

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jerry Jones, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 28, 2021

Court of Appeals Case No.
20A-CR-2309

Appeal from the Jackson Circuit
Court

The Honorable Richard W.
Poynter, Judge

Trial Court Cause No.
36C01-1907-F2-10

Pyle, Judge.

Statement of the Case

[1] Jerry Jones, Jr., (“Jones”), appeals his convictions, following a jury trial, for Level 2 felony dealing in methamphetamine,¹ Level 6 felony unlawful possession of a syringe,² Class A misdemeanor carrying a handgun without a license,³ and Class A misdemeanor driving while suspended.⁴ The sole issue for our review is whether the trial court abused its discretion in admitting evidence. Finding no abuse of the trial court’s discretion, we affirm Jones’ convictions.

[2] We affirm.

Issue

Whether the trial court abused its discretion in admitting evidence.

Facts

[3] At approximately 7:00 a.m. on June 10, 2019, Indiana State Police Senior Trooper Seth Davidson (“Trooper Davidson”) was inspecting a commercial vehicle on Interstate 65 just north of Seymour, Indiana, when he noticed Jones stop his motorcycle on the side of the interstate. Trooper Davidson subsequently noticed that Jones appeared to be working on the motorcycle’s

¹ IND. CODE § 35-48-4-1.1.

² IND. CODE § 16-42-19-18.

³ I.C. § 35-47-2-1.

⁴ IND. CODE § 9-24-19-2.

engine. Jones did not seek help from Trooper Davidson or the road construction crew working nearby on the interstate. Trooper Davidson left the immediate area after he had completed the inspection.

[4] Shortly thereafter, Trooper Davidson received a dispatch that a motorcycle was on fire on Interstate 65 near the location where the trooper had previously seen Jones working on his motorcycle. As Trooper Davidson approached the area, the trooper received another dispatch that the driver had “taken off walking westbound from the motorcycle that was on fire.” (Tr. Vol. 2 at 141). When Trooper Davidson arrived at the scene, Trooper Andrew Garrett (“Trooper Garrett”) and another trooper were already there, and they were talking with several interstate road construction workers. Trooper Davidson learned that one of the construction workers, who had been working forty to fifty feet from the motorcycle, had called 911 to report the motorcycle fire. The troopers saw Jones walking through a soybean field and noticed that he had had to walk through a ditch and some woods to get to the field. After discussing the situation, Trooper Garrett followed Jones on foot through the field, and Trooper Davidson drove to the nearest interstate exit in an attempt to intercept Jones when Jones exited the field. The troopers maintained radio contact while pursuing Jones.

[5] Trooper Davidson was waiting on a state road when Jones exited the soybean field. At that point, Jones, who was wearing a backpack, was approximately one-half mile from the scene of the burning motorcycle. Jones told Trooper Davidson that he had walked away from the scene of the fire because he had

been afraid that the motorcycle would explode. However, because of the distance that Jones had fled from the motorcycle as well as his failure to call 911 or to ask the nearby construction workers for assistance before fleeing across the field, Trooper Davidson placed Jones in handcuffs for the purpose of briefly detaining him.

[6] When Trooper Davidson asked Jones for his identification information, Jones initially gave the trooper an incorrect date of birth. Jones subsequently told Trooper Davidson his name and correct date of birth. Trooper Davidson performed a computer search with Jones' name and date of birth and discovered that Jones' driver's license had been suspended indefinitely and that he had an outstanding arrest warrant for unlawful possession of a syringe.

[7] Trooper Davidson arrested Jones for the outstanding warrant and advised Jones that the trooper would be performing a search incident to the arrest. Before performing the search, Trooper Davidson asked Jones if he had anything that would "stick [], poke [], or hurt" the trooper. (Tr. Vol. 2 at 152). Jones responded that he had two syringes in his shirt pocket and a gun in his backpack. A pat-down search of Jones revealed two uncapped syringes, ammunition, and cash totaling \$1,653. Trooper Davidson also found a Glock 9mm caliber handgun in Jones' backpack.

[8] While Trooper Davidson was searching Jones, Trooper Garrett arrived at the scene on foot. Just before Trooper Garrett transported Jones to the county jail, Trooper Davidson noticed a green Crown Royal bag on the ground about eight

to ten feet from where the troopers and Jones were standing. The bag caught Trooper Davidson's attention because "it was kind of out of place[.]" (Tr. Vol. 2 at 155). When Trooper Davidson picked up the bag, the trooper noticed that, although there was early morning dew on the ground, the bag was dry. When Trooper Davidson discovered the bag, Jones' demeanor "changed drastically." (Tr. Vol. 2 at 37). Jones immediately became argumentative and told the troopers that: (1) the bag did not belong to him; (2) the troopers could not prove that the bag belonged to him; and (3) he did not "deal Meth." (Tr. Vol. 2 at 41). The Crown Royal bag contained a plastic bag with 114 grams of methamphetamine.

[9] In July 2019, the State charged Jones with Level 2 felony dealing in methamphetamine, Level 6 felony unlawful possession of a syringe, Class A misdemeanor carrying a handgun without a license, and Class A misdemeanor driving while suspended. In November 2019, Jones filed a motion to suppress "certain evidence that was unlawfully seized." (App. Vol. 2 at 35). Jones' motion alleged that "[t]he arrest and seizure were unlawful as part of an investigatory 'Terry Stop' because the police lacked reasonable suspicion to believe that [Jones] was engaged in, or had been engaged in, criminal activity, or that any criminal activity was afoot." (App. Vol. 2 at 35). Jones asked the trial court to suppress "all of the evidence seized, as described above[.]" (App. Vol. 2 at 36). However, the motion failed to describe the specific evidence that Jones sought to have suppressed.

