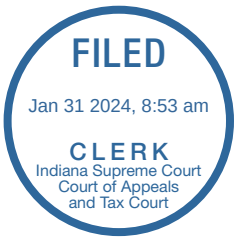
MEMORANDUM DECISION



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IN THE

COURT OF APPEALS OF INDIANA

Billy Weathers, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2024

Court of Appeals Case No. 23A-CR-856

Appeal from the Marion Superior Court

The Honorable Mark Stoner, Judge

The Honorable Andrew Borland, Magistrate

Trial Court Cause No. 49D32-2104-F2-11152

Memorandum Decision by Judge Bradford
Judges Pyle and Kenworthy concur.

Bradford, Judge.

Case Summary[1]

[1] On April 9, 2021, the Indianapolis Metropolitan Police Department ("IMPD") received an anonymous tip that Billy Weathers, Jr., was engaged in illegal activity. Police followed Weathers as he drove away from his house in a white Chevrolet Suburban, and, after two traffic stops and a crash, arrested him. A search of the Suburban and Weathers's house led to the State charging him with Level 2 felony cocaine dealing, Level 2 felony dealing a narcotic drug, Level 6 felony resisting law enforcement, and Class A misdemeanor carrying a handgun without a license. The trial court denied Weathers's motion to suppress evidence recovered from the Suburban and his house, and a jury found Weathers guilty as charged.

[2] Weathers contends that the initial stop of his vehicle was illegally extended, warranting the exclusion of all evidence uncovered thereafter; the search of the Suburban following the second stop was not contemporaneous with his arrest or a valid inventory search and was therefore improper; and the search warrant issued for his house was obtained under false pretenses. The State argues that, even if the first stop was illegally prolonged, Weathers's actions afterwards provided sufficient justification for the second stop, the search of the Suburban

[1] We heard oral argument in this case on January 18, 2024, at Indiana Wesleyan University in Marion. We would like to thank the students, administration, faculty, and staff of Indiana Wesleyan for their hospitality and assistance. We would also like to thank counsel for the high quality of their oral presentations.

was a proper search incident to arrest, the search of the Suburban was justified pursuant to the automobile exception to the Fourth Amendment to the United States Constitution, and the search warrant for Weathers's house was supported by probable cause and not obtained under false pretenses. We affirm.

Facts and Procedural History

[3] On April 9, 2021, IMPD received an anonymous tip that Weathers, who was asserted to live at 4209 North Lasalle Street and drive the Suburban, was dealing in illegal drugs and heavily armed and that there was a juvenile female being sex-trafficked from the house. Officers began conducting surveillance the same day and observed one car briefly visit the house.

[4] In mid-afternoon, officers saw Weathers and another man exit the house and drive away in a Suburban similar to the one described in the tip. Detective Ryan Gootee followed the Suburban and observed it cross the solid yellow center line twice. The Suburban also turned into an apartment complex and drove through it without stopping, a behavior Detective Gootee recognized as consistent with someone trying to ensure that he was not being followed. Detective Gootee, who was in plain clothes and driving an unmarked vehicle, radioed for a uniformed officer to conduct a traffic stop.

[5] IMPD Officer Chad Montgomery located the Suburban, saw it switch lanes without signaling, and stopped it based on that infraction and those that had been reported by Detective Gootee. Weathers pulled into a gas station and stopped. Officer Montgomery approached the Suburban and obtained Weathers's license and registration, which showed that the Suburban was

registered to him. Officer Montgomery called for a K9 officer to perform an open-air sniff on the Suburban. Officer Montgomery issued Weathers a traffic ticket approximately sixteen minutes after the stop had begun. Although Officer Montgomery permitted Weathers to reenter the Suburban, he and other officers who had arrived continued to detain him due to the ongoing investigation at the Lasalle Street residence and the imminent arrival of the K9 officer.

[6] The K9 officer arrived approximately two to three minutes after Weathers had been given the ticket. As the K9's handler approached the Suburban with the dog's leash in her hand, Officer Montgomery instructed Weathers and the passenger to exit the Suburban, explaining that they were going to conduct a dog sniff. Weathers, who had tensed up at seeing the K9 officer arrive, said, "nah, f[***] that, I'm gone" and drove away at high speed. Tr. Vol. II p. 150. The officers pursued Weathers, during which pursuit Weathers drove in excess of seventy miles per hour through a residential neighborhood in which the speed limit was thirty miles per hour; disregarded at least ten stop signs, including once while crossing a multi-lane road; made numerous turns without signaling; nearly caused multiple accidents, including twice almost hitting school buses; and drove around a school bus as it was slowing down with its lights blinking. After approximately three minutes, Weathers lost control of the Suburban and crashed into another car.

