

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ashley Kincaid Eve,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 15, 2023

Court of Appeals Case No.
22A-CR-1112

Appeal from the Hamilton
Superior Court

The Honorable David K. Najjar,
Judge

The Honorable P. Chadwick Hill,
Magistrate

Trial Court Cause No.
29D05-1906-F6-4864

Memorandum Decision by Judge Bailey
Judges Brown and Taviton concur.

Bailey, Judge.

Case Summary

- [1] Ashley Kincaid Eve appeals, pro se, her conviction of resisting law enforcement, as a Class A misdemeanor.¹ We affirm.

Issues

- [2] Eve raises three issues, which we restate as follows:
- I. Whether the trial court abused its discretion when it admitted evidence of Eve's conduct after she was prevented from opening the car door on the early morning of June 16, 2019.
 - II. Whether the State presented sufficient evidence to support her conviction of resisting law enforcement.
 - III. Whether the trial court erred when it denied Eve's pro se motion to correct error because she was represented by counsel.

Facts and Procedural History

- [3] At approximately 12:30 a.m. on June 16, 2019, Officer Wade Burtron with the Westfield Police Department was patrolling in his police vehicle. While he was

¹ Ind. Code § 35-44.1-3-1(a)(1).

driving behind another vehicle, he observed that vehicle disregard a stop sign and drive off the roadside twice. Officer Burtron initiated a traffic stop, and his vehicle camera recorded the stop. When Officer Burtron approached the driver's side of the vehicle, he saw that three people were in the car. He asked all of the occupants for their identification, and they all provided it to him. Eve, who was in the front passenger seat, informed Officer Burtron that she is an attorney. Officer Burtron conducted three "pre-exit" sobriety tests on the driver, Casey Wilson. Tr. v. II at 93. Officer Burtron then returned to his vehicle to conduct record searches on the occupants of the car. In the meantime, Officer Taylor McCorkle arrived at the scene to assist Officer Burtron.

- [4] Officers Burtron and McCorkle approached the vehicle. Officer Burtron went to the driver's side, and Officer McCorkle went to the passenger's side. Officer Burtron asked Wilson to exit the vehicle so that he could conduct an operating-while-intoxicated investigation. Eve began to speak loudly and advised Wilson that she was not required to exit the vehicle as "everything was voluntary." Tr. v. II at 96. Officer Burtron informed Wilson and Eve that Wilson was not required to submit to field sobriety tests, but she was required to exit the vehicle as directed. Eve stated that she would be exiting the vehicle with Wilson, as she was Wilson's attorney. Officers Burtron and McCorkle both instructed Eve to stay inside the vehicle. In the meantime, Officer Jeremy Thomas had also arrived on the scene and was standing next to Officer Burtron.

- [5] Wilson exited the vehicle, and Eve tried to open her passenger side car door twice, but Officer McCorkle held the door shut from the outside. Officer McCorkle again instructed Eve to remain in the vehicle. Officer Thomas came over to the passenger's side of the vehicle to assist Officer McCorkle. Officers Burton and McCorkle then observed Eve "raise[] her foot, put it on the [passenger's side] door, and kick[] the door open." Tr. v. II at 28. As Eve forcibly pushed the door open, Office McCorkle was pushed back by the force of the door.
- [6] Eve exited the vehicle and Officer Burtron instructed the other officers to detain Eve. Officers Thomas and McCorkle attempted to place Eve in handcuffs, but Eve pulled her arms away from them. The officers eventually placed the handcuffs on Eve and, while handcuffed, Eve swung around and yelled in Officer Thomas's face. Officer Burtron then briefly left Wilson standing alone and walked toward Eve to assist the other officers. Eve was placed in McCorkle's vehicle. At one point Eve opened the unlocked car door and exited the vehicle, but McCorkle then placed Eve back inside his vehicle.
- [7] The State charged Eve with battery against a public safety official, as a Level 6 felony;² resisting law enforcement, as a Class A misdemeanor; and disorderly conduct, as a Class B misdemeanor.³ The court subsequently granted the

² I.C. § 35-42-2-1(c)(1), (e)(2).

³ I.C. § 35-45-1-3(a)(2).

