MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Nancy Jo Young,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 31, 2021

Court of Appeals Case No. 21A-CR-12

Interlocutory Appeal from the Hendricks Superior Court

The Honorable Stephenie LeMay-Luken, Judge

Trial Court Cause No. 32D05-1907-F6-778

Crone, Judge.

Case Summary

[1] Nancy Jo Young was charged with level 6 felony possession of methamphetamine and level 6 felony unlawful possession of a syringe. She appeals the denial of her motion to suppress items seized from her vehicle during a traffic stop. We affirm.

Facts and Procedural History[1]

[2] The facts most favorable to the trial court's ruling are as follows. Shortly after 5:00 a.m. in the predawn darkness of July 24, 2019, Hendricks County Sheriff's Department Deputy Ryan Blinn and Danville Police Department Officer Jeffrey Slayback were investigating a roadside incident on County Road 300 East in Hendricks County. They saw a Nissan Maxima travel by "with [a] mattress bung[ee] corded and roped down to the top[,]" anchored to the "mirrors on the side of the vehicle." Tr. Vol. 2 at 6, 7. Deputy Blinn was concerned because "the mirrors are not structural points of a vehicle so any high speed especially mixed with the weight of a mattress […] will cause the wind to get up under the mattress and rip the mirrors off the vehicle[,]" which could cause the vehicle "to crash or the mattress to fly off onto someone else[.]" *Id*. at 7. The two men got into their vehicles and followed the Maxima.

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[1] The facts in an appellant's brief "shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. Appellate Rule 46(A)(6)(b). Young's statement of facts does not comply with this rule and is also inappropriately argumentative. *See, e.g.*, Appellant's Br. at 11 ("[W]ithout Mirandizing Appellant, and, again, without even a scintilla evidence [sic] of illegal activity, Blinn asked Appellant if she had anything 'illegal' in the Vehicle.").

[3] Deputy Blinn, who was directly behind the Maxima, saw it "travel left and right in its travel lane […] at an inconsistent speed. It would speed up and slow down and speed up and slow down." *Id*. He "was unsure whether it was a possible impairment or whether it was the driver unable to properly operate their vehicle with a mattress strapped to the top." *Id*. The Maxima approached County Road 150 South, signaled, and made a right turn onto that road. Deputy Blinn activated his emergency lights, which caused his dashboard camera to record the previous thirty seconds of the pursuit.[2] Those thirty seconds of the dashcam video show the Maxima drifting within its lane, slowing, then almost running off the right side of the road to avoid an oncoming vehicle before making the turn onto County Road 150 South.

[4] The Maxima stopped in the right travel lane. Deputy Blinn parked behind it, and behind him parked Officer Slayback, who was accompanied by his canine Zeke. Deputy Blinn activated his body camera, exited his car, and approached the Maxima. Young was in the driver's seat, and Chad Stanley was in the front passenger seat. Young asked if she should have had her "hazards" on, and the deputy responded, "No, you're fine." State's Ex. 2.[3] He told her that he stopped her because she was "kind of swerving," and he was afraid that she was

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[2] At the suppression hearing, Deputy Blinn expressed his belief that "cameras pre-record one minute prior to the initiation of our lights[,]" Tr. Vol. 2 at 17, but the dashcam video shows his lights being activated at around the thirty-second mark. State's Ex. 1.

[3] Unless otherwise specified, all subsequent quotations are from this exhibit, which is Deputy Blinn's bodycam video.

"going to leave the roadway." He also stated that her "tag light" was not "bright enough" because he "couldn't see [the tag] from fifty feet." *See* Ind. Code §§ 9-19-6-4(e) ("Either a tail lamp or a separate lamp must be placed and constructed so as to illuminate the rear registration plate with a white light and make the plate clearly legible from a distance of fifty (50) feet to the rear."), 9-19-6-24 ("A person who violates this chapter commits a Class C infraction.").

