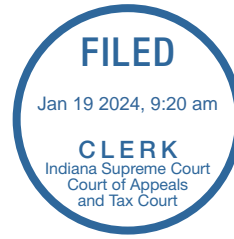


# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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Richard J. Hopkins, Jr.,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

January 19, 2024

Court of Appeals Case No.  
23A-CR-1506

Appeal from the Marshall Superior  
Court

The Honorable Matthew E. Sarber,  
Judge

Trial Court Cause No.  
50D03-2111-F5-54

**Memorandum Decision by Judge Bradford**  
Chief Judge Altice and Judge Felix concur.

**Bradford, Judge.**

## Case Summary

- [1] The State charged Richard Hopkins, Jr., with Level 5 felony possession of methamphetamine after an EMT discovered methamphetamine on his person while providing medical assistance to him. Hopkins moved to suppress the drug evidence. The trial court denied that motion and held a bench trial, after which it found Hopkins guilty as charged and sentenced him to five years of incarceration. Hopkins argues that the trial court abused its discretion in admitting the drug evidence, claiming that admission of the evidence violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution. We affirm.

## Facts and Procedural History

- [2] Around 4:00 a.m. on October 12, 2021, in Marshall County, a man, later identified to be Hopkins, appeared to be unresponsive and “slumped over the wheel” of his vehicle. Tr. Vol. II p. 9. Emergency personnel were dispatched to the scene. The ambulance arrived first, and EMT Kiera Brown determined that Hopkins “was critical[,]” “barely breathing[,]” unconscious, and “had a thready pulse[.]” Tr. Vol. II p. 10. Brown noted that Hopkins’s pupils were pinpoint-sized, which indicated an overdose, and administered Narcan prior to loading Hopkins into the ambulance. While in the ambulance, Brown looked for identification on Hopkins’s person and found it in one of the pockets of his shorts. While looking for Hopkins’s identification, Brown discovered a black glove that was about to fall out of Hopkins’s pocket. Brown retrieved the glove,

put it on the counter in the ambulance, and radioed the police to meet the ambulance at the hospital. Upon arrival, Brown pointed out the glove to Officer Richard Ayala, who then secured it in his police vehicle. Officer Ayala transported the glove to Sergeant Ryan Hollopeter. The glove contained “a clear crystal-like substance[,]” which field “tested positive for methamphetamine.” Tr. Vol. II p. 48. Sergeant Hollopeter put the methamphetamine in an evidence bag and secured it in a temporary-storage locker for handling by the detective division.

[3] At the time, Detective Sergeant Johnathan Bryant was managing the evidence room. Sergeant Bryant testified that he did not recall whether he or Captain Jeff Snyder had completed the laboratory-request form, but that he was familiar with the form and the chain-of-custody procedures. After evidence is secured in the temporary-storage locker, the system autogenerates a timestamp for the evidence log anytime that evidence is moved. Only Sergeant Bryant or Captain Snyder could transfer or move evidence.

[4] The evidence log showed that, on October 12, 2021, Sergeant Hollopeter put the methamphetamine in the temporary-storage locker. The next day, Captain Snyder transferred the methamphetamine from the temporary-storage locker to another storage area and then to the Indiana State Police (“the ISP”) testing laboratory in Lowell. On April 19, 2022, Sergeant Bryant transferred the methamphetamine from the ISP testing laboratory back to the evidence room. The lab results confirmed that the substance was 6.43 grams of

methamphetamine. As a result, the State charged Hopkins with Level 5 felony possession of methamphetamine.

- [5] On May 2, 2023, Hopkins moved to suppress the methamphetamine, claiming that Brown was a government agent and had searched his person without probable cause in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution. The trial court denied Hopkins's motion to suppress, found him guilty as charged, and sentenced him to five years of incarceration.

## Discussion and Decision

- [6] On appeal, Hopkins makes two arguments: First, he argues that the Marshall County Sheriff's Department failed to establish a sufficient chain of custody for the methamphetamine. Second, Hopkins argues that Brown's finding of the glove on his person constituted a warrantless search in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution. For its part, the State argues that the trial court did not abuse its discretion in admitting the methamphetamine into evidence because the chain of custody sufficiently established its reliability. The State also argues that there was no federal or state constitutional violation because (1) Fourth Amendment search-and-seizure prohibitions do not apply to private actors, and (2) Hopkins waived his Indiana constitutional claim by failing to make an independent argument in his appellant's brief.

[7] We review decisions on the admission of evidence for an abuse of discretion, which occurs if a decision is “clearly against the logic and effect of the facts and circumstances” before us. *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). We will not reweigh evidence, but instead “defer to the trial court’s factual determinations unless clearly erroneous and view conflicting evidence most favorably to the ruling.” *Potter v. State*, 912 N.E.2d 905, 907 (Ind. Ct. App. 2009). We review constitutional questions, such as the validity of a warrantless search, *de novo*. *Toppo v. State*, 171 N.E.3d 153, 155 (Ind. Ct. App. 2021), *trans. denied*.

