

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Dayquan Lamar Swain,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 23, 2023

Court of Appeals Case No.  
21A-CR-2708

Appeal from the Madison Circuit  
Court

The Honorable Angela Warner  
Sims, Judge

Trial Court Cause No.  
48C01-1907-F4-1634

**Memorandum Decision by Judge Pyle**  
Judges Bradford and Kenworthy concur.

**Pyle, Judge.**

## **Statement of the Case**

- [1] In this interlocutory appeal, Dayquan Swain (“Swain”) argues that the trial court erroneously denied his Motion to Suppress. Concluding that the trial court did not err in denying his motion, we affirm the trial court’s judgment.
- [2] We affirm.

## **Issue**

Whether the trial court erred in denying Swain’s Motion to Suppress.

## **Facts**

- [3] On June 22, 2019, police officers from the Anderson Police Department were dispatched on three separate occasions to address complaints regarding a loud party at 2007 Beverly Court. While addressing these complaints, Officer Joseph Todd (“Officer Todd”) observed a black 2012 Jeep Grand Cherokee displaying an Indiana temporary plate of D575342. As a result of previous investigations, Officer Todd believed the vehicle belonged to Swain. Officer Todd subsequently ran the plate number and determined that it was registered to a 2005 Pontiac Grand Am.
- [4] Several hours later, at approximately 3:00 a.m. on June 23, 2019, Officer Todd observed the same Jeep traveling south on Madison Avenue. He initiated a traffic stop because the Jeep was improperly registered. The driver and sole occupant was identified as Swain. When asked for identification and registration, Swain stated that he had recently purchased the vehicle but had not

had the chance to register or insure it. Swain provided a Maryland certificate of title and an unsigned receipt from Harper Motors in Texas. While the vehicle identification number (“VIN”) on the receipt matched the VIN on the Jeep, the receipt did not indicate a price or method of purchase; it only indicated a zero balance.

[5] Meanwhile, Officer Matthew Guthrie (“Officer Guthrie”) and K-9 Officer Chaz Willis (“Officer Willis”) arrived as backup. Officer Guthrie knew of Swain from a previous narcotics investigation from 2017 and, at that time, had observed Swain with a large amount of cash. In addition, Officer Willis was aware of Swain’s criminal history and had recently seen social media posts where Swain was in possession of firearms. While Officer Todd was speaking to Swain, Officer Guthrie noticed a large bulge in Swain’s right front pant pocket. Officer Todd asked Swain to exit the Jeep because they were going to have the K-9 do an exterior sniff of the vehicle. However, Swain refused and immediately rolled up his window and locked the doors. Officers told Swain he needed to exit the vehicle because it was going to be towed for the registration and insurance violations. Swain stated that he would only get out of the vehicle once the tow truck arrived.

[6] While waiting for the tow truck to arrive, a crowd of people had gathered across the street from the traffic stop and began to loudly protest the actions taken by the officers. When the tow truck arrived, Swain exited the Jeep and began to walk away from the scene. Officer Todd told him to come back and explained he was going to be cited for having a false and fictitious plate and not having

insurance. At that point, Officer Willis walked his K-9, who was certified in the detection of controlled substances, around the exterior of the Jeep. While sniffing the passenger side of the vehicle, the K-9 indicated that it had detected the odor of a controlled substance. As a result, Officer Todd told Swain to put his hands on his head and attempted to pat down and search Swain because the canine “had indicated on the vehicle.” (State’s Ex. 3, p. 60). When the pat down reached Swain’s pant pocket, Swain began to pull away. Swain was restrained, placed in handcuffs, and was eventually placed in the back of a police car. Officer Todd discovered that Swain had \$4,052 in his front pant pocket.

[7] Officers asked Swain for the keys to the Jeep so that it could be searched and inventoried. However, Swain refused to surrender the keys. Because of concerns over crowd control and officer safety, the officers decided not to attempt a search of the Jeep at the scene of the traffic stop. Instead, the Jeep was impounded and officers applied for a search warrant. Swain was not arrested at that time and was allowed to leave.