[5] Deputy Blinn asked Young where she and Stanley were going. She stated that they were taking her mattress to her boyfriend's home at County Road 125 West and County Road 400 South. According to Young, she had been moving in with her boyfriend, and the mattress was the "one thing [she] couldn't get moved." The deputy asked why they were moving it at "five in the morning," and Young replied that she was a "third-shifter" and had taken "vacation hours" to do so. Deputy Blinn asked Young for her driver's license, and she handed it to him. The deputy asked Stanley if he "had an ID," which he did not, so the deputy asked Officer Slayback to get his name and date of birth. Young stated that she "woke [Stanley] up out of bed" and that he "forgot that [she] was coming to get him." Deputy Blinn asked Young if she could "step out of the vehicle and talk to [him] real quick." Because the ropes securing the mattress were lashed to the side mirrors on the car doors, Young replied that she would have to climb out the window, which she did.

[6] Deputy Blinn asked Young to accompany him to the front of his car. He questioned her about how she knew Stanley, who was a "friend," and where she was moving from and moving to. The deputy told Young to "hang tight"

and walked toward his car door. He turned and asked if she "had anything to drink today or ingested any drugs, marijuana, anything like that[,]" and she said no. The deputy queried, "Nothing that would cause you to swerve[,]" and Young replied that the oncoming vehicle was "coming kind of fast" and she was "being overly cautious probably" because of the mattress. After a brief discussion about the mattress, Deputy Blinn got into his car and started typing on his laptop; at one point, the photo of a man resembling Stanley appeared on the computer screen. Officer Slayback, who was outside the car, talked with Deputy Blinn about whether Young and Stanley had "priors." The deputy said, "She does."

[7] Eight minutes into the bodycam video, Deputy Blinn exited his car. Young was still standing in front of his car, and Stanley was standing behind the Maxima. The deputy asked Young if she had "ingested anything today, legal or illegal." She said no, and the deputy used his flashlight to "see how [her] pupils [were] reacting to the light." On appeal, both parties describe this as a horizontal-gaze nystagmus test, which is a field sobriety test used to detect intoxication. At the suppression hearing, Deputy Blinn testified that he did not notice the odor of an alcoholic beverage and that he is "not a drug recognition expert[,]" and thus his ability "to detect impairment outside of alcohol is very limited[.]" Tr. Vol. 2 at 13. Deputy Blinn again asked why the Maxima was swerving, and Young again claimed that she was being "overly cautious." The deputy asked Young if, "to [her] knowledge, there was anything that [she]

shouldn't have in the vehicle," such as "alcohol, drugs, dead bodies, anything like that[,]" and she said, "No, there's nothing illegal in it."[4]

[8] Deputy Blinn asked Young if he could search the Maxima, and she replied that her lawyer had advised her "to never submit to a search, but, I mean, there's nothing in there, so." The deputy attempted to clarify whether Young was denying him permission to search the Maxima: "Your lawyer said no, so you're saying no." She reiterated that her lawyer had advised her never to consent to a search, "but that's been years ago." The deputy asked why she had needed a lawyer, and she replied, "I'm sure you saw it on my record." Deputy Blinn said that he could not "do a criminal history search" that "pops up with everything you've ever done."[5] Young stated that in 2011 she was pulled over while driving her "ex's car" in Hendricks County and got arrested for a "syringe" and a "baggie" that were found inside. The deputy asked, "Nothing like that in the car though now, right?" She replied, "Absolutely not." Deputy Blinn asked Stanley to stand next to Young and "just hang out for a second" and stated that he was "going to go get some stuff typed up[.]"

[9] Eleven minutes into the bodycam video, Deputy Blinn reentered his car, examined Young's driver's license, and entered some information on his laptop.

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[4] Young insinuates that the deputy's question was constitutionally impermissible, but it was not. *State v. Washington*, 898 N.E.2d 1200, 1208 (Ind. 2008).

[5] Young complains that Deputy Blinn "misled [her] about [his] ability to conduct criminal history searches online[,]" Appellant's Br. at 11, but one could reasonably infer that the deputy did so in order to assess Young's candor.

Two minutes later, the deputy got out of the car. Officer Slayback summoned Young to the driver's side of the deputy's car, and Deputy Blinn approached Stanley at the front of the car and patted him down. The deputy asked Stanley when Young had picked him up, and he stated that she had awakened him around 2:00 or 3:00. Deputy Blinn asked Stanley when he had last used "any kind of narcotic." Stanley replied, "About two and a half months ago." The deputy asked if there was "anything" in the Maxima, and Stanley said, "Not that I know of." He said that they were delivering the mattress to Young's boyfriend, and then she was going to take him back home. The deputy asked if the Maxima was Young's car, and Stanley said yes.