[7] Officers ordered Weathers and his passenger to exit the Suburban and placed Weathers under arrest. Officers then searched the Suburban, finding an open

bag containing $20,300.00 in cash, a loaded gun, a digital scale, over thirty grams of cocaine, and almost forty-three grams of fentanyl. The police also found multiple documents in Weathers's name inside the car.

[8] Based on the contraband found in the Suburban, Detective Gootee obtained a search warrant to search 4209 North Lasalle Street for evidence of drug dealing. The probable-cause affidavit detailed the anonymous tip, the surveillance of the Suburban when it drove away, the traffic stop, Weathers's flight, and the contraband found in the Suburban after it had crashed, as well as the contemporaneous investigation to determine if the juvenile female observed at the house was being trafficked and the discovery of drugs and a handgun on the person of the adult female who had been observed leaving the house and who had been with the juvenile when that traffic stop occurred.

[9] During the execution of the search warrant, police found documents in Weathers's name in the main bedroom, which was determined to be his. On top of the bed in the main bedroom, police found a baggy containing 0.3470 grams of cocaine. In the nightstand by the bed, police found a bag containing almost 100 grams of cocaine and a bag containing over thirty-four grams of fentanyl. Police also found boxes of baking soda and Dormin (common cutting agents for cocaine and fentanyl, respectively) in the bedroom.

[10] The State charged Weathers with Level 2 felony cocaine dealing, Level 2 felony dealing a narcotic drug, Level 6 felony resisting law enforcement, and Class A misdemeanor carrying a handgun without a license. Prior to trial, Weathers moved to suppress the evidence discovered in his house, alleging that there had

been insufficient probable cause to support the search warrant. At the suppression hearing, Weathers further asserted that there had been insufficient grounds for the stop, and thus no grounds for the search of the car or the warrant, and that the warrant affidavit had contained untrue statements. The trial court denied the motion to suppress, finding that both the initial stop and the second stop had been supported by observations of multiple infractions, the search of the Suburban had been valid, and there had been probable cause to issue a search warrant for the house. The jury found Weathers guilty as charged, and the trial court sentenced him to fourteen years of incarceration, with six years executed in the Department of Correction, to be followed by four years served in community corrections and then four years suspended, two of which would be suspended to probation.

Discussion

Standard of Review

[11] Weathers contends that the trial court abused its discretion in admitting evidence obtained when searching his Suburban and house, arguing that (1) the initial traffic stop had been impermissibly extended beyond the purpose of the stop, (2) the search of his Suburban cannot be justified as a search incident to arrest or pursuant to the automobile exception to the Fourth Amendment, (3) the evidence uncovered in the search of his house was inadmissible as the "fruit of the poisonous tree," and (4) the probable-cause affidavit for the search of his house had contained false statements. Issues regarding the admissibility of evidence are properly left to the discretion of the court. *Wilson v. State*, 765

N.E.2d 1265, 1272 (Ind. 2002). On appeal, we review admissibility rulings for abuse of discretion. *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013).

[12] The Fourth Amendment protects persons from unreasonable search and seizures. U.S. Const. amend. IV; *Ratliff v. State*, 770 N.E.2d 807, 809 (Ind. 2002). As a general rule, the Fourth Amendment prohibits warrantless searches and seizures. *Trowbridge v. State*, 717 N.E.2d 138, 143 (Ind. 1999). 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. *See Berry v. State*, 704 N.E.2d 462, 465 (Ind. 1998) (*citing Brown v. State*, 691 N.E.2d 438, 443 (Ind. 1998)). Although the ultimate question of a search's constitutionality is a matter of law that courts review *de novo*, *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014), claims regarding the reasonableness of a search or seizure are fact-sensitive inquiries, and a trial court's determination of the facts is entitled to deference. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008). Reversal of a conviction is appropriate only if a defendant can show that the admission of evidence was contrary to the logic and effect of the facts and circumstances presented by his case or based on a misinterpretation of the law. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001).

