MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gregory Blair Goff, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 5, 2022

Court of Appeals Case No. 22A-CR-996

Appeal from the Huntington Superior Court

The Honorable Jennifer Newton, Judge

Trial Court Cause No. 35D01-2008-CM-614

Bailey, Judge.

Case Summary

[1] Gregory Goff, Jr. ("Goff") appeals his convictions and sentence for operating a vehicle while intoxicated in a manner that endangers a person, as a Class A misdemeanor;[1] and possession of marijuana, as a Class B misdemeanor,[2] and his sentence enhancement for being a Habitual Vehicular Substance Offender ("HVSO").[3]

[2] We affirm.

Issues

[3] Goff raises the following two issues:

I. Whether the trial court abused its discretion when it admitted evidence obtained during a traffic stop.

II. Whether Goff's sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[4] On August 14, 2020, at approximately 9:53 p.m., Officer Jordan Corral ("Officer Corral") with the Huntington Police Department was driving behind a

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[1] Ind. Code § 9-30-5-2(b).

[2] I.C. § 35-48-4-11(a)(1).

[3] I.C. § 9-30-15.5-2.

Buick. While traveling on Broadway Street, a two-lane road, Officer Corral observed the Buick "cross[ing] … the double yellow center line." Tr. v. II at 170. The Buick crossed "the second line closer to the left-hand lane, so closer to the oncoming traffic." *Id*. at 212. There were no obstacles or debris in the right lane that would have caused the vehicle to drive into the other lane. Officer Corral's dashboard camera was not turned on to record the infraction "because [Officer Corral] was still trying to catch up to the vehicle." *Id*. at 171.

[5] Officer Corral continued following the vehicle as it turned onto Jefferson Street. While on Jefferson Street, Officer Corral observed the Buick's driver's side tires "again" cross the double yellow lines and drive "left of center." *Id*. at 172. The officer's dashboard camera recorded the second infraction. After witnessing the second infraction, Officer Corral turned on his emergency lights and initiated a traffic stop.

[6] Officer Corral approached the vehicle and spoke to the driver, Goff. Officer Corral informed Goff of the reason for the stop and requested his license and registration. Officer Corral noticed the odor of raw marijuana and alcohol emanating from Goff and observed that Goff's eyes were "bloodshot" and "kind of glassy." Tr. v. II at 177. Goff "admitted to having several beers" but denied there was marijuana in the vehicle. *Id*. at 176. Goff's speech was "labored" and "lethargic." *Id*. at 177. Goff told Officer Corral that he "could search the vehicle … if [he] would like." *Id*. at 176.

[7] Officer Corral asked Goff to step out of the vehicle. As Goff did so, he was "unsteady" and held onto the driver's side door. *Id*. at 176-77. Officer Corral noticed an alcohol container lying on the passenger's seat. Goff attempted to take a cigarette pack out of the vehicle with him, but Officer Corral told him to leave it in the vehicle. Officer Corral searched Goff's person and then asked Goff to wait by the front of Officer Corral's vehicle while Officer Corral conducted the search of Goff's vehicle. Another officer arrived and waited with Goff.

[8] Officer Corral searched the vehicle "bumper-to-bumper." *Id*. at 179. There was a "very strong odor of raw marijuana" coming from the trunk when Officer Corral opened it. *Id*. at 180. Officer Corral noticed the carpet in the trunk was pulled back slightly, and when he lifted it, he found a "natural void behind the taillight of this vehicle, and in that natural void there [wa]s a grocery bag that had a green plant substance that was congruent with the physical appearance and texture of marijuana." *Id*. at 180-81. Laboratory testing later confirmed that the grocery bag contained 9.92 grams of marijuana. Officer Corral found a joint that contained "a green plant material" in the cigarette pack that Goff had attempted to take out of the vehicle. *Id*. at 183. Goff failed several standardized field sobriety tests. Goff consented to a blood draw, so another officer transported Goff to the hospital for the blood draw while Officer Corral took the evidence back to the police department. Later testing of Goff's blood revealed that he had fentanyl, methamphetamine, and benzoylecgonine—a metabolite of cocaine—in his blood.

