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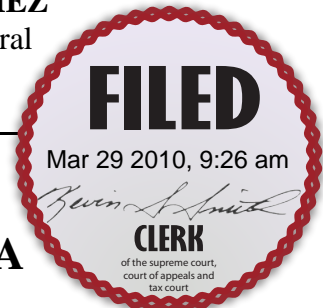
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**IN THE
COURT OF APPEALS OF INDIANA**



PATRICIA FISHER-LACY,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

No. 33A01-0908-CR-402

APPEAL FROM THE HENRY SUPERIOR COURT

The Honorable Bob A. Witham, Judge

Cause No. 33D02-0712-FD-401

March 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Patricia Fisher-Lacy appeals her conviction of Possession of a Schedule II Controlled Substance,¹ a class D felony. Fisher-Lacy presents the following restated issue for review: Did the trial court err in admitting evidence discovered during a search of Fisher-Lacy's vehicle?

We affirm.

The facts favorable to the conviction are that on December 13, 2007 at approximately 5:30 p.m., Lacy was traveling through Henry County, Indiana when Indiana State Police Trooper Kris Martin initiated a traffic stop for speeding. Fisher-Lacy was driving at the time and a passenger, Dawn Showalter, was also in the vehicle. As he approached Fisher-Lacy's vehicle, Trooper Martin smelled what he believed was the odor of burnt marijuana emanating from the driver's window. He did not mention this to Fisher-Lacy but asked her to accompany him back to his cruiser so that he could speak to the two women separately and thereby check the veracity of their stories. He asked Fisher-Lacy what she was doing, listened to her explanation, and then went back to Fisher-Lacy's vehicle in order to speak with Showalter. Showalter corroborated Fisher-Lacy's story but became nervous when Trooper Martin asked her if she had marijuana. She denied having any. Trooper Martin returned to his cruiser and for the first time apprised Fisher-Lacy that he smelled marijuana in her vehicle. Fisher-Lacy opined that the smell might be leaking, burnt motor oil and claimed she had not smoked marijuana for months. While he wrote the ticket for speeding, Trooper Martin requested assistance from a canine unit from the Henry County Sheriff's Department.

¹ Ind. Code Ann. § 35-48-4-7 (West, Westlaw through 2009 1st Special Sess.).

Approximately five to ten minutes later, Sergeant James Goodwin of the Henry County Sheriff's Department arrived with his canine partner, Cain. Trooper Martin returned to Fisher-Lacy's vehicle and spoke with Showalter a second time. He told her a drug-sniffing dog was going to walk around Fisher-Lacy's vehicle and again asked if she had any marijuana. This time she admitted that she did and retrieved from her purse marijuana and related paraphernalia. She claimed that was all of the marijuana she possessed at the time. In order to ensure that Cain would not alert to Showalter and the aforementioned items, Trooper Martin removed the items from the vehicle and moved Showalter to his cruiser. Cain then performed a walk-around of Fisher-Lacy's vehicle and alerted to the presence of drugs on the passenger side of the vehicle. Sgt. Goodwin let Cain into the vehicle, and the canine displayed a response indicating the presence of drugs, focusing on the area around the center console between the front seats. Trooper Martin observed a large quantity of "marijuana shake" in and around the front seats, which refers to small pieces of marijuana leaves, stems, and seeds. *Transcript* at 117. The officer then opened and searched the center console, where he discovered a small plastic bag containing burnt marijuana. Fisher-Lacy's purse was sitting beside the console between the seats. Sgt. Goodwin searched the purse and discovered thirteen, ten-milligram Hydrocodone pills, ten in a plastic bag and three in a plain pill bottle. Hydrocodone is classified as a Schedule II controlled substance.

Fisher-Lacy was transported to Henry County Hospital for a blood draw. Tests revealed the presence of THC in her blood. Fisher-Lacy was arrested and charged with operating while intoxicated as a class A misdemeanor, operating a vehicle with a controlled

substance as a class C misdemeanor, possession of marijuana ultimately as a class A misdemeanor, public intoxication as a class B misdemeanor, and possession of Schedule II controlled substance as a class D felony. She was also alleged to be an habitual substance offender.

Prior to trial, Fisher-Lacy filed a motion to suppress the items seized during the search of her vehicle, including the marijuana and Hydrocodone pills. She argued that the officers lacked probable cause to detain and arrest her, and that the search of her vehicle was not supported by probable cause. The trial court denied the motion. On June 5, 2009, the court granted the State's motion to dismiss the charges alleging operating while intoxicated, operating a vehicle with a controlled substance, and public intoxication. The matter proceeded to trial on June 10, 2009, after which the jury found Fisher-Lacy guilty of possession of a Schedule II controlled substance and not guilty of possession of marijuana. After the jury returned its verdicts, Fisher-Lacy admitted to being an habitual substance offender.

Fisher-Lacy received an eighteen-month sentence for the controlled substance conviction, all of it suspended to probation except for time served. The sentence was enhanced by three years because of the habitual offender determination, which was suspended to one year of formal probation and two years of informal probation, to be served consecutively.

At trial, Fisher-Lacy objected to the admission of the Hydrocodone found in her purse on grounds that it was the fruit of an illegal search. She contends the trial court erred in

overruling the objection and admitting the evidence. Fisher-Lacy brings these claims under the Fourth Amendment to the United States Constitution and article 1, section 11 of the Indiana Constitution.

