

STATEMENT OF THE CASE

Gregory L. Finger appeals his convictions for possession of cocaine and a firearm, as a Class C felony, and carrying a handgun without a license, as a Class A misdemeanor, following a bench trial. Finger raises a single issue for review, namely, whether the search of a duffel bag in Finger's van following his arrest violated his rights under the Fourth Amendment to the United States Constitution and under Article I, Section 11 of the Indiana Constitution.

We affirm.

FACTS AND PROCEDURAL HISTORY

At 11:15 p.m. on September 11, 2008, Officer Danny Reynolds of the Indianapolis Metropolitan Police Department observed a van parked in a "haphazard manner" more than a foot from the curb in an industrial area with poor lighting. Transcript at 20. Given those circumstances and the fact that vehicles were not usually parked in that area, Officer Reynolds believed the van may have broken down. He activated his overhead rear flashers and approached the vehicle with a flashlight to see if anyone was inside.

When Officer Reynolds looked through the driver's side window of the van, he saw Finger sitting in the driver's seat. The officer observed a "green leafy substance" scattered on the lapels of Finger's shirt. Officer Reynolds knew from experience and training that the substance was likely marijuana. The officer ordered Reynolds to exit the van and told him he was under arrest for possession of marijuana. Reynolds collected the green leafy substance from Finger's shirt. The green leafy substance from Finger's shirt later tested to be .13 grams of marijuana. Upon searching Finger's person, Officer

Reynolds found several white rock-like pieces in Finger's shirt pocket. Those pieces were later identified as .234 gram of rock cocaine.

Officer Reynolds sat Finger in handcuffs on a curb and searched the interior of the van, looking for more narcotics. The officer found more marijuana on the front seat and floorboard. Officer Reynolds also saw a green duffel bag lying "just next or kind of next or kind of juxtaposed to almost to the passenger side seat. Kind of to the rear of the seat." Transcript at 29. The bag had been "within arm's reach" of the driver's seat. Id. at 31. Officer Reynolds looked inside the green bag and found a handgun. Finger confirmed that the gun belonged to him.

The State charged Finger with possession of cocaine and a firearm, a Class C felony ("Count I"); possession of cocaine, as a Class D felony ("Count II"); carrying a handgun without a license, as a Class A misdemeanor ("Count III"); and possession of marijuana, as a Class A misdemeanor ("Count IV"). On May 7, 2009, Finger filed a motion to suppress "evidence discovered directly or indirectly as a result of the [allegedly] illegal arrest and detention" of Finger. Appellant's App. at 36. On that same day, the court held a bench trial and heard arguments on the motion to suppress. On June 12, 2009, the court denied the motion to suppress and found Finger guilty as charged. On August 11, the court entered judgment of conviction on Counts I, III, and IV.¹ The court then sentenced Finger to two years on Count I, one year on Count III, and one year on Count IV, to run concurrently. Finger now appeals.

¹ The court did not enter judgment of conviction on Count II because it "involve[d] the same cocaine as [in] Count [I]." Transcript at 95.

DISCUSSION AND DECISION

Standard of Review

Finger challenges the legality of the warrantless search of a duffel bag in his vehicle and, consequently, the trial court's denial of his motion to suppress the evidence obtained in that search. But Finger is challenging the admission of evidence following his conviction. Thus, the issue is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Bentley v. State, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), trans. denied. A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. In reviewing the trial court's ultimate ruling on admissibility, we may consider the foundational evidence from the trial as well as evidence from the motion to suppress hearing that is not in direct conflict with the trial testimony. Hendricks v. State, 897 N.E.2d 1208, 1211 (Ind. Ct. App. 2008).

Fourth Amendment

We first examine Finger's challenge under the Fourth Amendment. In general, the Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures. The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. Taylor v. State, 842 N.E.2d 327, 330 (Ind. 2006) (citing U.S. Const. Amend. IV; Berry v. State, 704 N.E.2d 462, 464-65 (Ind. 1998) (citing Mapp v. Ohio, 367 U.S. 643, 650

(1961))). The fundamental purpose of the Fourth Amendment to the United States Constitution is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes, and their belongings. Id. (citing Ybarra v. Illinois, 444 U.S. 85, 91 (1979)). For a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies. Id. (citing Berry, 704 N.E.2d at 465). The State bears the burden of proving that a warrantless search falls within an exception to the warrant requirement. Id. (citing Fair v. State, 627 N.E.2d 427, 430 (Ind. 1993)). The propriety of a search is subject to de novo review. Membres v. State, 889 N.E.2d 265, 268 (Ind. 2008).

An automobile search is an exception to the warrant requirement. See State v. Holley, 899 N.E.2d 31, 34 (Ind. Ct. App. 2008), trans. denied. Under the Fourth Amendment, a search falls within the automobile exception to the warrant requirement where (1) the vehicle was readily mobile or capable of being driven when the police first seized it; and (2) probable cause existed that the vehicle contained contraband or evidence or a crime. California v. Carney, 471 U.S. 386, 392-3 (1985).