State's request to dismiss the battery and disorderly conduct charges. At the start of Eve's January 13, 2022, bench trial on the resisting law enforcement charge, Eve's lawyer made an oral motion to suppress all evidence of Eve's actions after she was prevented from opening the car door on June 16, 2019. The trial court denied Eve's motion.

[8] At trial, Officers Burtron and McCorkle testified, and, over Eve's continuing objection, the State admitted into evidence as Exhibit 2 the video recorded by police vehicle cameras on June 16 at the roadside stop. Following the State's presentation of its case, Eve moved to dismiss the case per Trial Rule 41(B), and the court denied that motion. The trial court found Eve guilty of resisting law enforcement and sentenced her to one year fully suspended except for time served. On April 14, 2022, Eve filed a pro se motion to correct error while she was still represented by counsel. The trial court denied the motion to correct error, and this pro se appeal ensued.

Discussion and Decision

Admission of Evidence

[9] Eve asserts that the trial court erred when it denied her motion to suppress evidence because the evidence was obtained in violation of the Fourth

Amendment to the United States Constitution.⁴ Because she appeals following a bench trial and her conviction, the issue on appeal is more properly framed as one regarding the admissibility of the challenged evidence.⁵ See *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013).

In reviewing a trial court's determination on the admissibility of evidence garnered from an allegedly illegal search, we do not reweigh the evidence, we consider conflicting evidence in a light most favorable to the trial court's ruling, and we defer to the trial court's factual determinations unless they are clearly erroneous. However, we consider afresh questions regarding the constitutionality of a search or seizure.

Guthery v. State, 180 N.E.3d 339, 346 (Ind. Ct. App. 2021) (citations and quotation omitted), *trans. denied*.

[10] Eve asserts that the police violated her Fourth Amendment right to be free from unreasonable searches and seizures by preventing her from exiting the vehicle at the scene of the roadside stop. The Fourth Amendment protects “[t]he right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” U.S. Const. amend. IV. A traffic stop is a

⁴ An Article I, Section 11 claim of the right to be free from unreasonable searches and seizures under the Indiana constitution must be analyzed and argued separately from a Fourth Amendment claim. See, e.g., *Ackerman v. State*, 774 N.E.2d 970, 978 n.10 (Ind. Ct. App. 2002), *trans. denied*. Eve waived a state constitutional law argument by failing to raise and brief it separately in her opening brief, see *id.*, and she may not raise it for the first time in a reply brief, see *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005).

⁵ Eve's brief did not provide a Statement of the Case or state the applicable standard of review. We direct Eve to the requirements of Indiana Appellate Rule 46(A)(5) and (8)(b).

“seizure” under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). An officer may properly stop a vehicle when the driver of the vehicle is observed committing a traffic infraction. *Reinhart v. State*, 930 N.E.2d 42, 45 (Ind. Ct. App. 2010).

[11] Once a vehicle is stopped for a traffic infraction, any passengers within the vehicle are also effectively “seized” for purposes of the Fourth Amendment. *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). An officer conducting a legitimate roadside stop “has the limited right to briefly detain” the occupants of the vehicle, including the passengers. *Eaton v. State*, 111 N.E.3d 1039, 1044 (Ind. Ct. App. 2018); *Johnson*, 555 U.S. at 327 (noting police may detain the occupants of a properly stopped vehicle without “cause to believe any occupant of the vehicle is involved in criminal activity”). This limited right is predicated on the “de minimus” additional intrusion on a passenger who is already in a vehicle that has been stopped as weighed against the significant concern with officer safety.⁶ *Tawdul v. State*, 720 N.E.2d 1211, 1214 (Ind. Ct. App. 1999), *trans. denied*. Thus, the officer may legally order a passenger to remain in the vehicle or exit the vehicle, but only long enough for the officer to make an

⁶ Eve relies on *Gaddie v. State* for the proposition that, because there was no probable cause or reasonable suspicion that Eve had engaged in any criminal activity, the officers could not detain her, and she was free to ignore their commands and “go on [her] way.” 10 N.E.3d 1249, 1254 (Ind. 2014). However, *Gaddie* did not involve a passenger of a vehicle that had been validly stopped; rather, *Gaddie* involved a situation where an officer approached a person walking outside and ordered him to stop walking away without reasonable suspicion or probable cause that the person had engaged in criminal activity. *Gaddie* is not applicable to the instant case because it did not involve the same “de minimus additional intrusion” upon a passenger of a vehicle already legally stopped, nor the concern for police safety inherent in traffic stops. *Briggs v. State*, also cited by Eve, is distinguishable for similar reasons. 873 N.E.2d 129 (Ind. Ct. App. 2019), *trans. denied*.