[8] In its electronically submitted affidavit and search warrant, the State informed the trial court of the facts we have just recited. The trial court issued a search warrant for the Jeep. Meanwhile, the Jeep was towed to a bay at Northwest Towing where it was searched by Officer Willis. Having obtained the keys, a subsequent search revealed a clear plastic baggie in the center console containing approximately seven grams of a white rock-like substance that field

tested positive for cocaine. In addition, a Glock .40 caliber handgun was found under the driver's seat.

[9] On July 9, 2019, Swain was charged with the following offenses: Count I, Possession of Cocaine as a Level 4 felony,<sup>1</sup> Count II, Maintaining a Common Nuisance as a Level 6 Felony,<sup>2</sup> Count III, Carrying a Handgun Without a License as a Class A Misdemeanor,<sup>3</sup> Count IV, Carrying a Handgun Without a License With a Prior Conviction as a Level 5 Felony,<sup>4</sup> and Count V, Carrying a Handgun Without a License Being Convicted of a Felony Within 15 Years as a Level 5 Felony.<sup>5</sup> A warrant for Swain's arrest was issued. It was served on July 17, 2019, and Swain posted bond.

[10] On March 2, 2021, Swain filed a Motion to Suppress the evidence seized by police. The trial court held a hearing on June 29, 2021. At the hearing, the parties submitted testimony from the officers who were involved, the search warrant and affidavit, and a copy of the Anderson Police Department's policy regarding the inventory of impounded vehicles. The trial court issued an order denying Swain's motion on October 15, 2021. Swain requested the trial court

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<sup>1</sup> IND. CODE § 35-48-4-6.

<sup>2</sup> I.C. § 35-45-1-5.

<sup>3</sup> I.C. § 35-47-2-1. Effective July 1, 2022, the statutes covering Counts III thru V (prohibiting the carrying a handgun without a license) were amended to allow certain persons to carry a handgun without being licensed. The statutes cited here refer to the statutes in effect at the time of the alleged offenses.

<sup>4</sup> I.C. § 35-47-2-1(e)(2)(A)(i).

<sup>5</sup> I.C. § 35-47-2-1(e)(2)(B).

certify the issues regarding its denial of the Motion to Suppress for interlocutory appeal, and the trial court granted his request.

[11] Swain now appeals.

## Decision

[12] Swain argues that the trial court erroneously denied his Motion to Suppress because the searches and seizure of evidence violated the Fourth Amendment of our Federal Constitution and Article 1, Section 11 of the Indiana Constitution. Specifically, Swain argues that the pat down was unlawful and that the seizure of the cocaine and money was not supported by probable cause. Swain also argues that the search warrant was defective.

[13] Our standard of review for the denial of a motion to suppress requires us to “determine whether there is substantial evidence of probative value to support denial of the motion.” *Danh v. State*, 142 N.E.3d 1055, 1060 (Ind. Ct. App. 2020), *trans. denied*. We do not reweigh the evidence and we consider any conflicting evidence in a light 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. We review *de novo* a ruling on the constitutionality of a search and seizure.” *Id.* at 1060.

[14] We first consider Swain’s Fourth Amendment claims regarding the cash, cocaine, and handgun that were seized. “The fundamental purpose of the Fourth Amendment to the United States Constitution is to protect the

legitimate expectations of privacy that citizens in their persons, their homes, and their belongings.” *Taylor v. State*, 842 N.E.2d 327, 330 (Ind. 2006). In order for a search to be valid under the Fourth Amendment, police must obtain a warrant unless an exception to the warrant requirement applies. *Id.* It is the State’s burden to prove that a warrantless search falls within an exception to the warrant requirement. *Id.*

