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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHAD WOOD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0809-CR-790
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Paula Lopossa, Judge  
Cause No. 49F08-0806-CM-138838

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**June 11, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Chad Wood appeals his conviction for Class A misdemeanor possession of marijuana. Specifically, Wood contends that the officer who pulled him over did not have “reasonable suspicion” to stop him. Second, he contends that the trial court erred in admitting the marijuana found on his person during the stop because there is no evidence that the officer who patted him down conducted the pat down for officer safety. Because a traffic violation, however minor, creates probable cause to stop a driver of a vehicle, and there is evidence that Wood was driving more than fifteen miles an hour below the speed limit and almost causing accidents, we conclude that the officer had an objectively justifiable reason to stop Wood’s vehicle for violation of the reckless driving statute. In addition, we conclude that because Wood, who was in handcuffs, was under arrest for reckless driving at the time of the pat down, he was properly searched incident to that arrest. Therefore, the trial court did not abuse its discretion in admitting the marijuana at trial. We therefore affirm the trial court.

## **Facts and Procedural History**

Around 12:30 a.m. on June 6, 2008, Indianapolis Metropolitan Police Officer Bradley Beaton was on routine patrol on U.S. 31 on the south side of Indianapolis when he observed Wood driving approximately thirty-five miles per hour in a forty-five mile per hour zone in the right hand lane. This concerned Officer Beaton, because it could be a sign of an impaired driver, so he began following Wood. While following Wood for about one mile, Officer Beaton noticed that Wood’s speed fluctuated. Specifically, it went from thirty miles per hour back up to forty-five miles per hour and then back down

to thirty-five miles per hour. At one point, Wood's speed dipped below thirty miles per hour. In addition, the cars coming from behind Wood and Officer Beaton had to swerve to avoid rear-ending Officer Beaton (who was driving directly behind Wood) because of the slow speed at which they were driving. In fact, one car almost side-swiped another car when it quickly switched lanes to avoid rear-ending Officer Beaton's car. At this point, Officer Beaton activated his emergency lights and pulled over Wood.

When Officer Beaton approached Wood's vehicle, he observed two other people in the vehicle and smelled marijuana. Officer Beaton took Wood's driver's license and registration and ran a check. Officer Beaton then asked Wood if there were any weapons in the vehicle, and Wood said no. Officer Beaton next observed Wood continuously taking his right hand and reaching down toward his right pocket. Officer Beaton ordered Wood to stop and to show his hands. At this point, Officer Beaton noticed a large pocket knife in Wood's right pocket. Officer Beaton opened the driver's door and ordered Wood to exit the vehicle and to place his hands on the roof of the vehicle. Officer Beaton handcuffed Wood and promptly secured the knife. By this time, another officer, Chris Taylor, arrived on the scene and performed a pat down of Wood. Officer Taylor patted the outside of Wood's clothing and felt an object identified as Wood's cell phone. Officer Taylor next felt something square that he thought could be a weapon.<sup>1</sup> Tr. p. 45. Officer Taylor then retrieved the object from Wood's pocket, finding "a large irregular shaped not a uniformed pile of money meaning that they weren't all stacked together just

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<sup>1</sup> Officer Taylor asked Wood what the object was, and Wood eventually responded, "I've got a little dope in my pocket." Tr. p. 39. However, the trial court struck this statement from the record because *Miranda* warnings were not given. *Id.* at 40.

folded over. They were all which ways and in that stack of money was a small bag of marijuana.” *Id.* at 46. The money totaled \$173.00.

The State charged Wood with Class A misdemeanor possession of marijuana.<sup>2</sup> A bench trial was held, during which three motions to suppress were filed.<sup>3</sup> Following the bench trial, Wood was convicted, and the trial court sentenced him to 365 days, all suspended, with 180 days of probation. Wood now appeals.

### **Discussion and Decision**

Wood raises two issues on appeal. First, he contends that Officer Beaton did not have “reasonable suspicion” to stop him. Second, he contends that the trial court erred in admitting the marijuana because there is no evidence that Officer Taylor conducted the pat down for officer safety.