[10] Approximately fifteen minutes into the bodycam video, Deputy Blinn asked Stanley, "Is there anything, to your knowledge, that's in the car that should not be there?" Stanley replied, "For real, we just went over there to get the mattress[.]" The deputy said, "Well, the dog alerted on the car, that's why I'm asking you. That's why I'm asking you these questions, because, like, the dog will alert to the presence of narcotic odor." The dashcam video shows Zeke alerting on the Maxima twelve minutes after the deputy activated his emergency lights, which was shortly before the deputy exited his car and started questioning Stanley. Stanley denied knowing about anything illegal in the Maxima.

[11] Deputy Blinn approached Officer Slayback and asked if Young said anything to him. The officer reported that she said that someone might have "smoked weed" or "done some other things inside of the car," but "she said there's

nothing in the car." Deputy Blinn and another officer searched the Maxima and found a glass pipe with suspected methamphetamine residue, syringes, and suspected meth in various containers and forms. The deputy handcuffed Young, put her in his vehicle, and Mirandized her. Young denied owning the meth but admitted that she had "relapsed somewhat recently."

[12] Young was charged with level 6 felony possession of methamphetamine and level 6 felony unlawful possession of a syringe. She filed a motion to suppress the items seized from her car during the traffic stop. In October 2020, after a hearing, the trial court summarily denied Young's motion. This interlocutory appeal ensued.

Discussion and Decision

[13] Young asserts that the trial court erred in denying her motion to suppress. "Our justice system entrusts the admission of evidence to the trial court's sound discretion." *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). "We review a trial court's denial of a defendant's motion to suppress deferentially, construing conflicting evidence in the light most favorable to the ruling, but we will also consider any substantial and uncontested evidence favorable to the defendant." *Id*. "We will not reweigh the evidence or reassess the credibility of witnesses[.]" *Veerkamp v. State*, 7 N.E.3d 390, 394 (Ind. Ct. App. 2014), *trans. denied*. "When the trial court's denial of a defendant's motion to suppress concerns the

constitutionality of a search or seizure, however, it presents a question of law, and we address that question de novo." *Robinson*, 5 N.E.3d at 365.[6]

[14] "Traffic stops, for even minor violations, fall within the protections of the federal and state constitutions." *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019), *cert. denied*. "When a law enforcement officer stops a vehicle for a suspected traffic infraction like speeding, that officer seizes the vehicle's occupants under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution; and that traffic stop must pass constitutional muster." *Id.*[7] "Even though the Fourth Amendment and Article 1, Section 11 share parallel language, they part ways in application and scope. The Indiana Constitution sometimes affords broader protections than its federal counterpart and requires a separate, independent analysis from this Court." *Id*.

[15] The gist of Young's argument is that Deputy Blinn had no basis for stopping her vehicle and/or unnecessarily prolonged the stop, and thus the seizure of the items from her vehicle violated both the Fourth Amendment and Article 1, Section 11. The Fourth Amendment "protects persons from unreasonable

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[6] We remind Young's counsel that the argument section of an appellant's brief "must include for each issue a concise statement of the applicable standard of review[.]" Ind. Appellate Rule 46(A)(8)(b).

[7] Nevertheless, "a person temporarily detained in an ordinary traffic stop is not in custody for the purposes of" *Miranda v. Arizona*, 384 U.S. 436 (1966). *State v. Brown*, 70 N.E.3d 331, 336 (Ind. 2017). Young argues that she was in custody before she was Mirandized and therefore her pre-*Miranda* statements must be suppressed as fruit of the poisonous tree, but we find that argument waived for lack of cogency. *See Howard v. State*, 32 N.E.3d 1187, 1195 n.11 (Ind. Ct. App. 2015) (finding argument waived due to lack of cogency) (citing Ind. Appellate Rule 46(A)(8)(a)). We also note that Young moved to suppress her statements for the first time in a brief that she filed *after* the suppression hearing and failed to include in her appendix, notwithstanding our order to file a conforming appendix.