[15] One exception to the warrant requirement was established by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968). “An officer can stop a person if the officer ‘observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.’ While this stop requires less than probable cause, an officer’s reasonable suspicion demands more than just a hunch: ‘the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.’” *Johnson v. State*, 157 N.E.3d 1199, 1203-1204 (Ind. 2020) (quoting *Terry*, 392 U.S. at 21) *cert. denied*. In addition, an officer may conduct a pat-down of the outer clothing for weapons if he has a reasonable fear that a suspect is armed and dangerous. *Johnson*, 157 N.E.3d at 1205. “The purpose of this search ‘is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.’” *Id.* Absolute certainty that an individual is armed is not required. *Id.* 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. To determine whether an officer acted reasonably, we consider the specific,

reasonable inferences that the officer, in light of his experience, can draw from the facts.” *Id.*

[16] Concerning the cash seized by the officers, we find that the trial court did not err in denying the Motion to Suppress because the officers had reasonable suspicion that Swain might be armed and dangerous. It is uncontested that Swain was legally stopped because the vehicle he was driving was improperly registered and uninsured. In addition, the officers were aware of Swain’s criminal history, that he had been the subject of a prior narcotics investigation, and had been seen possessing firearms in recent social media posts. Further, Officer Guthrie stated that he observed a large bulge in Swain’s front right pant pocket, and Swain immediately refused to exit the Jeep, rolled up the windows, and locked the doors upon learning that a K-9 sniff was going to occur. Finally, when the K-9 indicated the presence of controlled substances and Officer Todd began his search, Swain pulled away and had to be restrained and handcuffed. We conclude that the pat-down of Swain’s outer clothing is supported by the specific facts, numerous inferences, and the officer’s experiences that Swain might be armed and dangerous. *See Patterson v. State*, 958 N.E.2d 478, 486 (Ind. Ct. App. 2011) (“[C]ourts have often considered evidence of drug involvement as part of the totality of the circumstances contributing to an officer’s reasonable belief that a subject is armed and dangerous.”).

[17] We next turn to the seizure of the cocaine and handgun. Another well-established exception to the warrant requirement is the automobile exception. *Myers v. State*, 839 N.E.2d 1146, 1150 (Ind. 2005). This exception permits



police to search a readily mobile vehicle under their control if they have probable cause that the vehicle contains illegal drugs. *Id.* at 1152. In addition, a dog sniff is not a search protected by the Fourth Amendment and “no degree of suspicion is required to summon [a] canine unit to the scene to conduct an exterior sniff of the car or to conduct the sniff itself.” *State v. Hobbs*, 933 N.E.2d 1281, 1286 (Ind. 2010). A dog sniff alone can provide probable cause that a vehicle contains contraband. *Id.*

[18] We also note the inventory exception to the warrant requirement. *Whitley v. State*, 47 N.E.3d 640, 645 (Ind. Ct. App. 2015), *trans. denied*. “Police are permitted to conduct a warrantless search of a lawfully impounded vehicle if the search is designed to produce an inventory of the vehicle’s contents. The rationale for an inventory search is three-fold: (1) protection of private property in police custody; (2) protection of police against claims of lost or stolen property; and (3) protection of police from possible danger.” *Id.* Evidence of an established procedure is necessary to ensure that the inventory is not a pretext for “general rummaging in order to discover incriminating evidence.” *Id.* Further, in Indiana, a police officer is authorized to impound a vehicle “until the proper certificate of registration and license plates for the vehicle are procured . . . .” IND. CODE § 9-18.1-2-10(a)(2).

[19] In this case, we conclude that the trial court did not err in denying the Motion to Suppress regarding the cocaine and handgun that were seized. Again, it is uncontested that Swain was lawfully stopped for registration violations and that the vehicle was readily movable. The officers did not need to provide any

degree of suspicion regarding the K-9 sniff. Once the K-9 indicated the presence of controlled substances, the officers had probable cause to search the Jeep. In addition, because the Jeep was improperly plated and uninsured, the officers had authority under Indiana Code § 9-18.1-2-10(a)(2) to impound the vehicle. Pursuant to established Anderson Police Department policy, a warrantless vehicle inventory would have been permissible. *See Wilford v. State*, 50 N.E.3d 371, 375 (Ind. 2016) (“Impoundment is reasonable if it is authorized either by statute or the police’s discretionary community caretaking function.”).

