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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL K. COLLINS,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 47A05-0908-CR-444
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable William G. Sleva, Judge
Cause No. 47D02-0707-CM-633

April 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Michael Collins appeals the trial court's denial of his motion to suppress marijuana discovered during a patdown search following a traffic stop. For our review, Collins raises two issues, which we consolidate and restate as whether the trial court erred by denying Collins's motion to suppress. Finding no error, we affirm.

Facts and Procedural History

On July 21, 2007, at approximately 7:55 p.m., Collins and James Gaines were sitting in Gaines's pickup truck parked in a near-empty parking lot outside a Wal-Mart. Bedford Police Officer Jeremy Bridges was on patrol and noticed Collins, who was in the front passenger seat, "rolling a hand rolled type cigarette." Transcript at 4. Officer Bridges drove his patrol car behind the pickup truck to observe. Gaines then drove the pickup truck across the parking lot and turned left onto Beech Street, in doing so nearly hitting the curb. Officer Bridges followed the pickup truck and observed it swerve twice within its lane of travel, nearing the center line and nearly hitting the curb two more times. Concerned the truck's driver might be intoxicated, Officer Bridges effected a traffic stop.

When Officer Bridges approached to request Gaines's license and registration, he smelled the odor of burnt marijuana coming from the pickup truck. Officer Bridges requested Gaines and Collins step outside the pickup truck, which they did. Collins appeared nervous, avoiding eye contact and placing his hands in his pockets. Officer Bridges asked Collins to remove his hands from his pockets "for officer safety," which he did, while appearing to be "cupping" an item in his left hand. Id. at 8. Because the item

"could have been a weapon," Officer Bridges grabbed hold of Collins's wrist and commanded him to let go of the item. Id. Collins did so. At that time, Officer Bridges advised Collins he would perform a patdown search for weapons. While feeling along the outside of Collins's pocket, Officer Bridges felt the presence of a hard item "that could have been a knife" due to its "long thin shape." Id. at 10. Officer Bridges reached into Collins's pocket to remove the object, which turned out to be a lighter. As Officer Bridges was removing the lighter, he felt a plastic baggie in the same pocket. Officer Bridges "assumed" the baggie contained marijuana due to the marijuana odor coming from the pickup truck and "[t]he fact that marijuana is . . . normally in baggies of some sort." Id. at 45. Officer Bridges reached into Collins's pocket a second time to remove the baggie, which contained a green leafy substance found to be marijuana.

The State charged Collins with possession of marijuana, a Class A misdemeanor. Collins filed a motion to suppress all evidence resulting from the traffic stop and patdown search. On April 29, 2009, the trial court held a suppression hearing, and on May 29, 2009, issued its order denying Collins's motion to suppress. At Collins's request, the trial court certified that order for interlocutory appeal and this court accepted jurisdiction.

Discussion and Decision

I. Standard of Review

We review the trial court's denial of a motion to suppress in a manner similar to other sufficiency matters. Faris v. State, 901 N.E.2d 1123, 1126 (Ind. Ct. App. 2009), trans. denied. That is, we must determine whether substantial evidence of probative value supports the trial court's ruling. Id. In making this determination, we do not

reweigh the evidence, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Id. We also consider any uncontroverted evidence in the defendant's favor. Id. If the denial is sustainable on any legal grounds apparent in the record, we will affirm. Id.

II. Traffic Stop

Collins initially contends the traffic stop of the pickup truck violated his rights under the Fourth Amendment,[1] which declares: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The purpose of this provision is to protect persons from unreasonable search and seizure, and it applies to the states through the Fourteenth Amendment. Krise v. State, 746 N.E.2d 957, 961 (Ind. 2001). A traffic stop of an automobile and detention of its occupants is a "seizure" within the meaning of the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809-10 (1996). To be valid, a traffic stop must be supported by, at least, reasonable suspicion that a traffic law has been violated or other criminal activity is afoot. Meredith v. State, 906 N.E.2d 867, 869 (Ind. 2009).

Our supreme court has recently emphasized that "[r]easonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence," although it "still requires at least a minimal level of objective justification and more than an inchoate and unparticularized suspicion or

[1] Although Collins mentions Article 1, section 11 of the Indiana Constitution in his brief, he does not develop any separate argument under that provision. Therefore, we analyze and resolve Collins's claims solely under the Fourth Amendment. See Myers v. State, 839 N.E.2d 1154, 1158 (Ind. 2005), cert. denied, 547 U.S. 1148 (2006).

'hunch' of criminal activity." State v. Schlechty, __N.E.2d__, 2010 WL 1078798 at *5 (Ind., Mar. 24, 2010) (citing Illinois v. Wardlow, 528 U.S. 119, 123-24 (2000)). Thus, a reviewing court must examine "the totality of circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." Bannister v. State, 904 N.E.2d 1254, 1255-56 (Ind. 2009) (quotations omitted). "The State has the burden to show that under the totality of the circumstances its intrusion was reasonable." Id. at 1256.