## I. Chain-of-Custody

[8] “To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition.” *Id.* The State, however, “need not establish a perfect chain of custody, and once the State ‘strongly suggests’ the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to admissibility.” *Id.* (quoting *Jenkins v. State*, 627 N.E.2d 789, 793 (Ind. 1993)). Importantly, we presume “regularity in the handling of evidence by officers” and “that officers exercise due care in handling their duties.” *Id.*

[9] Here, there was a sufficient chain of custody for the methamphetamine. After Brown discovered the glove, she directed Officer Ayala to it, and he secured it in his patrol vehicle. From there, Officer Ayala transported the glove to Sergeant Hollopeter and Sergeant Hollopeter placed it in a temporary-storage

locker. The next day, Captain Snyder internally transferred the methamphetamine from the temporary-storage locker to another storage area in the evidence room. Later that day, he transported the methamphetamine to the ISP laboratory in Lowell for testing where it remained until Sergeant Bryant transported it back to the evidence room.

[10] Hopkins claims that the State’s chain-of-custody evidence is insufficient because “[n]o testimony was produced stating that a specific officer [...] prepared the specific evidence to be transported to the laboratory for testing” and “the [laboratory-request] form did not indicate who had filled it out[.]” Appellant’s Br. p. 8. Hopkins, however, fails to explain how the identity of the person who had completed the laboratory-request form undermines the above-detailed chain of custody. Detective Bryant’s testimony details the location of the methamphetamine at all times and who transported it to the laboratory or moved it inside the evidence room. Moreover, the evidence log auto-generated entries when the evidence was moved, which entries corroborate Sergeant Bryant’s testimony. Again, the State “need not establish a perfect chain of custody[.]” and we have no doubt that the chain of custody here strongly established “the exact whereabouts of the evidence” at all times. *Troxell*, 778 N.E.2d at 814. Given our presumption that officers exercise their duties carefully, we cannot say that the trial court abused its discretion in denying the chain-of-custody challenge. *Id.*

## II. Search and Seizure

### A. Fourth Amendment

[11] The Fourth Amendment protects persons “against unreasonable searches and seizures[.]” U.S. Const. amend. IV. That protection proscribes only government action—“it is wholly inapplicable ‘to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.” *U.S. v. Jacobsen*, 466 U.S. 109, 113 (1984) (quoting *Walter v. U.S.*, 447 U.S. 649, 662 (1980)). When challenging a private actor’s conduct, the defendant must prove that there was a “close nexus between the State and the challenged action” such that the action is “fairly attributable” to the State. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001). There are two critical factors in showing that nexus: (1) whether the private actor was acting to assist law enforcement or further its own ends, and (2) whether the government knew of and acquiesced in the intrusive conduct. *U.S. v. Koenig*, 856 F.2d 843, 847 (7th Cir. 1988).

[12] Here, Hopkins has failed to prove such a nexus. Brown was serving as an EMT employed by Union North Ambulance Service and Walkerton EMS. Brown had been searching for Hopkins’s identification to provide him with medical assistance when she discovered the methamphetamine. Brown testified that it was her practice to obtain identification for “every patient” because it enabled her to provide better care, allowed her to see a patient’s medical history, and the hospital required her to obtain her patients’ identifications. Tr. Vol. II p. 27.

[13] Moreover, there is no indication that law enforcement knew of or acquiesced in Brown’s search. Brown did not search Hopkins’s pockets until he was in the ambulance. Law enforcement was not present in the ambulance and was not alerted about the methamphetamine until Brown radioed them and requested police presence at the hospital. Hopkins has failed to establish that Brown conducted this search to assist law enforcement or that law enforcement knew of or acquiesced to it; therefore, the Fourth Amendment does not apply. *See Koenig*, 856 F.2d at 847; *see also Bradley v. State*, No. 23A-CR-202, 2023 WL 8232907, at \*4 (Ind. Ct. App. Nov. 28, 2023) (concluding that an ICU nurse who had discovered drugs on the defendant’s person while rendering medical assistance had not been a state actor for search-and-seizure purposes).

## **B. Article 1, Section 11**

[14] When it comes to presenting Indiana constitutional claims, a “defendant cannot invoke analysis of an issue under the Indiana Constitution without a separate and independent analysis of the claim.” *Holloway v. State*, 69 N.E.3d 924, 931 (Ind. Ct. App. 2017), *trans. denied*. Here, Hopkins merely mentions Article 1, Section 11, in the midst of his Fourth Amendment analysis—he provides no separate analysis under our state constitution. Although “almost identical to 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). As a result of his failure to provide an independent state-constitution analysis, Hopkins has waived his Article 1, Section 11, argument.



[15] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.