is what Richardson relied on when he objected to the evidence at trial. At the

suppression hearing, the State argued that Deputy Hill placed Richardson under arrest after confirming that Richardson's driver's license was suspended and that the methamphetamine was seized pursuant to a search incident to arrest consistent with Richardson's federal and state constitutional rights. Tr. Vol. 2 at 31-32. Richardson contended that while a limited patdown search as part of an investigatory stop would have been proper, Deputy Hill's act of putting his hand in his coat pocket went beyond the scope of a limited patdown. *Id*. at 32-34. He asserted that Deputy Hill's search of his coat pocket was not part of a search incident to arrest because, even though Deputy Hill handcuffed him, Deputy Hill told him that he was not under arrest and that he wanted to figure out what was going on with the car. Richardson did not refer to his detainment or Deputy Hill's conduct prior to the handcuffing but rather focused solely on Deputy Hill's conduct when he handcuffed Richardson and put his hand in Richardson's coat pocket. Accordingly, we conclude that the constitutionality of the initial detainment and patdown were not within the issues presented to the trial court. As such, Richardson's objection did not preserve this claim. *See Turner*, 953 N.E.2d at 1058.

[13] Waiver notwithstanding, Deputy Hill's actions did not transform an investigatory stop into an arrest without probable cause. As previously noted, courts do not take a bright-line approach for evaluating whether an investigatory detention becomes so intrusive that it becomes an arrest. *See Shotts*, 53 N.E.3d at 532. Rather, we consider the totality of the circumstances to assess whether an investigatory stop was converted into an arrest. *Reinhart*,

930 N.E.2d at 45. "An arrest occurs when a police officer interrupts the freedom of the accused and restricts his liberty of movement." *Sears v. State*, 668 N.E.2d 662, 667 (Ind. 1996). "Circumstances that would lead a reasonable person to conclude they are not free to leave may include 'the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.'" *Wilson v. State*, 96 N.E.3d 655, 658-59 (Ind. Ct. App. 2018) (quoting *Overstreet v. State*, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000), *trans. denied*), *trans. denied*. "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Shotts*, 53 N.E.3d at 532 (quoting *Graham*, 490 U.S. at 396).

[14] We note that Deputy Hill had reasonable suspicion that the Cadillac may have been stolen, and thus under the Fourth Amendment had the authority to detain Richardson long enough to confirm or dispel this suspicion. *See Smith v. State*, 713 N.E.2d 338, 342 (Ind. Ct. App. 1999) (concluding that officer had reasonable suspicion to believe theft had occurred when license plate check revealed mismatched plate), *trans. denied*. When Richardson walked away before Deputy Hill could speak with him, it was necessary for Deputy Hill to ask him to stop, so that the deputy could safely conduct his investigation. Deputy Hill was the only officer present, and he did not display his weapon.

Because Deputy Hill saw that Richardson had a knife, Deputy Hill instructed Richardson to place his hands on the Cadillac and patted him down to ensure his safety. *See Reinhart*, 930 N.E.2d at 46 (stating that officer conducting investigatory stop may "take reasonable steps to ensure his own safety"). "To conduct a pat-down during a *Terry* stop, 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.'" *Bell v. State*, 81 N.E.3d 233, 237 (Ind. Ct. App. 2017) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)), *trans. denied*. We acknowledge that Deputy Hill retrieved Richardson's wallet from Richardson's back pocket, but Deputy Hill did so only after Richardson told him that his ID was in his back pocket. Their encounter lasted only two minutes before Richardson stated that his license was suspended. These circumstances are vastly different from those where our courts have concluded that an investigatory stop became an arrest. *See e.g., Reinhart*, 930 N.E.2d at 47-48 (concluding that officer's actions constituted arrest where officer fixed laser sight of gun on defendant and ordered defendant to kneel and then lie on the ground and defendant calmly complied with orders and gave no indication he was armed); *Wilson*, 96 N.E.3d at 659-60 (finding officer's actions exceeded scope of investigatory stop and became arrest where officer approached defendant with gun drawn and then handcuffed him).