initial assessment and alleviate any concerns for safety. *Eaton*, 111 N.E.3d at 1044 (citing *Tawdul*, 720 N.E.2d at 1217). However, “[i]f probable cause or reasonable suspicion develop during this short period of time, then the officer may be justified in detaining the individual longer in order to further investigate.” *Tawdul*, 720 N.E.2d at 1217.

[12] The facts in this case are very similar to those in *Eaton*. There, the officer initiated a valid roadside stop based on observed traffic violations. The officer ordered Eaton, a passenger, to remain in the vehicle, but Eaton nevertheless attempted to exit the vehicle. The officer used his hand to prevent Eaton from doing so in a “reasonable attempt to control Eaton while assessing the situation and addressing safety concerns.” *Eaton*, 111 N.E.3d at 1044. When Eaton “pushed back” against the officer and “struggled to get out of the car,” those actions provided probable cause to arrest Eaton for resisting law enforcement. *Id.*

[13] Here, Officer Burtron initiated a valid traffic stop of Wilson’s car. The officers then ordered Eve to remain in the vehicle, which they had a right to do under the Fourth Amendment.⁷ *See id.* Eve’s use of her foot to forcibly open her car door and push Officer McCorkle away provided the officers with probable

⁷ We do not find that Eve’s seizure was unreasonably long at the time she was prevented from leaving her vehicle, as she argues. At that time, approximately eight minutes had passed since the time the vehicle was stopped, during which time Officer Burtron conducted “pre-exit” sobriety tests on Wilson, ran a computer search of the identities of the vehicle’s occupants, and returned to the vehicle to ask Wilson to exit and do field sobriety tests. State’s Ex. 2, Burton 1, 31:30 – 39:40.

cause to arrest Eve for resisting law enforcement, which they did. *See id.* Eve has failed to show that her Fourth Amendment rights were violated such that evidence of her subsequent actions should have been excluded from evidence.

[14] Nevertheless, Eve asserts that her situation was an exception because she was a lawyer attempting to represent her client during a criminal investigation. The basis for this claim is Eve’s mistaken belief that Wilson was entitled to legal representation while Officer Burtron conducted his operating-while-intoxicated investigation. In fact, Wilson had no such right. The Sixth Amendment right to counsel does not attach until “judicial adversary proceedings ha[ve] been initiated.” *Davis v. State*, 367 N.E.2d 1163, 1166 (Ind. Ct. App. 1977) (finding no right to counsel prior to taking a breath analysis test). Thus, there is no Fourth Amendment right to counsel “at a breathalyzer refusal confrontation because no criminal proceedings have been initiated.” *Gibbs v. State*, 444 N.E.2d 893, 895 (Ind. Ct. App. 1983); *see also Cohee v. State*, 945 N.E.2d 748, 751-52 (Ind. Ct. App. 2011) (noting right against self-incrimination does not apply to obtaining “noncommunicative physical evidence” such as a chemical breath test (quoting *Davis*, 367 N.E.2d at 1166-67)), *trans. denied*; *Smith v. State*, 496 N.E.2d 778, 784 (Ind. Ct. App. 1986) (holding the same regarding field sobriety and breathalyzer tests), *trans. denied*. Nor is there a right to counsel under Article I, Section 13 prior to deciding whether to take a chemical, breathalyzer, or field sobriety test. *See State v. Taylor*, 49 N.E.3d 1019, 1024 (Ind. 2016) (noting Indiana right to counsel attaches upon arrest); *Datzek v. State*, 838 N.E.2d 1149, 1159 (Ind. Ct. App. 2006) (noting that “a person who

drives on Indiana's roads has no right to consult with an attorney prior to deciding whether or not to submit to a chemical test"), *trans. denied*.