I. Justification for the Second Stop

[13] While Weathers does not argue that his first traffic stop was unsupported by reasonable suspicion, he *does* argue that the first stop was impermissibly lengthened beyond the time needed for the purpose of the stop, thereby tainting all evidence collected thereafter. A "reasonable narcotics [K9] sweep is not a

search for purposes of the Fourth Amendment." *Hansbrough v. State*, 49 N.E.3d 1112, 1114–15 (Ind. Ct. App. 2016), *trans. denied*. "However, such a sweep 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." *Id.* at 1115.

[14] Weathers also argues that any evidence collected after the illegal detention must be suppressed. Generally speaking, evidence obtained pursuant to an unlawful seizure must be excluded under the so-called "fruit-of-the-poisonous-tree" doctrine, which bars evidence directly obtained by the illegal search or seizure as well as evidence derivatively gained as a result of information learned or leads obtained during that same search or seizure. *Sanchez v. State*, 803 N.E.2d 215, 221 (Ind. Ct. App. 2004) (citations omitted), *trans. denied*. While the State seems to concede that the initial stop was impermissibly prolonged, it argues that Weathers's actions following the stop provided ample reasonable suspicion to support a second stop and also purged any taint from the first stop pursuant to the attenuation doctrine.

[15] The State argues—and we agree—that Weathers's conduct provided ample justification for a second stop. It is true that, if the police have no lawful grounds to detain a person, he is free to "walk away" and "go about his business." *Gaddie v. State*, 10 N.E.3d 1249, 1253–55 (Ind. 2014). This does not mean, however, that that person is free to commit new violations of the law with immunity while leaving the encounter. *See id.* at 1256 n.4 ("[W]e also

acknowledge that a person's conduct after receiving an order to stop from police may provide a new basis for reasonable suspicion or probable cause to support a subsequent order to stop, from which Resisting Law Enforcement by fleeing could be successfully prosecuted."). Even if the initial stop had been improperly lengthened, Weathers did not simply walk away from the illegal detention—he drove away at high speed, committing over a dozen additional traffic violations (and, arguably, at least one crime)[2] before crashing into another vehicle. This conduct provided ample justification for a second traffic stop.

[16] We also agree with the State that Weathers's actions after the first stop eliminated the taint from any illegal detention that might have occurred. It is well-established that not all derivative evidence must be suppressed as "fruit of the poisonous tree" merely because it would not have come to light "but for" some prior illegal action by police. *Wong Sun v. U.S.*, 371 U.S. 471, 487–88 (1963). Evidence, even if it would not have been collected but for an illegal seizure, is admissible if the means through which the evidence was discovered are sufficiently distinguishable, or attenuated, from the prior act as to be purged of its taint. *Id*. In assessing whether there is sufficient attenuation, courts consider the time lapse between the illegal conduct and the discovery of the

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[2] The record indicates, for example, that Weathers drove seventy miles per hour through a residential neighborhood in which the speed limit was thirty miles per hour. "A person who operates a vehicle and who recklessly […] drives at such an unreasonably high rate of speed […] under the circumstances as to […] endanger the safety or the property of others […] commits a Class C misdemeanor." Ind. Code § 9-21-8-52(a).

evidence, the presence of intervening circumstances, and the purpose or flagrancy of the official misconduct. *Utah v. Strieff*, 579 U.S. 232, 239 (2016).

[17] We have little hesitation in concluding that Weathers's extremely dangerous and illegal actions attenuated any taint from the initial stop. While the time between the first and second stops was short, Weathers's actions (as described above) were intervening events extreme enough to more than overcome this. We also conclude that any official conduct was far from flagrant. Illegal though the initial detention may have been, it only lengthened the stop by two to three minutes and, because it occurred at the request of officers investigating at Weathers's house, it was not entirely without justification, even if that justification did not rise to the level of reasonable suspicion. Because we conclude that the second stop of Weathers was justified pursuant to the Fourth Amendment, the trial court did not abuse its discretion in denying his motion to suppress evidence on the basis that the first stop was impermissibly lengthened.[3]

II. The Search Following the Second Stop

[18] Weathers also argues that, even if the evidence collected from the Suburban is not inadmissible as fruit of the poisonous tree, no exception to the Fourth Amendment applies to render that evidence admissible. The State argues that the evidence collected from the Suburban is admissible pursuant to the