#### **I. Traffic Stop**

Wood contends that Officer Beaton did not have “reasonable suspicion” to stop him under either the United States or Indiana Constitution. The State responds that Officer Beaton, in fact, had probable cause to stop Wood because he violated the reckless driving statute.

The Fourth Amendment to the United States Constitution protects an individual’s privacy and possessory interests by prohibiting unreasonable searches and seizures. *Howard v. State*, 862 N.E.2d 1208, 1210 (Ind. Ct. App. 2007). A police officer may stop a vehicle when he observes a minor traffic violation. *State v. Quirk*, 842 N.E.2d 334, 340

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<sup>2</sup> Ind. Code § 35-48-4-11.

<sup>3</sup> For instance, Wood’s statement in response to Officer Beaton’s question “when was the last time that dope was smoked in this car?” was suppressed because *Miranda* warnings were not given. Tr. p. 28.

(Ind. 2006). “A traffic violation, however minor, creates probable cause to stop the driver of the vehicle.” *Id.*; *see also United States v. Hernandez-Rivas*, 513 F.3d 753, 758-59 (7th Cir. 2008) (“An officer has probable cause for a traffic stop when he has an objectively reasonable basis to believe a traffic law has been violated.”). A stop is lawful if there is an objectively justifiable reason for it. *State v. Rager*, 883 N.E.2d 136, 139 (Ind. Ct. App. 2008).

In this case, Officer Beaton testified that Wood, who was driving at 12:30 a.m. on a heavily-traveled road, was fluctuating his speed from between forty-five miles per hour to below thirty miles per hour in a forty-five mile per hour zone. As for the danger that Wood posed to others, Officer Beaton elaborated:

Okay, then like I started to say with the abundance of traffic that is in that area at that given time the traffic that was coming up behind us was having to slow and change lanes rapidly and at approximately the 6700 to 6800 block of South East Street a vehicle came up so quickly behind me because we were travelling like I said already below thirty (30) miles per hour and had to swerve to keep from rear-ending me and it almost side-swiped another vehicle that was in the lane to our left. At that point [in] time because an accident was almost caused I then went ahead and activated my emergency equipment and stopped him in the 6600 block of South East Street.

Tr. p. 11. Officer Beaton articulated that Wood was driving at such an unreasonably low rate of speed that he was endangering the safety and property of others and blocking the proper flow of traffic. Reckless driving, a Class B misdemeanor, is defined as someone who operates a vehicle and who recklessly “drives at such an unreasonably high rate of speed or *at such an unreasonably low rate of speed under the circumstances as to . . . endanger the safety or the property of others . . . or block the proper flow of traffic.*” Ind. Code § 9-21-8-52 (emphasis added). Thus, based on Wood’s driving, Officer Beaton had

probable cause to stop Wood for the offense of Class B misdemeanor reckless driving. Contrary to Wood's suggestion, we find that his driving was more than an isolated incident of slow driving. For approximately one mile, Wood fluctuated his speed and at times drove more than fifteen miles per hour below the posted speed limit, causing cars to swerve to avoid hitting Officer Beaton, who was following closely behind him. At one point, one car almost sideswiped another car. If Officer Beaton had not pulled over Wood, we can only speculate as to whether an accident may have been caused. Therefore, we find that Officer Beaton had an objectively justifiable reason to stop Wood's vehicle under the Fourth Amendment. *See Sell v. State*, 496 N.E.2d 799, 800-01 (Ind. Ct. App. 1986) (concluding investigatory stop of motorist was reasonable, where state trooper observed motorist driving fifteen to twenty miles an hour below speed limit on interstate for two to three minutes and had traffic backed up and congested behind him).

As for Article 1, § 11 of the Indiana Constitution, though it shares the same language as the Fourth Amendment, we analyze them independently. *State v. Bulington*, 802 N.E.2d 435, 438 (Ind. 2004). That is, rather than looking to federal requirements such as warrants and probable cause, we place the burden on the State to show that under the totality of the circumstances its intrusion was reasonable. *Id.*; *see also State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). Based on the facts recited above, the State has met its burden of showing that under the totality of the circumstances its intrusion was reasonable. There is no violation under Article 1, § 11.