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 a prosecution against the victim of the unlawful search or seizure absent evidence of a recognized exception." *Id*. "It is the State's burden to prove that one of these well-delineated exceptions is satisfied." *Id*.

[16] "A warrantless traffic stop … is permissible where an officer has at least a reasonable suspicion that a traffic law has been violated." *Peak v. State*, 26 N.E.3d 1010, 1014-15 (Ind. Ct. App. 2015).[8] "The existence of reasonable suspicion is determined by looking at the totality of the circumstances to see whether the detaining officer has a particularized and objective basis for suspecting wrongdoing." *Id*. at 1015. "Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, but it still requires at least a minimal level of objective justification and more than an inchoate and unparticularized suspicion or 'hunch' of criminal activity." *State v. Schlechty*, 926 N.E.2d 1, 7 (Ind. 2010), *cert. denied* (2011).

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[8] Young asserts that an officer's discretion to stop a vehicle for a traffic violation "does not extend to an officer's mistaken belief about what constitutes a violation as a matter of law." Appellant's Br. at 18-19 (citing *Ransom v. State*, 741 N.E.2d 419, 422 (Ind. Ct. App. 2000), *trans. denied* (2001)). The U.S. Supreme Court held otherwise over half a decade ago. *Heien v. North Carolina*, 574 U.S. 54, 60-61 (2014). For its part, the State cites several traffic statutes that Young allegedly violated but were not cited as the bas(e)s for the stop, either at the scene or in Deputy Blinn's probable cause affidavit.

[17] Here, Deputy Blinn stopped Young's car because it was drifting within its lane and almost ran off the road, which suggested possible driver impairment. *See* Ind. Code §§ 9-30-5-2(a) ("[A] person who operates a vehicle while intoxicated commits a Class C misdemeanor."), 9-13-2-86 (defining "intoxicated" as under the influence of alcohol, controlled substances, and/or other drugs or substances "so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties"). The dashcam video clearly shows that the Maxima did not travel in a straight line down the two-lane road, and Deputy Blinn was not required to believe Young's claim that she almost ran off the road because she was being "overly cautious" about an oncoming vehicle due to the mattress strapped to her roof. Based on the evidence favorable to the trial court's ruling, we conclude that the deputy had at least reasonable suspicion to stop Young's car to investigate possible driver impairment. *See, e.g.*, *Potter v. State*, 912 N.E.2d 905, 908 (Ind. Ct. App. 2009) (upholding traffic stop "due to the officer's reasonable suspicion of driver impairment" based on vehicle "continuously weav[ing] from side to side in its lane and nearly strik[ing] a concrete median when making a turn"). Regarding the inadequately illuminated license plate, which Young does not mention in the argument section of her opening brief, we note that "[i]t is unequivocal under our jurisprudence that even a minor traffic violation is sufficient to give

an officer probable cause to stop the driver of a vehicle." *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013).[9]

[18] As for whether the stop was unnecessarily prolonged, it is well settled that "[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 1209, 1214 (Ind. Ct. App. 2017) (quoting *Rodriguez v. United States*, 575 U.S. 348, 355 (2015)), *trans. denied*. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (citations omitted). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." *Id*. (quotation marks and brackets omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id*.

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[9] Young complains that Deputy Blinn "did not cite [her] for a single [traffic] violation[,]" Appellant's Br. at 22, but she cites no authority for the proposition that he was required to do so. At the suppression hearing, the deputy testified that "typically on a criminal arrest" he will not cite the arrestee for any "Title 9" offenses. Tr. Vol. 2 at 22. Young's argument in her reply brief that she did not violate Indiana Code Section 9-19-6-4 is a belated invitation to reweigh the evidence, which we may not do.

[19] Young argues that Deputy Blinn "verified the mattress was secure and, further, that [she] was not operating while intoxicated. The stop should have ended there[,]" i.e., before Zeke alerted to the presence of drugs in her car. Appellant's Br. at 22. "A 'dog sniff' sweep of a vehicle is not a search protected by the Fourth Amendment." *Danh v. State*, 142 N.E.3d 1055, 1063 (Ind. Ct. App. 2020), *trans. denied*. "When a dog sniff occurs incident to a legitimate traffic stop and does not prolong the stop beyond what is necessary to complete the purpose of the traffic stop, no reasonable suspicion of drug-related activity is required." *Id*.