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[3] Weathers also seems to argue that the initial stop was a manifestation of IMPD's alleged "'search-at-all-costs'" mentality, Appellant's Br. p. 10, which we take as a claim that the stop was pretextual. The State is correct, however, that the subjective intentions and motivations of law-enforcement officers are irrelevant to a Fourth-Amendment inquiry. *See, e.g.*, *Montgomery v. State*, 904 N.E.2d 374, 383 n.7 (Ind. Ct. App. 2009), *trans. denied*.

automobile exception to the Fourth Amendment, which provides that police may conduct a warrantless search of a readily-mobile vehicle when they have probable cause to believe it contains contraband or evidence of a crime. *Meister v. State*, 933 N.E.2d 875, 878–79 (Ind. 2010). Probable cause is a "practical, common-sense" determination that, given all the circumstances known, there is a "fair probability" that evidence of a crime will be found on a particular location. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). For purposes of this exception, all vehicles that are operational or potentially operational are deemed inherently mobile. *Meister*, 933 N.E.2d at 879 (citing *Myers v. State*, 839 N.E.2d 1146, 1152 (Ind. 2005)). Moreover, there is no separate exigency requirement under this exception; it does not require any consideration of the likelihood, under the circumstances, of the vehicle actually being driven away. *Id*. (citing *Maryland v. Dyson*, 527 U.S. 465, 467 (1999)).

[19] The State contends that police had probable cause to believe that there were drugs in the Suburban, rendering the search legal pursuant to the automobile exception. Although we do not believe that the anonymous tip regarding drugs being dealt from Weathers's address could have supplied probable cause on its own, the State correctly argues that it can nonetheless be considered as part of the totality of the circumstances in the probable-cause calculus. *Ware v. State*, 859 N.E.2d 708, 717 (Ind. Ct. App. 2007), *trans. denied*. With this in mind, we agree with the State that the tip was strongly corroborated by evidence of the dramatic and abrupt change in Weathers's behavior when he realized that a dog sniff was imminent and the extreme lengths to which he went in an attempt to

prevent that sniff from occurring. Weathers's attempt at flight, which put his own life (as well as the lives of many others) at risk is more than sufficient to give rise to a reasonable inference of a fair probability that illegal drugs would be found in the Suburban.[4]

III. The Search of Weathers's House

[20] Weathers's house was searched pursuant to a search warrant, which is considered to be presumptively valid with the burden on the defendant to overcome that presumption. *Jones v. State*, 783 N.E.2d 1132, 1136 (Ind. 2003). Weathers does not argue that the warrant affidavit was unsupported by sufficient probable cause or that there was not a sufficient nexus to the house; rather, he argues that the evidence constituting the probable cause was the evidence found during the search of his car, and as that evidence was unlawfully obtained, the evidence found in his house must be suppressed. Because we have already determined that the State legally seized the evidence from the Suburban, to the extent that Weathers's argument in this regard relies on his claim that that evidence should have been suppressed, we conclude that it is without merit.

[4] Weathers also argues that the search following the second stop was not a valid inventory search and that it was not a valid search incident to arrest. Because we conclude that the search was justified pursuant to the automobile exception, we need not address either of these claims.

[21] Weathers also contends that the probable cause supporting the search warrant contained several intentional falsehoods, a contention for which the State contends there is no support.

> If a defendant establishes by a preponderance of the evidence that "a false statement knowingly and intentionally, or with a reckless disregard for the truth, was included by the affiant in the warrant affidavit…, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit."

Stephenson v. State, 796 N.E.2d 811, 815 (Ind. Ct. App. 2003) (citation omitted), *trans. denied*. Our review of the record indicates that Weathers did not argue in the trial court that the search warrant had been based on *intentionally* false statements, as he does on appeal. At most, Weathers claimed below that the affidavit was based, in part, on untrue statements, which is insufficient to preserve this claim for appeal. It is well-settled that an issue must first be raised in the trial court by raising a timely objection, and the failure to do so results in waiver of the claim on appeal. *See, e.g.*, *Benson v. State*, 762 N.E.2d 748, 755 (Ind. 2002) ("As a general rule, the failure to object at trial results in a waiver of the issue on appeal.").[5] Weathers has failed to establish that the trial court abused its discretion in admitting evidence collected from the Suburban or his house.

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[5] This general rule is subject only to claims that fundamental error occurred, which Weathers does not allege. *See Benson*, 762 N.E.2d at 755.

[22] We affirm the judgment of the trial court.

Pyle, J., and Kenworthy, J., concur.