[15] Under the totality of the circumstances, Officer Hill's actions of telling Richardson to stop, come back, and place his hands on his vehicle, patting him

down for officer safety, requesting identification and removing Richardson's wallet from his back pocket after Richardson told him it was there did not convert the investigatory stop into an arrest without probable cause. We do not agree with Richardson that a reasonable person would have considered his freedom of movement to have been restrained to the degree associated with a formal arrest. *See e.g., Payne v. State*, 854 N.E.2d 1199, 1204-05 (Ind. Ct. App. 2006) (concluding that encounter was investigatory stop and not arrest where officer asked Payne's permission to handcuff him and detention lasted only five minutes), *trans. denied*. After Richardson told Deputy Hill that his license was suspended, the deputy had probable to arrest him, as Richardson apparently concedes. *See Hollowell v. State*, 753 N.E.2d 612, 615 (Ind. 2001) (concluding that officers had probable cause to arrest defendant because he told officer he was driving with suspended license). Therefore, the deputy was justified in conducting a search incident to arrest, and such a search is an exception to the warrant requirement. *Bell*, 13 N.E.3d at 545 (citing *Arizona v. Gant*, 556 U.S. 332, 338 (2009)). The fact that the deputy told Richardson he was not under arrest is irrelevant. "So long as probable cause exists to make an arrest, the fact that a suspect was not formally placed under arrest at the time of the search incident thereto will not invalidate the search." *Santana v. State*, 679 N.E.2d 1355, 1360 (Ind. Ct. App. 1997). Accordingly, the search of Richardson's coat pocket and seizure of the methamphetamine did not violate the Fourth Amendment.

Section 1.2 –The search of Richardson's coat pocket and seizure of the methamphetamine did not violate Article 1, Section 11.

[16] Richardson also argues that Deputy Hill's actions were unreasonable under Article 1, Section 11. The purpose of Article 1, Section 11 is "to protect from unreasonable police activity, those areas of life that Hoosiers regard as private." *Brown v. State*, 653 N.E.2d 77, 79 (Ind. 1995). "[W]hen police obtain evidence by way of an unreasonable search or seizure the evidence is excluded at the defendant's trial." *Wright v. State*, 108 N.E.3d 307, 313 (Ind. 2018). "While almost identical to the wording in the search and seizure clause of the federal constitution, Indiana's search and seizure clause is independently interpreted and applied." *Baniaga v. State*, 891 N.E.2d 615, 618 (Ind. Ct. App. 2008). When analyzing Article 1, Section 11, we focus on the police officer's conduct and "employ a totality-of-the-circumstances test to evaluate the reasonableness of the officer's actions." *Duran v. State*, 930 N.E.2d 10, 17 (Ind. 2010). Although there may be other relevant considerations under the circumstances, the reasonableness of a search or seizure turns on a balancing of 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 v. State*, 824 N.E.2d 356, 361 (Ind. 2005). The State bears the burden to show that under the totality of the circumstances, the police intrusion was reasonable. *State v. Parrott*, 69 N.E.3d 535, 545 (Ind. Ct. App. 2017), *trans. denied*.

[17] First, we evaluate the degree of suspicion that a violation has occurred by considering "the reasonableness of the officers' assumptions, suspicions, or beliefs based on the information available to them at the time." *Duran*, 930 N.E.2d at 18. Richardson concedes that the initial traffic stop of his vehicle was valid under Article 1, Section 11. *See Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013) (observing that Indiana Constitution permits officer to stop driver of vehicle for "even a minor traffic violation"). Richardson asserts that although Deputy Hill had reasonable suspicion to pull him over for a license plate infraction, "the relevant question is the degree of suspicion that another violation had occurred because [Deputy] Hill detained Mr. Richardson and patted him down before discovering his suspended license." Appellant's Br. at 19.