- [15] Wilson had no right to counsel prior to her arrest or the initiation of formal criminal proceedings, and Eve had no corresponding right to exit the vehicle to represent Wilson as legal counsel. Eve was not entitled to ignore the officers' commands that she remain in the vehicle, and the officers did not violate the Constitution by attempting to keep Eve in the vehicle. The trial court did not abuse its discretion when it allowed evidence of all of Eve's actions on June 16, 2019.

Sufficiency of the Evidence

- [16] Eve contends that the evidence is insufficient to support her resisting law enforcement conviction. Our standard of review in a sufficiency of the evidence claim is clear:

[W]e examine only the probative evidence and reasonable inferences that support the [judgment]. We do not assess witness credibility, nor do we reweigh the evidence to determine if it was sufficient to support a conviction. Under our appellate system, those roles are reserved for the finder of fact. Instead, we consider only the evidence most favorable to the trial court ruling and affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

Lock v. State, 971 N.E.2d 71, 74 (Ind. 2012) (citations and quotation marks omitted).

[17] Under Indiana Code Section 35-44.1-3-1(a)(1), “[t]he basic offense of resisting law enforcement has five essential elements: that [the defendant] (1) knowingly or intentionally (2) forcibly (3) resisted, obstructed, or interfered with (4) a law enforcement officer, (5) while the officer was lawfully engaged in the execution of the officer’s duties.” *K.W. v. State*, 984 N.E.2d 610, 612 (Ind. 2013). The only element Eve challenges is the lawfulness of the officer’s actions; she asserts that the State failed to provide sufficient evidence that the officers did not violate her Fourth Amendment right to be free from unreasonable seizure. However, as we discussed extensively above, Eve’s Fourth Amendment claim fails. Through witness testimony and video evidence, the State provided sufficient evidence that the police officers were lawfully engaged in the execution of their duties, thus supporting Eve’s conviction of resisting law enforcement.

Motion to Correct Error

[18] Eve appeals the trial court’s denial of her pro se motion to correct error.

A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct error. *Volunteers of America v. Premier Auto Acceptance Corp.*, 755 N.E.2d 656, 658 (Ind. Ct. App. 2001). A trial court has abused its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences therefrom. *Id.* The trial court’s decision comes to us cloaked in a presumption of correctness, and the appellant has the burden of proving that the trial court abused its discretion. *Id.* In making our determination, we may neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Instead, we look at the

record to determine if (a) the trial court abused its judicial discretion; (b) a flagrant injustice has been done to the appellant; or (c) a very strong case for relief has been made by the appellant. *Id.*

Jones v. Jones, 866 N.E.2d 812, 814 (Ind. Ct. App. 2007).

[19] It is well-settled law that “[w]hen a defendant files a pro se motion after counsel has been appointed to represent him, ... the trial court is not required to consider the defendant’s pro se request.” *Anderson v. State*, 160 N.E.3d 1102 (Ind. 2021). Rather, consideration of a pro se motion after counsel has been appointed is left to the trial court’s discretion. *Id.*; see also *Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000) (“To require the trial court to respond to both Defendant and counsel would effectively create a hybrid representation to which Defendant is not entitled.”).

[20] Eve has failed to show that the trial court abused its discretion when it declined to consider her pro se motion to correct error when she was still represented by legal counsel. While Eve argues there should be an exception that requires a trial court to consider the pro se motions of defendants who are attorneys, she fails to provide any legal authority for such an exception, and we find none. Moreover, we note that Eve was not required to incur the costs of a lawyer to proceed further with her case. She could have had her attorney withdraw his appearance and *then* filed her pro se motion to correct error, which the trial court then would have been required to address.

Conclusion

[21] The police did not violate Eve's Fourth Amendment right to be free from an unreasonable seizure when they prevented her from opening the car door during a lawful roadside stop; therefore, the court did not abuse its discretion when it admitted evidence of Eve's actions on July 16, 2019. In addition, there was sufficient evidence that the police were lawfully engaged in the exercise of their duties prior to Eve forcing her car door open. Thus, as the lawfulness of the police action is the only element of resisting law enforcement that Eve challenges, there was sufficient evidence to support her conviction. And finally, the trial court did not abuse its discretion when it denied Eve's pro se motion to correct error that was filed while she was still represented by legal counsel.

[22] Affirmed.

Brown, J., and Tavitas, J., concur.