[9] After Goff waived his *Miranda* rights and while he was waiting at the hospital for the blood draw, he spoke to Officer Ryan Gatchel ("Officer Gatchel"). Goff told Officer Gatchel that, at around 1:00 a.m. or 2:00 a.m. on August 14th, he had "snorted … just under half a gram of cocaine" and that it may have been laced with something else. Tr. v. III at 15. Goff also stated that he had smoked marijuana on the 14th at around 1:00 p.m. and had been drinking alcohol prior to the traffic stop. Goff explained that he had received the "big bag of weed" in his trunk from a friend and that Goff "was going to transport it to someone else's house to give to them." *Id*. at 16.

[10] The State charged Goff with Count I, operating a vehicle while intoxicated in a manner that endangered a person, as a Class A misdemeanor; Count II, operating a vehicle while intoxicated, as a Class C misdemeanor;[4] Count III, operating a vehicle with a Schedule I or II controlled substance, a Class C misdemeanor;[5] and Count IV, possession of marijuana, as a Class B misdemeanor. The State also alleged that Goff was an HVSO. On November 25, 2020, Goff filed a motion to suppress the evidence obtained during the search of his vehicle on the grounds that the search violated his rights under the federal and state constitutions. Following a hearing, the trial court denied the motion to suppress.

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[4] I.C. § 9-30-5-2(a).

[5] I.C. § 9-30-5-1(c).

[11] Goff's jury trial was held on February 24 and 25 of 2022. The trial was bifurcated and, during the break between phases one and two, Goff "left the building." Tr. v. III at 158. The trial court found that Goff had "absconded" and conducted the second phase of the trial (regarding the HVSO allegation) in absentia. App. v. II at 24. The State admitted into evidence Goff's Bureau of Motor Vehicle records which showed that Goff had been convicted of operating a vehicle while intoxicated in 1996, 2000, and 2003.

[12] The jury found Goff guilty as charged and found him to be an HVSO. The trial court issued a warrant for Goff's arrest due to his failure to appear for the second phase of his trial. Goff was arrested on March 18, 2022, and his sentencing hearing was held one month later. The trial court had access to Goff's criminal history, which consisted of two prior misdemeanor convictions and one prior felony conviction. At sentencing, the trial court stated to Goff:

> I'm hesitant to give you any probation because you left during your trial. We had members of the public here who probably didn't really want to be here, but they were here as part of the system to determine your guilt or innocence and you left before the second phase of the trial started. You knew there was a second phase of the trial because you requested the second phase of the trial, and you just didn't show up. By doing that, you've shown complete disdain for the Court and the Court's orders and the whole judicial process.

Tr. v. III at 188.

[13] The trial court entered judgments on Counts I and IV and the HVSO allegation. The court sentenced Goff to a term of one year imprisonment on Count I, with

no time suspended. Presumably due to double jeopardy concerns, the court did not enter judgments on Counts II and III, which were merged with Count I. The court sentenced Goff to a term of 180 days on Count IV, to run concurrent with Count I. The court enhanced Goff's sentence by three years, suspended to probation, for being an HVSO. This appeal ensued.

Discussion and Decision

Admission of Evidence

[14] Goff appeals the denial of his motion to suppress the evidence obtained in the search of his vehicle. Because this is not an interlocutory appeal of the denial of his motion to suppress but rather an appeal following trial, Goff's issue is more properly one of admission of the evidence. *See, e.g.*, *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). A trial court has broad discretion to rule on the admissibility of evidence. *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). Generally, evidentiary rulings are reviewed for an abuse of discretion and reversed when admission is clearly against the logic and effect of the facts and circumstances. *Id.* When a trial court denies a motion to suppress evidence, we review that decision "deferentially, construing conflicting evidence in the light most favorable to the ruling." *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019) (quotation and citation omitted). However, we "consider any substantial and uncontested evidence favorable to the defendant." *Id.* We review the trial court's factual findings for clear error, and we will not reweigh evidence or judge witness credibility. *Id.* When a challenge to an evidentiary ruling is

predicated on the constitutionality of a search or seizure of evidence, it raises a question of law that is reviewed de novo. *Thomas*, 81 N.E.3d at 624. The State has the burden to demonstrate that the measures it used to seize information or evidence were constitutional. *State v. Rager*, 883 N.E.2d 136, 139 (Ind. Ct. App. 2008).

[15] Goff raises claims under both the federal and state constitutions; specifically, he alleges that the officer's initial stop of Goff's vehicle was made in violation of both constitutions and, therefore, the evidence obtained from the subsequent search should have been suppressed. Although the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution contain textually similar language, each must be separately analyzed. *State v. Washington*, 898 N.E.2d 1200, 1205-06 (Ind. 2008).