[18] We believe Richardson minimizes the license plate infraction, given that the Cadillac's false license plate provided reasonable suspicion that the vehicle was stolen. *See Smith*, 713 N.E.2d at 342. Deputy Hill's concern that the vehicle might be stolen intensified when Richardson immediately exited the vehicle and walked away before Deputy Hill could speak with him. Deputy Hill then saw that Richardson had a large knife hanging from his side. Richardson asserts that he was carrying the knife openly and legally, but we cannot say that concern for officer safety is unreasonable when an individual is clearly in possession of a knife. About two minutes after Deputy Hill began speaking with Richardson, Richardson admitted that his driver's license was suspended. At that point, as previously noted, Deputy Hill had probable cause to arrest Richardson. *See*

Hollowell, 753 N.E.2d at 615. "[O]nce a lawful arrest occurs, no additional probable cause is necessary to conduct a 'relatively extensive exploration of the person.'" *Garcia v. State*, 47 N.E.3d 1196, 1201 (Ind. 2016) (quoting *Edwards v. State*, 759 N.E.2d 626, 629 (Ind. 2001)). Under the totality of the circumstances, the degree of suspicion weighs in favor of the State.

[19] Next, we evaluate the degree of intrusion from the defendant's point of view. *Id*. Richardson maintains that the degree of intrusion was high because Deputy Hill detained him while he "was merely attempting to visit the grave of his parents," restricted his movements during the entire encounter, handcuffed him, reached into his pockets, and did not inform him what he was being arrested for until almost an hour later. Appellant's Br. at 20. However, Deputy Hill had the authority to make the traffic stop and to detain Richardson to investigate the false license plate. Given that there was reasonable suspicion that the vehicle was stolen, and that Richardson carried a knife, Deputy Hill's request that Richardson place his hands on his vehicle, so that Deputy Hill could safely perform a patdown search for other possible weapons, was not overly intrusive. Just over two minutes into the encounter, Richardson told Deputy Hill that his driver's license was suspended, and therefore there was probable cause to arrest Richardson and search him before transporting him to the jail.[4] We observe that an arrest alone is a significant intrusion into a

[4] Richardson also contends that Deputy Hill falsely telling him that he was not under arrest was unreasonable. *See* Tr. Vol. 2 at 218 (Deputy Hill testifying that he told Richardson that he was not under arrest, even though it was not true, because "that was a tactic for officer safety"). Given that Richardson was

person's ordinary activities. *Garcia*, 47 N.E.3d at 1201. As the State points out, Deputy Hill immediately located the methamphetamine when he performed the search incident to arrest. Given that Richardson was being placed under arrest, the search had little additional impact on Richardson's ordinary activities. *See id.* at 1202 (concluding that brief delay to pat down defendant had little to no additional impact on defendant's ordinary activities given that defendant was already under arrest). Accordingly, the degree of intrusion also weighs in favor of the State.

[20] Finally, Richardson argues that the extent of law enforcement needs in these circumstances was low because he "was merely driving through a cemetery to visit his parents" and committed a traffic infraction, he was carrying "a legal hunting knife, which is common for rural areas," and even offered to remove the knife, which the officer refused, and he "complied with all commands and did not attempt to flee or charge the officer." Appellant's Br. at 20-21. We note that Deputy Hill had reasonable suspicion that the vehicle could be stolen, which is a serious offense. The presence of the knife supported reasonable concern regarding officer safety. Richardson admitted that his license was suspended, which supported probable cause for his arrest. When an arrestee is taken into custody, "[o]fficer safety is a paramount concern." *Garcia*, 47 N.E.3d at 1202. "Moreover, a search incident to arrest is not limited based on 'an

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being handcuffed, we fail to see how the officer telling him that he was not under arrest added to the level of intrusion Richardson was already experiencing. Our conclusion does not imply that false statements made by police officers in other circumstances will be found inoffensive to Article 1, Section 11.

assumption that persons arrested for the offense of driving while their licenses have been revoked are less likely to possess dangerous weapons than are those arrested for other crimes.'" *Id*. at 1202-03 (quoting *United States v. Robinson*, 414 U.S. 218, 234 (1973)). "Rather, 'all custodial arrests [are treated] alike for purposes of search justification.'" *Id*. at 1203 (quoting *Robinson*, 414 U.S. at 235). We conclude that the extent of law enforcement needs also weighs in favor of the State.

[21] Weighing the degree of suspicion, the degree of intrusion, and law enforcement needs, all of which lean heavily in favor of the State, we conclude that Deputy Hill's actions were reasonable under the totality of the circumstances, and therefore the search of Richardson's coat pocket did not violate Article 1, Section 11. As such, the trial court did not err by admitting the methamphetamine. Thus, we affirm Richardson's conviction for possession of methamphetamine.

