MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mario Mendez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 21, 2021

Court of Appeals Case No. 21A-CR-514

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-1903-F6-1315

Bailey, Judge.

Case Summary

[1] Mario Mendez ("Mendez") brings this interlocutory appeal challenging the trial court's denial of his motion to suppress evidence of the cocaine found in his wallet. He raises the following restated issues: whether the officer's search of his wallet violated his rights to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and/or Article 1, Section 11 of the Indiana Constitution.

[2] We affirm.

Facts and Procedural History

[3] On the morning of February 25, 2018, Deputy Sheriff Kevin Abner ("Dep. Abner") of the Bartholomew County Sheriff's Department was dispatched to a residence due to a "subject refusing to leave." Tr. at 7. Upon arriving, Dep. Abner was greeted outside the residence by two Hispanic males who informed him that another male was inside the residence "acting crazy" and refusing to leave. *Id*. Dep. Abner did not know who owned or lived at the residence, but the two males who had greeted him "let [him] into the residence" and directed him to a bedroom. *Id*. at 8. Dep. Abner's purpose in entering the residence was not to arrest the subject or investigate an alleged crime, but to "try to take [the subject] somewhere that would be suitable for him" such as "his house or to friends." *Id*. at 9-10, 13. Dep. Abner testified, "if everything was okay and the

others there said that a crime had not been committed, I would have just helped to get [Mendez] out of there." *Id*. at 13.

[4] Upon entering the bedroom, Dep. Abner "saw a Hispanic male [who later proved to be Mendez] walking in circles, stumbling around and kind of bobbling [sic], … appear[ing] to be intoxicated." *Id*. at 8. Subsequent testing indicated that Mendez had had "quite a bit of alcohol to drink." *Id*. at 12. Mendez spoke no English and Dep. Abner spoke no Spanish, so the two were "not able to communicate with each other." *Id*. at 8-9, 11. Nevertheless, Dep. Abner asked Mendez "what was going on, who he was, things like that." *Id*. at 8. Mendez then handed Dep. Abner an identification card that had Mendez's name on it. Dep. Abner "continued to try and gather some more information from [Mendez], like where he lived and things like that." *Id*. at 9. Dep. Abner was "trying to figure out where [Mendez] could go since the other people wanted him to leave." *Id*.

[5] Mendez then handed his wallet to Dep. Abner, "without [Dep. Abner] asking for it." *Id*. That is, Mendez handed over the wallet "without that being responsive to anything that [Dep. Abner was] trying to get from [Mendez]." *Id*. at 12. When Mendez handed his "bifold" wallet to Dep. Abner, the latter opened the wallet and immediately saw in an "open[,] floppy" pocket of the wallet "a corner cut baggie with a white powdery substance that [he] recognized as cocaine." *Id*. at 10, 14, 15.

[6] On March 7, 2019, the State charged Mendez with possession of cocaine, as a Level 6 felony.[1] On September 1, 2020, Mendez filed a motion to suppress the evidence, alleging it was obtained in violation of his federal and state constitutional rights to be free from unreasonable searches and seizures. The State did not file a written response to the motion to suppress. On January 15, 2021, the trial court conducted a hearing on the motion. At the hearing, the State presented the testimony of Dep. Abner and its Exhibit A, which consisted of photographs of Mendez's wallet and its contents as they appeared on February 25, 2018.

[7] On January 22, 2021, the trial court denied Mendez's motion to suppress by way of an entry in the Chronological Case Summary. On February 4, 2021, Mendez filed a motion to certify the order for interlocutory appeal and stay the proceedings pending the appeal. The trial court granted that motion, and this Court subsequently granted Mendez's motion to accept jurisdiction of the interlocutory appeal.

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[1] Ind. Code § 35-48-4-6(a).

Discussion and Decision

Standard of Review

[8] Mendez appeals, on federal and state constitutional grounds, the trial court's denial of his motion to suppress the evidence of the cocaine found in his wallet.

> Our standard of review for the denial of a motion to suppress evidence is similar to other sufficiency issues. *Westmoreland v. State*, 965 N.E.2d 163, 165 (Ind. Ct. App. 2012). We determine whether substantial evidence of probative value exists to support the denial of the motion. *Id*. We do not reweigh the evidence, and we consider conflicting evidence that is most favorable to the trial court's ruling. *Id*. However, the review of a denial of a motion to suppress is different from other sufficiency matters in that we must also consider uncontested evidence that is favorable to the defendant. *Id*. We review de novo a ruling on the constitutionality of a search or seizure but we give deference to a trial court's determination of the facts, which will not be overturned unless clearly erroneous. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008).

Jones v. State, 54 N.E.3d 1033, 1036 (Ind. Ct. App. 2016), *trans. denied*.

