

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brione Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 17, 2023

Court of Appeals Case No.
22A-CR-2524

Interlocutory Appeal from the
Hamilton Superior Court

The Honorable William J. Hughes

Trial Court Cause No.
29D03-2203-F4-1271

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] On March 1, 2022, Brione Jackson was charged with one count of Level 4 felony unlawful possession of a firearm by a serious violent felon (“SVF”), after a police officer found a handgun concealed in the trunk of his vehicle. Prior to trial, Jackson filed a motion to suppress the handgun and any statements he had made following its discovery. The trial court certified the matter for interlocutory appeal after denying Jackson’s motion to suppress, and we accepted jurisdiction. On appeal, we conclude that the trial court did not err in denying Jackson’s motion to suppress the challenged evidence because Jackson consented to the search of his vehicle.

Facts and Procedural History

- [2] At approximately 2:40 a.m. on March 1, 2022, Carmel Police Officer Thomas Szybowski was patrolling the parking lot of the Extended Stay America Hotel in Carmel, which he knew to have “a significant history of ... criminal activities” occurring in the parking lot, including illegal drug activity. Tr. Vol. II p. 10. Officer Szybowski observed Jackson sitting in a silver Lexus GS3 in “the back parking lot.” Tr. Vol. II p. 10. Officer Szybowski further observed that the vehicle had been backed into a parking spot, which, based on its position in the parking lot behind the hotel, “drew [Officer Szybowski’s] attention with [his] experience that sometimes criminals know to do that to conceal the license plate being displayed on that vehicle.” Tr. Vol. II p. 10.

[3] Officer Szybowski approached the vehicle and spoke to Jackson, the sole occupant of the vehicle. During the encounter, Officer Szybowski smelled what he knew from his training and experience to be the odor of burnt marijuana emanating from the interior of Jackson’s vehicle. During the initial encounter, Jackson indicated that he did not currently have any marijuana on his person and told Officer Szybowski “you can search my vehicle.” Def. Ex. 1 at 8:10-8:15. After Jackson consented to a search of the vehicle, Officer Szybowski searched Jackson’s vehicle, finding a “silver and black Glock 48 handgun” concealed under a wooden box in the trunk. Appellant’s App. Vol. II p. 34. By this time, Officer Szybowski had become aware that Jackson had a previous conviction for carjacking and, as a result, qualified as an SVF. Later that day, the State charged Jackson with one count of Level 4 felony unlawful possession of a firearm by an SVF.

[4] On April 18, 2022, Jackson filed a motion to suppress “all evidence recovered from the search of [his] automobile trunk, and any statements made by [Jackson] thereafter.” Appellant’s App. Vol. II p. 36. After a hearing on Jackson’s motion, the trial court denied Jackson’s motion to suppress. At Jackson’s request, the trial court subsequently certified its order for interlocutory appeal, and we accepted jurisdiction.¹

¹ In addition to requesting that the trial court’s order be certified for interlocutory appeal, Jackson also filed a motion to correct error, which was denied by the trial court.

Discussion and Decision

- [5] Our standard of review on appeal for the denial of a motion to suppress evidence is similar to other sufficiency issues. *Johnson v. State*, 21 N.E.3d 841, 843 (Ind. Ct. App. 2014), *trans. denied*.

We determine whether substantial evidence of probative value exists to support the court’s denial of the motion. [*Westmoreland v. State*, 965 N.E.2d 163, 165 (Ind. Ct. App. 2012)]. We do not reweigh the evidence, and we consider conflicting evidence most favorably to the trial court’s ruling. *Taylor v. State*, 689 N.E.2d 699, 702 (Ind. 1997). However, unlike other sufficiency matters, we must also consider the uncontested evidence that is favorable to the defendant. *Westmoreland*, 965 N.E.2d at 165.

Id. “We review de novo a ruling on the constitutionality of a search or seizure, but we give deference to a trial court’s determination of the facts, which will not be overturned unless clearly erroneous.” *Westmoreland*, 965 N.E.2d at 165 (citing *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008)).

- [6] Jackson contends that the trial court erred in denying his motion to suppress the handgun recovered during the search of the trunk of his vehicle. Specifically, Jackson argues that “[w]ithout more, the smell of burnt marijuana alone [was] insufficient to establish probable cause to search the trunk of [his] vehicle.” Appellant’s Br. p. 6. However, probable cause was not needed in this situation to search the trunk because Jackson consented to the search of his vehicle.
- [7] The Indiana Supreme Court has held that “a person may freely consent to even the most unreasonable of intrusions; where such consent is valid, no warrant is

required.” *Dycus v. State*, 108 N.E.3d 301, 306 (Ind. 2018). “A person who consents to a search gives up those protections and subjects herself to a general search without probable cause.” *Id.*

- [8] Prior to giving his consent to the search, Jackson had been made aware of why Officer Szybowski had prolonged the initial encounter and detained him. While speaking with Officer Szybowski, Jackson clearly told Officer Szybowski “you can search my vehicle” and indicated that he would not find any marijuana in the vehicle. Defense Ex. 1 at 8:10–8:15. Notably, Jackson did not make any comments limiting the scope of his consent to the vehicle’s passenger compartment. By consenting to the search of the vehicle, Jackson waived his constitutional protections against search and seizure and subjected himself to a general search of his vehicle. *See Dycus*, 108 N.E.3d at 306 (providing that a person who consents to a search “gives up” the constitutional search and seizure protections and subjects herself to a general search without probable cause.) Jackson therefore cannot now challenge the constitutionality of the search.

- [9] The judgement of the trial court is affirmed.

May, J., and Mathias, J., concur.