Officer Bridges observed the pickup truck swerve twice within its lane of travel and nearly hit the curb three times. Such erratic driving establishes reasonable suspicion the driver may be impaired by consumption of alcohol or controlled substances, which would constitute criminal activity. See Baran v. State, 639 N.E.2d 642, 644 (Ind. 1994) (reasonable suspicion supporting traffic stop existed when vehicle weaved more than once within its lane of travel); Potter v. State, 912 N.E.2d 905, 908 (Ind. Ct. App. 2009) (reasonable suspicion to support traffic stop existed when officer observed "multiple movements by [defendant's] vehicle that indicated possible driver impairment"); see also Ind. Code §§ 9-30-5-1(a), (c) (operating a vehicle with an alcohol concentration of at least 0.08 or operating a vehicle with a controlled substance or metabolite thereof in one's body constitute Class C misdemeanor). Collins points out Officer Bridges did not observe any traffic violations, but this argument is unavailing as reasonable suspicion requires only an articulable basis for further investigation, not actual proof of wrongdoing. See Baran, 639 N.E.2d at 644 (traffic stop valid because "it was reasonable

for the trooper to believe that further investigation was warranted"). The trial court did not err by finding the traffic stop was valid under the Fourth Amendment.

III. Patdown Search

Next Collins argues Officer Bridges exceeded the scope of a lawful patdown search when he reached into Collins's pocket to seize the baggie. Under Terry v. Ohio, 392 U.S. 1 (1968), when a police officer has reasonable suspicion an individual whose suspicious behavior he is investigating at close range is presently armed and dangerous, the officer may conduct a patdown search to determine whether the suspect is in fact carrying a weapon. Minnesota v. Dickerson, 508 U.S. 366, 373 (1993). The purpose of a patdown search is not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence; therefore a patdown search must be "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." Id. (quotation omitted). In Dickerson, the Supreme Court held officers may seize nonthreatening contraband they detect during a patdown search. Id. Under the plain feel doctrine, if an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity as contraband "immediately apparent," there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons, and warrantless seizure of the contraband based on probable cause is justified. Id. at 375-76. Assessing whether a seizure of contraband is valid under the plain feel doctrine requires a two-step inquiry: first, the contraband must have been detected during the initial patdown search for weapons rather than during a further search; and second, the identity of the item must have been

immediately apparent to the officer. Smith v. State, 780 N.E.2d 1214, 1217 (Ind. Ct. App. 2003), trans. denied.

Here, Officer Bridges's actions satisfy the first step of the plain feel inquiry. As part of a patdown search, officers "may remove an item whose identity is not immediately discernable by touch and that might be used as a weapon." Harris v. State, 878 N.E.2d 534, 538 (Ind. Ct. App. 2007), trans. denied. Officer Bridges testified the hard object that turned out to be a lighter could have been a knife, based on its size and shape. Therefore, Officer Bridges acted within the scope of the initial patdown search when he reached into Collins's pocket to remove the hard object. As he was doing this, he felt the baggie. Thus, the baggie was discovered during the initial search for weapons.

Second, the evidence supports a finding that the identity of the baggie as containing marijuana was immediately apparent to Officer Bridges. Cases applying the second prong of the plain feel test generally turn on whether the officer formed a belief as to the specific identity of the item based upon initially feeling it or, contrariwise, needed to see the item or investigate further in order to tell its identity. Compare Bratcher v. State, 661 N.E.2d 828, 832 (Ind. Ct. App. 1996) (plain feel doctrine satisfied where officer, immediately upon feeling item, "figured it was a bag containing marijuana" and only subsequently removed the bag), with D.D. v. State, 668 N.E.2d 1250, 1253-54 (Ind. Ct. App. 1996) (plain feel doctrine not satisfied by officer's general declaration bulge "felt like contraband" or initial feel that made officer believe item was "probably cocaine or marijuana"). Here, Officer Bridges felt the baggie and, before removing it from Collins's pocket or otherwise investigating further, "assumed" it was marijuana, tr. at 45,

which in fact it was. As we do not reweigh the evidence or judge witness credibility, see Faris, 901 N.E.2d at 1126, we cannot say Officer Bridges's "assum[ption]" was mere speculation not rationally based upon the feel of the baggie in conjunction with his experience as an officer. Therefore, the trial court did not err by finding Officer Bridges's seizure of the baggie was valid under the Fourth Amendment.

Conclusion

The trial court did not err by finding the traffic stop and subsequent patdown search were valid under the Fourth Amendment. The trial court's denial of Collins's motion to suppress is therefore affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.