> If a dog sniff occurs after the completion of a traffic stop, an officer must have reasonable suspicion of criminal activity in order to proceed thereafter with an investigatory detention. The critical facts in determining whether a vehicle was legally detained at the time of the canine sweep are whether the traffic stop was concluded and, if so, whether there was reasonable suspicion at that point to continue to detain the vehicle for investigatory purposes. The burden is on the State to show the time for the traffic stop was not increased due to the canine sweep. In assessing whether a detention is too long in duration, we examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.

Id. (citations omitted). "A dog sniff of the exterior of the vehicle indicating the presence of illicit substances provides probable cause for a warrantless search of the interior of the vehicle under the automobile exception" to the Fourth Amendment's warrant requirement. *Harbaugh v. State*, 96 N.E.3d 102, 106 (Ind. Ct. App. 2018), *trans. denied*.

[20] After conducting the horizontal-gaze nystagmus test and not detecting the odor of an alcoholic beverage, Deputy Blinn concluded that Young was not impaired from consuming alcohol. But, as he acknowledged at the suppression hearing, "it is possible to be intoxicated or impaired on something other than an alcoholic beverage[.]" Tr. Vol. 2 at 12. And, in his estimation, Young was "very excited" and "speaking very quickly" and was "kind of having trouble […] staying on topic[.]" *Id*. at 11.[10] Deputy Blinn again asked Young why her car was swerving and requested permission to search it, which she refused based on her lawyer's advice. Young admitted that she had been arrested for driving her "ex's car" with a "syringe" and a "baggie" inside and assured the deputy that there was "[n]othing like that in the car" now. State's Ex. 2. At that point, Deputy Blinn told Young that he was "going to get some stuff typed up" and got back in his car. *Id*.

[21] The State asserts, and we agree, that "[t]here is nothing to suggest that Deputy Blinn returned to his vehicle to simply pass time for the canine sweep." Appellee's Br. at 18. Indeed, when the deputy got back in his car, he examined Young's driver's license and entered information into his laptop, which strongly suggests that he was completing administrative work related to the traffic stop and/or verifying her account of her prior arrest, which he was not obligated to

[10] Young's assertion to the contrary is a request to reweigh the evidence, which we may not do. The bodycam video does not indisputably contradict Deputy Blinn's assessment. *Cf. Love v. State*, 73 N.E.3d 693, 700 (Ind. 2017) ("We hold that for video evidence, the same deference is given to the trial court as with other evidence, unless the video evidence at issue indisputably contradicts the trial court's findings.").

believe. As he was doing so, Zeke alerted to the presence of drugs in Young's car, which gave the deputy probable cause to search the car without a warrant. Based on the facts most favorable to the trial court's ruling, we conclude that Deputy Blinn did not unnecessarily prolong the traffic stop and that the dog sniff occurred incident to the stop and did not prolong it beyond what was necessary to complete its purpose. Accordingly, we also conclude that the seizure of the items found in Young's car did not violate the Fourth Amendment.

[22] "In cases involving Article 1, Section 11 of the Indiana Constitution, the State must show that the challenged police action was reasonable based on the totality of the circumstances." *Alexander-Woods v. State*, 163 N.E.3d 902, 911 (Ind. Ct. App. 2021), *trans. denied*. "[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). The reasonableness of a search or seizure turns "on a balance of: 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 citizens' ordinary activities, and 3) the extent of law enforcement needs." *Alexander-Woods*, 163 N.E.3d at 911 (quoting *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005)). Young addresses only the first factor, and we have already determined that Deputy Blinn possessed at least reasonable suspicion of driver impairment and a tag lamp violation when he stopped her vehicle. Because this factor weighs in favor of

the State and Young fails to address the two remaining factors, we affirm the trial court's denial of Young's motion to suppress.

[23] Affirmed.

Bailey, J., and Pyle, J., concur.