Fourth Amendment

[9] 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). However, the Fourth Amendment only protects people, places, or objects over which a person has a legitimate expectation of privacy. *U.S. v. Hammond*, 996 F.3d 374, 383 (7th Cir. 2021) ("The touchstone of the Fourth

Amendment analysis is whether a person has a constitutionally protected reasonable expectation of privacy." (citations and internal quotations omitted)).

> "Whether an expectation of privacy exists for Fourth Amendment purposes depends upon two questions: 1) whether the individual, by his conduct, has exhibited an actual expectation of privacy; and 2) whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable." *United States v. Yang*, 478 F.3d 832, 835 (7th Cir. 2007). The inquiry is therefore both subjective, in that it requires the individual to manifest his own belief that he has privacy; and objective, in that this subjective expectation must conform to accepted societal expectations.

U.S. v. Huart, 735 F.3d 974-75 (7th Cir. 2013); *see also U.S. v. Basinski*, 226 F.3d 829, 836 (7th Cir. 2000) ("[I]t does not matter whether the defendant harbors a desire to later reclaim an item; we look solely to the external manifestations of his intent as judged by a reasonable person possessing the same knowledge available to the government agents."). The "defendant objecting to a search bears the burden of proving that he or she had a legitimate expectation of privacy in the item searched." *U.S. v. Yang*, 478 F.3d 832, 835 (7th Cir. 2007).

[10] Thus "'objects … that [a person] exposes to the 'plain view' of outsiders are not protected under the Fourth Amendment because no intention to keep them to [the person's self] has been exhibited.'" *Holder v. State*, 847 N.E.2d 930, 936 (Ind. 2006) (quoting *Katz v. U.S.*, 389 U.S. 347, 361 (1967)). Similarly, property that a person has abandoned is not subject to Fourth Amendment protection

because the person who abandons the property has relinquished his privacy interest in it. *E.g.*, *U.S. v. Alexander*, 573 F.3d 465, 472 (7th Cir. 2009).[2]

[11] Here, when Dep. Abner approached Mendez in the bedroom of the residence, he did not do so to investigate a crime, take Mendez into custody, or place him under arrest. Rather, the evidence establishes that Dep. Abner approached Mendez to try to safely remove Mendez to his own home or that of his friends, pursuant to the community caretaking function of law enforcement.[3] During the encounter, Mendez took it upon himself to hand Dep. Abner his wallet without being asked to do so. Thus, Mendez did not, by his conduct, exhibit a subjective expectation of privacy in the wallet. *Cf. Yang*, 478 F.3d at 835 (noting the defendant did not have a subjective expectation of privacy in the contents of notebooks when, rather than taking affirmative steps to demonstrate such an expectation, he allowed the officer investigating a burglary in his home to take the notebooks without placing any limitation on access to the notebooks or attempting to remove contents from the notebooks).

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[2] "To demonstrate abandonment, the government must prove by a preponderance of the evidence that the defendant's voluntary words or actions would lead a reasonable person in the searching officer's position to believe that the defendant relinquished his property interests in the item to be searched." [*U.S. v.*] *Pitts*, 322 F.3d [449,] 456 [(7th Cir. 2003)] (citation omitted). The test is an objective one: We consider only "the external manifestations of the defendant's intent as judged by a reasonable person possessing the same knowledge available to the" searching officer. *Id*.

Alexander, 573 F.3d at 472.

[3] *See Fair v. State*, 627 N.E.2d 427, 431 (Ind. 1993) (stating, regarding law enforcement's community caretaking function, "[t]he police are expected not only to enforce the criminal laws but also to aid those in distress, abate hazards, prevent potential hazards from materializing, and perform an infinite variety of other tasks calculated to enhance and maintain the safety of communities") (citing *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). *See also* I.C. § 5-2-1-17 (regarding police officers' powers and duties).

[12] There is not substantial evidence that Mendez had a legitimate expectation of privacy in the wallet after he voluntarily handed it to Dep. Abner without being asked to do so. *See id*. The evidence establishes that a reasonable person in Dep. Abner's position would believe that Mendez, by handing over his wallet without being asked to do so, was relinquishing his expectation of privacy in the wallet. *See Basinski*, 226 F.3d at 836; *see also Alexander*, 573 F.3d at 472 (regarding the test for abandonment). Whether or not Mendez's actions amount to "abandonment" of the wallet or some other relinquishment of interest in the wallet, it is clear from his own actions that he did not manifest a subjective expectation of privacy in the wallet and no reasonable person in Dep. Abner's position would have believed otherwise.[4] The search of the wallet did not violate the Fourth Amendment.