Section 2 – Richardson has failed to carry his burden to show that his sentence is inappropriate.

[22] Richardson asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not

look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offenses and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). In conducting our review, we may consider all aspects of the penal consequences imposed by the trial court in sentencing, i.e., whether it consists of executed time, probation, suspension, home detention, or placement in community corrections, and whether the sentences run concurrently or consecutively. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[23] Richardson has the burden to show that his sentence is inappropriate. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016). Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation

marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[24] Turning first to the nature of the offense, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Richardson was convicted of possession of methamphetamine as a level 6 felony because he possessed less than five grams of methamphetamine. Ind. Code § 35-48-4-6.1. The advisory sentence for a level 6 felony is one year, with a range of six months to two and a half years. Ind. Code § 35-50-2-7. The trial court imposed the maximum sentence. "Maximum sentences are generally reserved for the worst offenders, but this category encompasses a considerable variety of offenses and offenders." *Wells v. State*, 904 N.E.2d 265, 274 (Ind. Ct. App. 2009), *trans. denied*.

[25] We note that a level 6 felony possession of methamphetamine applies to amounts up to five grams. Ind. Code § 35-48-4-6.1. Richardson possessed only 0.49 grams of methamphetamine, which is one-tenth the maximum amount for a level 6 felony. In addition, as the trial court recognized, Richardson, unlike many defendants sentenced for level 6 felonies, "didn't harm property or another person." Tr. Vol. 3 at 99. We agree with Richardson that the nature of his offense does not justify the maximum sentence.

[26] Richardson's character is a different matter. Since 1990, he has amassed over nineteen prior convictions, including seven felony convictions. His felony convictions include a Texas conviction for arson (1990); Ohio convictions for unlawful possession of dangerous drugs (1990) and aggravated possession of drugs (2010); and Indiana convictions for class D felony cultivating marijuana, class D felony illegal drug lab, class D felony maintaining a common nuisance, and class D felony possession of cocaine (all 2007). His misdemeanor convictions include Ohio convictions for theft (1992), driving without a license (1992), operating without proof of financial responsibility (1992), disorderly conduct (1992), and driving without a valid license (2006). In Indiana, he has misdemeanor convictions for criminal mischief (1990), possession of paraphernalia (2007), improper handling of anhydrous ammonia (2007), driving without a valid license (2005), and three convictions for driving while suspended (2008, 2011, 2016). Although these convictions are predominantly for driving offenses and low-level drug offenses, they show an apparently well-established and consistent pattern that reflects poorly on Richardson's willingness to conform his behavior to the law. Richardson almost always received suspended sentences for his convictions, and although he has received only one notice of probation violation over the years, which was dismissed, each time he has completed probation, he has committed another crime. Richardson's presentence investigation report indicates that he admitted that he used methamphetamine after he was arrested in this case. Tr. Vol. 3 at 100.

[27] Richardson claims that at sixty-one years old, he has struggled with addiction issues, but he is a stone mason with stable employment who accepted responsibility and tried to plead guilty early in the case. He notes that in the plea agreement, the State agreed to a two-year sentence with one year suspended, and he urges that this sentence, with drug treatment and probation, is appropriate. He requests that we impose a two-year sentence with the balance suspended to probation.

[28] We are unconvinced that his attempt to plead guilty reflects his acceptance of responsibility for his conduct. The presentence report shows that he reported that he was innocent of the instant offense and had been "set up" by someone so he would get in trouble. Appellant's App. Vol. 2 at 123. Regarding probation, we observe that although Richardson has been offered probation numerous times, Richardson has failed to take advantage of the opportunity afforded by probation to seek help and overcome his drug problems. We are unconvinced that yet another opportunity for probation will be used any more productively or deter him from committing further offenses. That said, we acknowledge his frustration that Franklin County is one of the few Indiana counties that does not have a drug court and agree that the citizens of these counties should be afforded the same rehabilitative opportunities granted to Hoosiers in the rest of the state. Richardson has failed to convince us that his sentence is inappropriate. Accordingly, we affirm his sentence.

[29] Affirmed.

Bradford, C.J., and Tavitas, J., concur.