Fourth Amendment

[16] The Fourth Amendment, which is incorporated against the states through the Fourteenth Amendment, protects people against unreasonable searches and seizures. U.S. Const. amend. IV; *Combs v. State*, 168 N.E.3d 985, 991 (Ind. 2021). Generally, the Fourth Amendment requires a warrant for a search and seizure. *Combs*, 168 N.E.3d at 991. One exception to the warrant requirement allows police to seize a person without a warrant and on a level of suspicion less than probable cause—that is, the reasonable suspicion standard for brief investigatory stops. *Marshall*, 117 N.E.3d at 1259. We often call these encounters "*Terry* Stops," in reference to the United States Supreme Court case

which held that an officer may stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot." *Id*. (quotations and citations omitted); *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

[17] Thus, we have held that an officer may stop and briefly detain a person when there is reasonable suspicion that the person committed a traffic violation. *Marshall*, 117 N.E.3d at 1259; *see also U.S. v. Cole*, 21 F.4th 421, 427 (7th Cir. 2021) ("Because traffic stops are typically brief detentions, more akin to *Terry* stops than formal arrests, they require only reasonable suspicion of a traffic violation—not probable cause."), *cert. denied*. In fact, we have held that, "[i]f an officer observes a driver commit a traffic violation, he has probable cause to stop that driver." *Toppo v. State*, 171 N.E.3d 153, 156 (Ind. Ct. App. 2021) (citing *State v. Keck*, 4 N.E.3d 1180, 1184 (Ind. 2014)), *trans. denied*; *see also Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013) ("It is unequivocal under our jurisprudence that even a minor traffic violation is sufficient to give an officer probable cause to stop the driver of a vehicle.").

[18] Indiana Code Section 9-21-8-2(a) provides that "[u]pon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway" with some exceptions that are not applicable here. We have repeatedly held that "crossing" the yellow dividing line between opposite lanes of traffic is a violation of Indiana Code Section 9-21-8-2(a). *See, e.g.*, *Toppo*, 171 N.E.3d at 156; *Pridemore v. State*, 71 N.E.3d 70, 74 (Ind. Ct. App. 2017), *trans. denied*. As we noted in *Pridemore*, "[a] motorist is not 'upon the right half of the roadway'

if she is driving in the median between two opposite lanes of traffic." 71 N.E.3d at 74 (quoting IC 9-21-8-2(a)).

[19] Here, Officer Corral testified that he twice witnessed Goff "cross" the yellow dividing line between opposite lanes of traffic. Thus, he had reasonable suspicion and probable cause that Goff had twice violated a traffic law, and his subsequent stop of Goff's vehicle did not violate Goff's Fourth Amendment rights. *See Marshall*, 117 N.E.3d at 1259 (regarding reasonable suspicion); *Toppo*, 171 N.E.3d at 156 (regarding probable cause). Goff's arguments to the contrary[6] are requests that we reweigh the evidence and judge witness credibility, which we may not do. *See id.* at 1258. Moreover, we note that the State was not required to provide proof that the double center lines had been placed "left of the actual halfway point of the road," as Goff contends. Appellant's Br. at 17. "*Terry* does not require absolute certainty of illegal activity, but rather reasonable suspicion." *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). Officer Corral had reasonable suspicion to believe Goff had violated Indiana Code Section 9-21-8-2(a) by crossing the yellow dividing line between opposite lanes of traffic. *See Toppo*; *Pridemore*.

[6] Goff asserts that State's Exhibit 2, the video from Officer Corral's dashboard camera, does not show Goff crossing the yellow center line at any point. However, the jury observed all the evidence, including State's Exhibit 2, and clearly believed Officer Corral's testimony. We may not second-guess the jury's weighing of the evidence and judgment of witness credibility. *See Marshall*, 117 N.E.3d at 1258.

Article 1, Section 11

[20] Goff also challenges the stop of his vehicle on state constitutional grounds; specifically, Article 1, Section 11 of the Indiana Constitution.[7] The reasonableness of a search and/or seizure under the Indiana Constitution "turns on an evaluation of the reasonableness of the police conduct *under the totality of the circumstances*." *Garcia v. State*, 47 N.E.3d 1196, 1199 (Ind. 2016) (emphasis original to *Garcia*) (quoting *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005)). In making this evaluation, we must balance three factors: "1) the [officer's] 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*. (quoting *Litchfield*, 824 N.E.2d at 361).