We observe that Finger does not contend that the officers lacked probable cause to believe that his vehicle contained contraband. Rather, he urges it was unlawful and unreasonable under the circumstances for Officer Reynolds to search the duffel bag in Finger's vehicle without first obtaining a warrant. We cannot agree. Officer Reynolds observed Finger's van parked in a haphazard manner in an industrial area where vehicles were not usually parked. Believing the vehicle to be broken down, the officer approached the vehicle and looked inside the driver's side window with the aid of his

flashlight. There he saw Finger, sitting in the driver's seat with a green leafy substance in plain view on his shirt. Officer Reynolds knew from experience that the green leafy substance was likely marijuana.

Officer Reynolds handcuffed Finger and placed him under arrest for possession of marijuana. In a search incident to arrest, the officer found several pieces of a white rock-like substance that he recognized through his training and experience to be crack cocaine. At that point, the officer considered Finger to be under arrest for possession of cocaine as well. Officer Reynolds then searched the interior of the van, where he observed a green bag lying behind the front passenger seat of the van and within arm's reach of the driver's seat. On these facts, Officer Reynolds had probable cause to believe he would find more drugs in the bag. There is also evidence that the van was operable. Officer Reynolds testified that the van had all four tires and the keys were in the ignition. Thus, the State has shown that the automobile exception to the Fourth Amendment's warrant requirement applies. See Holley, 899 N.E.2d at 34.

Finger contends that the search of the duffel bag was unreasonable under Arizona v. Gant, 129 S. Ct. 1710, 1719 (2009). Specifically, he argues that Gant allows the warrantless search of the area within the arrestee's immediate reach only when the arrestee could reasonably access that area at the time of the search. Finger maintains that he was handcuffed to a chain link fence when Officer Reynolds searched the bag and, therefore, the search of the bag was unreasonable under Gant. But Finger has not pointed to evidence in the record to show that he was handcuffed to the fence at the time Officer

Reynolds searched the bag, nor is the record clear about when the officer handcuffed him to the fence.

In any event, Finger ignores the additional holding in Gant that “circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’” Id. Here, Officer Reynolds had already found drugs on Finger and in the van. His search of the duffel bag for additional drugs, which had been within Finger’s immediate reach before the arrest, was reasonable under Gant.²

Indiana Constitution

Finger also contends that the search was unreasonable under Article I, Section 11 of the Indiana Constitution. Article I, Section 11 provides that “[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; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.” “Notwithstanding the textual similarity of Article I, § 11 of the Indiana Constitution to that of the federal Fourth Amendment, Section 11 is interpreted separately and independently from Fourth Amendment jurisprudence.” State v. Washington, 898 N.E.2d 1200, 1205-06 (Ind. 2008) (citing Mitchell v. State, 745 N.E.2d 775, 786 (Ind. 2001)).

² Finger also argues that the search was not valid under either the inventory search exception or the search incident to arrest exception. But we have already concluded that the search was valid under the automobile exception and under Gant. Thus, we need not consider Finger’s argument under other exceptions to the warrant requirement.

“The legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances.” Baxter v. State, 891 N.E.2d 110, 117 (Ind. Ct. App. 2008) (quoting Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005)). Although there may be other relevant considerations under certain circumstances, generally the reasonableness of a search or seizure turns on a balancing 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. Id. We consider each of these factors in turn.

Finger concedes that the degree of concern, suspicion, or knowledge that a violation had occurred was high in the present case because Officer Reynolds had already found drugs in Finger’s possession. Still, Finger argues that because the State “presented no evidence [that Officer] Reynolds had reason to suspect Mr. Finger’s green bag would contain contraband, his degree of concern, suspicion, or knowledge of a violation related to that container was very low.” Appellant’s Brief at 11. We cannot agree. The officer observed marijuana leaves on Finger’s shirt and on the floorboard of the van, and he found crack cocaine in Finger’s pocket. On such facts, the officer’s suspicion that there might be drugs in the duffel bag, which was within reach of Finger when Officer Reynolds first saw him, was reasonable.

We next consider the degree of intrusion resulting from the warrantless search of the duffel bag. The State acknowledges that “searching a defendant’s car is likely to impose an intrusion on a ‘citizen’s ordinary activities[.]’” Appellee’s Brief at 9. But, as

the State notes, we have held that such an intrusion is not as great where officers searched a vehicle following a traffic stop at 1:00 a.m. in a residential driveway. Myers v. State, 839 N.E.2d 1146, 1154 (Ind. 2005) (“to a limited extent, the intrusion [on such facts], at least as to public notice and embarrassment, was somewhat lessened because of the hour and place of the search”). Here, Finger’s van was parked in an industrial area, and there were no other cars around when Officer Reynolds searched the van. Although Finger had an expectation of privacy in the bag, the intrusion was lessened by the circumstances surrounding the search, namely, Finger’s arrest for possession of marijuana and cocaine.

Lastly we consider the extent of law enforcement needs. When Officer Reynolds searched the van and the duffel bag, he had already arrested Finger for possession of marijuana. Upon the arrest, Officer Reynolds’ search of the van, including a search of the duffel bag, was not unreasonable because, again, he had already found drugs on Finger and in the van. Gathering evidence in plain view was within the needs of law enforcement, and it was not unreasonable for the officer to conclude that the duffel bag within reach of the driver’s seat likely contained evidence of contraband. Considering and balancing all three factors, we conclude that Officer Reynolds’ search of the duffel bag was reasonable under the circumstances. As such, Finger’s claim under the Indiana Constitution also must fail.

Affirmed.

VAIDIK, J., and BROWN, J., concur.