## **II. Admission of Marijuana**

Wood next contends that the trial court erred in admitting the marijuana because the State, through Officer Taylor's testimony, had failed to prove the seizure was made in response to [Officer] Taylor's reasonable concern for the officers' safety. Instead, the evidence shows [Officer] Taylor knew the square object in Wood's pocket was drugs, not a weapon, and the *trial court* suggested the object might have been a weapon. [Officer] Taylor later fashioned his testimony to match the court-supplied rationale.

Appellant's Br. p. 11. Our standard of review of a trial court's determination as to the admissibility of evidence is for an abuse of discretion. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001). We will reverse only if a trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* We will not reweigh the evidence and will consider any conflicting evidence in favor of the trial court's ruling. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*.

Wood relies on the rule of law that under the Fourth Amendment, a law enforcement officer is permitted to conduct a reasonable search for weapons, for the officer's protection, where the officer has "reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Lewis v. State*, 755 N.E.2d 1116 (Ind. Ct. App. 2001) (citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Wood relies heavily on the late timing of Officer Taylor's testimony that he believed the object in Wood's pocket was a weapon (and insinuates that the trial court lost its neutrality and advanced arguments for the State by suggesting that it could have been a weapon) and points out that it was the officer's testimony at trial that Wood was *not* under arrest. *See* Tr. p. 42 (State's argument that Wood was not under arrest at the time of his pat down); *but see id.* at 27 (Officer Beaton's testimony that he thought he had the authority to arrest Wood at the time he

asked Wood when was the last time dope was smoked in the car, but he just did not tell Wood he was arrested).

Despite Wood's argument, we find that Officer Taylor's search of Wood was validly undertaken as a search incident to arrest. A search incident to a lawful arrest is an exception to the warrant requirement. *Culpepper v. State*, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996), *reh'g denied, trans. denied*. Under this exception, the arresting officer may conduct a warrantless search of the arrestee's person and the area within his immediate control. *Id.* (citing *Chimel v. California*, 395 U.S. 752, 772 (1969)). The initial inquiry under this exception is to determine whether the arrest itself was lawful. *Moffitt v. State*, 817 N.E.2d 239, 246 (Ind. Ct. App. 2004), *trans. denied*. "An arrest occurs when a police officer 'interrupts the freedom of the accused an[d] restricts his liberty of movement.'" *Id.* (quoting *Sears v. State*, 668 N.E.2d 662, 667 (Ind. 1996)). In addition, even when a police officer does not tell a defendant that he is under arrest before a search, that fact does not invalidate a search incident to an arrest as long as there is probable cause to make an arrest. *Id.* Furthermore, the subjective belief of the police officer that he may not have probable cause to arrest a defendant when he handcuffs the defendant has no legal effect. *Id.*

After Officer Beaton stopped Wood for reckless driving, he approached Wood's car and smelled marijuana. Officer Beaton ran a computer check on Wood's driver's license and then asked if he had any weapons. After saying no, Wood kept moving his right hand toward his right pocket, at which time Officer Beaton observed a large knife. Officer Beaton then removed Wood from the vehicle and handcuffed him. The trial court

found that when Wood was handcuffed, he was under arrest for reckless driving, *see* Tr. p. 41 (“I think the evidence shows that he was being searched incident to an arrest because he was arrested . . . for reckless driving.”); 42 (“No, I find that he was under arrest when he was handcuffed.”), and we agree.

A law enforcement officer may arrest a person when the officer has probable cause to believe the person is committing or attempting to commit a misdemeanor in his presence. Ind. Code § 35-33-1-1(4). Probable cause exists when, at the time of the arrest, the officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect committed a criminal act. *Griffith v. State*, 788 N.E.2d 835, 840 (Ind. 2003). The amount of evidence necessary to meet the probable cause requirement for a warrantless arrest is determined on a case-by-case basis. *Id.* As explained in Section I, Officer Beaton had probable cause to believe that Wood committed the offense of reckless driving, a Class B misdemeanor.<sup>4</sup> Therefore, Wood was properly searched incident to his arrest for that crime. The trial court did not abuse its discretion in admitting the marijuana found on Wood’s person.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.

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<sup>4</sup> It is of no import that Wood was not eventually charged with reckless driving. *See Sears*, 668 N.E.2d at 667 n.10.