Article 1, Section 11

[13] Mendez also contends the search of his wallet violated his rights under Article 1, Section 11 of the Indiana Constitution.[5] Although the text of that state constitutional provision "mirrors the Fourth Amendment," we interpret it

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[4] Mendez asserts—based on evidence that he was intoxicated and there was a language barrier between him and Dep. Abner—that he did not voluntarily relinquish his right to privacy in his wallet. To the extent this is a request that we reweigh the evidence, we may not do so. *See Jones*, 54 N.E.3d at 1036. Further, the mere fact that one is intoxicated does not, alone, render the individual incapable of voluntary action. *U.S. v. Castellanos*, 518 F.3d 965, 969 (8th Cir. 2008). And the existence of any language barrier is not relevant to whether Mendez voluntarily relinquished his privacy interest in his wallet because the evidence establishes that he did not hand it over in response to any request, verbal or otherwise, from Dep. Abner.

[5] In his motion to suppress, Mendez raised both federal and state constitutional challenges to the search; therefore, he has not waived the state constitutional issue as the State claims.

separately. *Washburn v. State*, 121 N.E.3d 657, 661 (Ind. Ct. App. 2019) (quotation and citation omitted), *trans. denied*. While "[c]oncerns for privacy interests are integral in an analysis under the Fourth Amendment[,] … they do not control a fact-specific inquiry into overall reasonableness under Article 1, Section 11." *Id*. at 664 n.8 (citing *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005)). Rather, in the analysis under the Indiana Constitution,

> the focus is upon the actions of the police officer and whether his or her actions were reasonable under the totality of the circumstances. *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013). This analysis requires us to balance: "'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*. (quoting *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005)). The State has the burden of proving that police intrusion into privacy was reasonable under the totality of the circumstances. *Id*.

Browder v. State, 77 N.E.3d 1209, 1217 (Ind. Ct. App. 2017), *trans. denied*. Notably, because "Indiana citizens are concerned not only with personal privacy but also with safety, security, and protection from crime," the "reasonableness [of a search] under the totality of circumstances also includes considerations of protecting citizens from crime." *Washburn*, 121 N.E.3d at 662; *see also Holder*, 847 N.E.2d at 940 ("It is because of concerns among citizens about safety, security, and protection that some intrusions upon privacy are tolerated, so long as they are reasonably aimed toward those concerns.").

[14] Here, a balance of the factors considered under the totality of the circumstances weighs in favor of the reasonableness of the search of Mendez's wallet. As to the first factor, Dep. Abner had at least some degree of suspicion that Mendez was violating a law, such as the law regarding trespass; the officer was responding to a complaint that Mendez was "acting crazy" and refusing to leave the house where he was located. Tr. at 7. However, Dep. Abner testified that he did not know who owned or rented the residence and, in any case, he was not mainly concerned with investigating a potential crime, but in carrying out his community care-taking function by assisting in safely removing Mendez from the premises. Thus, the factor of the degree of suspicion weighs moderately in favor of Mendez.

[15] Regarding the second factor, "we consider the [degree of] intrusion into both the citizen's physical movements and the citizen's privacy." *Hardin v. State*, 148 N.E.3d 932, 944 (Ind. 2020). In this case, as noted above, Mendez had no legitimate expectation of privacy in his wallet after he voluntarily handed it to Dep. Abner without being asked to do so. Moreover, in obtaining the wallet, Dep. Abner engaged in a low-to-nonexistent degree of intrusion upon Mendez's physical movements. That is, there is no evidence that Dep. Abner touched Mendez or restricted Mendez's movements in any way; rather, Mendez, of his own volition, simply handed Dep. Abner the wallet. Dep. Abner also engaged in only a limited intrusion when he simply opened the wallet and observed what was before him in plain view, rather than opening and searching the

pockets or folds of the wallet. The limited degree of intrusion weighs in the State's favor.

[16] Regarding the third factor, the extent of law enforcement needs was relatively high. Under this factor, we look at the needs of the officer to act in a general way and to act in a particular way at the time of the search. *Hardin*, 148 N.E.3d at 947. "[L]aw-enforcement needs exist not only when officers conduct investigations of wrongdoing but also when they provide emergency assistance or act to prevent some imminent harm." *Id*. at 946. Dep. Abner had a general need to make sure that everyone at the residence was safe, as he was responding to a complaint of someone "acting crazy" and "refusing to leave." Tr. at 7. More particularly, Dep. Abner needed to ensure, as part of his community care-taking function, that Mendez was safely removed from the situation to his own home or another safe place. It is reasonable to infer from Dep. Abner's testimony that he opened the wallet that Mendez freely handed to him in an attempt to discover where Mendez lived so that he could be taken there. Thus, the third factor also weighs in the State's favor.

[17] There is substantial evidence of probative value to support the conclusion that the search of Mendez's wallet was reasonable under the totality of the circumstances. The State did not violate Mendez's rights under Article 1, Section 11.

Conclusion

[18] Because the State's search of Mendez's wallet did not violate his right to be free from unreasonable searches and seizures under either the federal or state constitutions, the trial court did not err in denying Mendez's motion to suppress evidence of the cocaine found as a result of that search.

[19] Affirmed.

Crone, J., and Pyle, J., concur