[21] First, as we held above, Officer Corral had reasonable suspicion that criminal activity was afoot; therefore, the degree of the officer's suspicion or knowledge weighs in favor of the State. *See State v. Parrot*, 69 N.E.3d 535, 545 (Ind. Ct. App. 2017), *trans. denied*. And, although there was some degree of intrusion on Goff's ordinary activities in that his vehicle was pulled over and stopped, law enforcement's need to protect the public from drivers crossing over the line

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[7] That provision states:

> The 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.

Ind. Const., Art. I, § 11.

between opposite lanes of traffic is very high as such a traffic violation could lead to serious injury and/or death of persons traveling in the opposite lane of traffic. Given the extent of law enforcement needs and the officer's reasonable suspicion that Goff had committed the traffic violation, we hold that the officer's decision to stop Goff's vehicle was reasonable under the totality of the circumstances and did not violate Article 1, Section 11.

Appellate Rule 7(B)

[22] Goff contends that the sentence for Count I, operating a vehicle while intoxicated in a manner that endangers a person, as a Class A misdemeanor, and Count IV, possession of marijuana, as a Class B misdemeanor, is inappropriate in light of the nature of the offenses and his character.[8] Article 7, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[8] Goff does not allege that the HVSO enhancement was inappropriate. Appellant's Br. at 22, n.7.

[23] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Id.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[24] We begin by noting that the sentencing range for a Class A misdemeanor is up to one year, I.C. § 35-50-3-2, and the sentencing range for a Class B misdemeanor is up to 180 days, I.C. § 35-50-3-3. Goff's 180-day sentence for the Class B misdemeanor was concurrent with his one-year sentence for the Class A misdemeanor. Thus, Goff's *aggregate* sentence of one year for *both* the Class A and Class B misdemeanors was within the sentencing ranges and was not the highest aggregate sentence he could have been given.

[25] Moreover, our review of the record discloses nothing about the nature of the offense that would warrant revising Goff's sentence. "The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation." *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019) (quotation and citation omitted), *trans. denied*. Here, the record discloses that Goff was driving a vehicle with three controlled substances in his blood and had admittedly consumed alcohol prior to the stop. Goff also admittedly had a "big bag of weed" in the trunk of the vehicle that he was "transport[ing] … to someone else's house to give to them." Tr. v. III at 16. We cannot say Goff's offenses were accompanied by any apparent restraint or regard for others. *See Stephenson*, 29 N.E.3d at 122.

[26] Furthermore, contrary to Goff's assertions, his offense of driving while impaired in a manner that endangered a person was not a "harmless" offense. As the State notes, harm is implicit in the crime: the element of endangerment encompasses conduct that "could have endangered any person, including the public, the police, or the defendant." *Burnett v. State*, 74 N.E.3d 1221, 1225 (Ind. Ct. App. 2017. We see nothing in the nature of Goff's offenses that suggests the aggregate sentence for both the Class A and B misdemeanors—which is within the statutory boundaries and is 180 days less than the maximum aggregate sentence he could have received—is too harsh for the crimes committed.

[27] Nor does Goff's character warrant a sentence revision. "The significance of a criminal history in assessing a defendant's character and an appropriate

sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020) (quotation and citation omitted), *trans. denied*. Goff has been convicted of driving a vehicle while impaired three times in the past, making this his fourth such conviction. In addition, Goff proved untruthful by stating to Officer Corral that he did not have any marijuana in his vehicle when, in fact, he was aware that he had a "big bag of weed" in the trunk of the vehicle. Tr. v. III at 16. Moreover, Goff absconded half-way through his trial, resulting in a warrant for his arrest that was served on him two weeks later. Goff's criminal history and his poor behavior during his questioning and trial reflect poorly on his character.

[28] We cannot say that Goff's aggregate sentence of one year of imprisonment for his Class A and Class B misdemeanor convictions is inappropriate in light of the nature of the offenses and his character.

Conclusion

[29] The *Terry* stop of Goff's vehicle was reasonable under the Fourth Amendment, as it was based on reasonable suspicion of criminal activity. The stop was also reasonable under our state constitution, as the reasonable suspicion of criminal activity and the heightened law enforcement need to keep the driving public safe outweighed any intrusion on Goff's ordinary activities. Thus, the trial court did not abuse its discretion in admitting the evidence found as a result of the search. Nor was Goff's sentence inappropriate.

[30] Affirmed.

Bradford, C.J., and Pyle, J., concur.