- [10] The trial court held a hearing on Jones’ motion to suppress in February 2020. At the hearing, Trooper Garret testified that he had “never had anybody leave either a vehicle fire or vehicle crash to that extent. Usually they might go off into the ditch or something, back up in the tree line or something, but normally they make contact with us right away.” (Tr. Vol. 2 at 31). Following the hearing, the trial court denied Jones’ motion.
- [11] The trial court held a two-day jury trial in October 2020. After hearing the facts as set forth above, a jury convicted Jones of all four charges.
- [12] Jones now appeals his convictions.

Decision

- [13] Jones argues that “Trooper Davidson did not have reasonable suspicion to believe that Jones was engaged in, or had been engaged in, criminal activity, when he seized Jones.” (Jones’ Br. 6). According to Jones, “the seizure violated the Fourth Amendment to the United States Constitution.” (Jones’ Br. 4). This appears to be an argument that the trial court erred in denying his motion to suppress.
- [14] However, because Jones appeals from a completed trial, the issue is “more appropriately framed” as whether the trial court abused its discretion when it admitted evidence. *See Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). The decision to admit or exclude evidence at trial is within the trial court’s discretion, and we afford it great deference on appeal. *VanPatten v. State*, 986 N.E.2d 255, 260 (Ind. 2013). We review the trial court’s decision regarding

the admissibility of evidence for an abuse of discretion. *King v. State*, 985 N.E.2d 755, 757 (Ind. Ct. App. 2013), *trans. denied*. An abuse of discretion of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

[15] Before addressing the evidentiary issue, we note that Jones has waived appellate review of any alleged error for two reasons. First, Jones failed to object to the admission of the syringes, cash, ammunition, gun, and methamphetamine at trial. *See Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (“A contemporaneous objection at the time the evidence is introduced at trial is required to preserve the issue for appeal, whether or not the appellant has filed a pretrial motion to suppress.”). *See also Jackson v. State*, 735 N.E.2d 1146, 1152 (Ind. 2000) (“The failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal.”).⁵ Second, Jones’ brief conclusory one-paragraph argument in his appellate brief is supported neither by citation to authority nor cogent argument. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where

⁵ We note that the fundamental error doctrine is an exception to the general rule that the failure to object at trial constitutes a procedural default precluding consideration of the issue on appeal. *Palilonis v. State*, 970 N.E.2d 713, 730 (Ind. Ct. App. 2012), *trans. denied*. In order to be fundamental, the error must represent a “blatant violation of basic principles rendering the trial unfair to the defendant and thereby depriving the defendant of fundamental due process.” *Hoglund v. State*, 962 N.E.2d 1230, 1239 (Ind. 2012). “Harm is not shown by the fact that the defendant was ultimately convicted; rather harm is found when error is so prejudicial as to make a fair trial impossible.” *Id.* Further, this exception is available only in egregious circumstances. *Palilonis*, 970 N.E.2d at 730. Here, however, Jones has neither alleged nor shown how the admission of the evidence in this case made a fair trial impossible or why the circumstances in this case were egregious, and we find no fundamental error.

the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”), *trans. denied*.

[16] Waiver notwithstanding, we find no abuse of the trial court’s discretion. “The Fourth Amendment prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” *Ertel v. State*, 928 N.E.2d 261, 264 (Ind. Ct. App. 2010), *trans. denied*. “Evidence obtained in violation of the Fourth Amendment may not be used against a defendant at trial.” *Id.* A law enforcement official 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 a reasonable suspicion that criminal activity “‘may be afoot.’” *Id.* (quoting *Moultry v. State*, 808 N.E.2d 168, 170-71 (Ind. Ct. App. 2004)).

[17] Here, our review of the evidence reveals that Jones’ motorcycle caught fire after he had stopped on the side of the interstate and attempted to make engine repairs. Jones did not call 911 for law enforcement or fire department assistance. He also did not ask the nearby interstate construction workers to assist him. Rather, he crossed a ditch and some woods at the side of the interstate and then walked nearly one-half mile through a soybean field while being followed by Trooper Garrett on foot and Trooper Davidson in his vehicle. Trooper Garrett had never seen anyone flee so far from a vehicle fire without making contact with law enforcement. Based upon these specific facts and

circumstances, Trooper Davidson had reasonable suspicion that criminal activity might have been afoot and to, therefore, briefly detain Jones.

[18] Moreover, the search that led to the seizure of the evidence was also proper. During the brief detention, Trooper Davidson learned that Jones had an outstanding arrest warrant for unlawful possession of a syringe. Trooper Davidson arrested Jones for the outstanding warrant and, during a search incident to that arrest, Trooper Davidson found syringes, ammunition, and cash in Jones' pocket and a gun in Jones' backpack. This search pursuant to Jones' arrest did not violate the Fourth Amendment. *See Durstock v. State*, 113 N.E.3d 1272, 1278 (Ind. Ct. App. 2018) (explaining that "once a person is arrested, officers are not required to obtain a warrant before conducting a further search of the arrestee's person."), *trans. denied*. *See also State v. Crager*, 113 N.E.2d 657, 664 (Ind. Ct. App. 2018) (holding that the search of the arrestee's backpack pursuant to an arrest did not violate the arrestee's rights under the Fourth Amendment), *trans. denied*. We further note that because Jones abandoned the Crown Royal bag containing the 114 grams of methamphetamine before he was seized, the search of it also did not violate the Fourth Amendment. *See Wilson v. State*, 825 N.E.2d 49, 52 (Ind. Ct. App. 2005). Because Trooper Davidson's discovery of the syringes, cash, ammunition, gun, and 114 grams of methamphetamine did not violate the Fourth Amendment, the trial court did not abuse its discretion in admitting any of these items into evidence.

[19] Affirmed.

Najam, J., and Tavitas, J., concur.