[20] Turning to Swain’s claims under the Indiana Constitution, we assess whether a search and seizure is lawful under Article 1, Section 11 of the Indiana Constitution based on whether law enforcement’s actions were reasonable under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). “While acknowledging the possibility of ‘other relevant considerations under the circumstances,’ we stated that the reasonableness of a law-enforcement officer’s search or seizure requires 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.’” *Hardin v. State*, 148 N.E.3d 932, 943 (Ind. 2020) (quoting *Litchfield*, 824 N.E.2d at 361), *cert. denied*. When weighing these factors, “we consider the full context in which the search or seizure occurs.” *Hardin*, 148 N.E.3d at 943.

[21] Regarding the degree of concern, suspicion, or knowledge that a violation has occurred, we find that officers had a strong basis for believing that a violation

had occurred. First, officers knew that the Jeep Swain was driving was improperly registered and uninsured. Officers had knowledge of his criminal history, that he had been the subject of a narcotics investigation, and was observed in possession of firearms on recent social media posts. Once stopped and told of the impending K-9 sniff, Swain refused to get out of the Jeep, rolled up the windows, and locked the doors. Further, the K-9 detected the presence of controlled substances. These facts tip the balance in favor of the State.

[22] Next, we consider the degree of intrusion from Swain's point of view, and we "consider the intrusion into both the citizen's physical movements and the citizen's privacy." *Hardin*, 148 N.E.3d at 944. Here, while we acknowledge that Indiana's citizens have a privacy interest in their motor vehicles, it is not absolute. For example, citizens may be required to yield to the interests of the State when a vehicle is improperly registered. As we previously noted, a vehicle may be impounded and subject to an inventory search when improperly registered. I.C. § 9-18.1-2-10(a)(2). Here, the degree of intrusion was relatively low as applied to Swain. After being stopped, he was not physically restrained until he tried to prevent Officer Todd from patting him down. He was also allowed to leave without being arrested. The degree of intrusion was low.

[23] Finally, we consider the extent of law enforcement needs. "These 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. In reviewing the extent of law enforcement needs, we look to the needs of the officers to act in a general way." *Id.* at 946-47. Police

used a K-9 to sniff the exterior of the Jeep and police had probable cause that the Jeep contained controlled substances. In addition, police had information regarding Swain’s criminal history and his involvement in a prior narcotics investigation. The need for an immediate search was high to combat suspected drug trafficking. *See id.* (“Regarding the broad need to act in this situation, we’ve recognized that law-enforcement needs in combating trafficking – ‘from individual operators to large-scale, corporate-like organizations’ – are great.”). In addition, law-enforcement needs were high because Swain could have left the scene in an uninsured and improperly registered vehicle. *See also Harbaugh v. State*, 96 N.E.3d 102, 107 (Ind. Ct. App. 2018) (holding that a dog sniff of vehicle and subsequent warrantless search of vehicle with expired plates was reasonable under the State Constitution); *Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006) (“We recognize a valid inventory search as an exception to the Article 1, Section 11 warrant requirement.”).

[24] Considering all the factors, we find that police acted reasonably in searching Swain’s person and vehicle, even if a warrant had not been procured. Further, because the searches conducted in this case were permissible under multiple exceptions to the warrant requirements of both the Fourth Amendment and Article 1, Section 11 of Indiana’s Constitution, we need not address Swain’s claims that the warrant was defective.<sup>6</sup>

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<sup>6</sup> Our finding of multiple exceptions to the warrant requirements under the Federal and Indiana Constitutions should not be taken as an invitation to law enforcement to avoid seeking search warrants. Indeed, “the

[25] Applying these exceptions to this case, we find that the trial court did not err in denying the Motion to Suppress.

[26] Affirmed.

Bradford, J., and Kenworthy, J., concur.

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possession of a warrant by officers conducting an arrest or search greatly reduces the perception of unlawful or intrusive police conduct, by assuring ‘the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.’” *Massachusetts v. Upton*, 466 U.S. 727, 733 n.1 (1984) (quoting *United States v. Chadwick*, 433 U.S. 1, 9 (1977)). The officers of the Anderson Police Department were wise to seek a warrant.