Generally, our standard of review for the admissibility of evidence is well established. The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal. *Whiteside v. State*, 853 N.E.2d 1021 (Ind. Ct. App. 2006). We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Id.*

A law enforcement officer may stop a vehicle when the officer observes a traffic violation. *Lark v. State*, 755 N.E.2d 1153 (Ind. Ct. App. 2001), *clarified on reh'g on other grounds*, 759 N.E.2d 275. In this case, Fisher-Lacy does not challenge the legality of the initial traffic stop, as she admitted she was traveling at 67-70 miles per hour in an area where the posted speed limit was 60 miles per hour. After executing the valid traffic stop, Trooper Martin detected the obvious odor of burnt marijuana emanating from Fisher-Lacy's vehicle as he spoke with her. This alone constituted probable cause to search the vehicle. *See, e.g., Marcum v. State*, 843 N.E.2d 546 (Ind. Ct. App. 2006); *see also Lark v. State*, 755 N.E.2d 1153; *D.K. v. State*, 736 N.E.2d 758 (Ind. Ct. App. 2000) *Kenner v. State*, 703 N.E.2d 1122 (Ind. Ct. App. 1999), *trans. denied*. Moreover, an officer's detection of the odor of burnt

marijuana justifies at a minimum extending the traffic stop long enough to summon a canine unit to the scene to sniff for drugs. *See State v. Hawkins*, 766 N.E.2d 749 (Ind. Ct. App. 2002). We note also that except for certain cases involving entering onto private property to do it, *see, e.g., Hoop v. State*, 909 N.E.2d 463 (Ind. Ct. App. 2009), *trans. denied*, the United States Constitution does not even require reasonable suspicion for a canine drug sniff. *See State v. Gibson*, 886 N.E.2d 639 (Ind. Ct. App. 2008). Be that as it may, we have also observed that a “dog sniff alone [is] sufficient to establish probable cause[.]” *Hoop v. State*, 909 N.E.2d at 468.

In this case, after he smelled the odor of burnt marijuana, Trooper Martin requested a canine unit to assist in the search. After the canine arrived and alerted to the presence of drugs outside the vehicle, the officers had sufficient probable cause to search the inside of the vehicle. *See id.* We understand that Fisher-Lacy complains that she was detained an unreasonable length of time for these events to occur. Considering all of the circumstances, we reach the opposite conclusion. We reiterate that the facts make it clear that, from the beginning of the traffic stop, this was not a mere fishing expedition. Trooper Martin immediately smelled burnt marijuana. His practice of immediately separating Fisher-Lacy and her passenger in order to better ascertain the truth of their stories is not only effective law-enforcement procedure, but also takes longer to accomplish than would be the case had he spoken with the two women together without removing them from the car. He spoke to one, then the other, and then did so again. After speaking with Fisher-Lacy a second time, he summoned a canine unit, which arrived on the scene within five or ten minutes. After he

subsequently spoke with Showalter a second time, she admitted she possessed marijuana and surrendered the substance then in her possession. The canine's sniff of the vehicle was performed shortly thereafter and with dispatch. Each phase of the multi-step investigation was justified by suspicious facts gleaned from the preceding phase. As a result, there were multiple bases upon which probable cause was established. "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 825 (1982). Thus, the search of the interior of Fisher-Lacy's vehicle, and specifically her purse, did not violate the Fourth Amendment, and the trial court did not err in refusing to exclude evidence on this basis.

We turn now to Fisher-Lacy's challenge under the Indiana Constitution. Although the language of article 1, section 11 is nearly identical to its federal counterpart, our analysis under the Indiana provision is separate and distinct therefrom. *Holder v. State*, 847 N.E.2d 930 (Ind. 2006). We will therefore engage in an independent examination of the propriety of the search and seizure under the Indiana Constitution.

Article 1, section 11 of the Indiana Constitution, provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated[.]" Automobiles are among the "effects" protected. *See Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006). To determine whether a search violated this provision, we must evaluate the reasonableness of the police conduct under the totality of the circumstances. *Myers v. State*, 839 N.E.2d 1146. In so doing, we consider both the degree

of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search. *Id.* Our Indiana Supreme Court has explained the reasonableness evaluation as follows:

[A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning 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 citizen's ordinary activities, and 3) the extent of law enforcement needs.

Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005). The State bears the burden to show that each relevant intrusion was reasonable in light of the totality of the circumstances. *State v. Bulington*, 802 N.E.2d 435 (Ind. 2004).

After stopping Fisher-Lacy for a routine traffic violation, Trooper Martin detected a strong odor of marijuana emanating from her vehicle. This gave rise to a reasonable suspicion that Fisher-Lacy and/or her passenger were using marijuana inside the vehicle. After speaking briefly and separately with Fisher-Lacy and Showalter while processing the citation, Trooper Martin determined that the circumstances warranted a drug sweep by a law enforcement canine unit, so he called the local Henry County Sheriff's Department and made this request. By the time the canine unit arrived just a few minutes later, Showalter admitted possessing marijuana and surrendered to the trooper a quantity of the substance and related items. After Showalter and her contraband were removed from the vehicle, the dog alerted to the vehicle, indicating the presence of still more illegal drugs. Upon entering the vehicle, the officers observed "marijuana shake" strewn about the vehicle's interior, including on the floor in front of the seat on which Fisher-Lacy had been sitting. *Transcript* at 117. In view

of the compelling nature of the evidence indicating the presence of contraband, we conclude that the intrusion upon Fisher-Lacy's ordinary activities beyond the traffic stop was reasonable under the circumstances. Thus, we are satisfied that the warrantless search of Fisher-Lacy's vehicle, including the contents of Fisher-Lacy's purse, was reasonable under the circumstances.

Finding no violation of the Fourth Amendment or article 1, section 11, we conclude that the trial court did not abuse its discretion in admitting evidence seized as a result of the warrantless search.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.