MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

John C. Bradley III,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff.

November 28, 2023

Court of Appeals Case No. 23A-CR-202

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Cause No. 02D04-2104-F4-27

Memorandum Decision by Judge Pyle

Judge Riley and Senior Judge Baker concur.

Pyle, Judge.

Statement of the Case

[1] John C. Bradley III, ("Bradley") appeals, following a jury trial, his conviction for Level 4 felony possession of methamphetamine.[1] Bradley argues that the trial court abused its discretion by admitting into evidence the methamphetamine found in Bradley's coat pocket by an ICU nurse when Bradley had been in the hospital's ICU and the nurse had been documenting Bradley's belongings. Specifically, Bradley contends that the search by the nurse constituted a warrantless search and violated his constitutional rights under the federal and state constitutions. Concluding that the alleged constitutional provisions are inapplicable because the nurse was acting as a private citizen and not a state actor when she searched and seized the methamphetamine from Bradley's coat pocket, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court abused its discretion by admitting into evidence the methamphetamine found in Bradley's coat by an ICU nurse.

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[1] IND. CODE § 35-48-4-6.1.

Facts[2]

[3] On February 20, 2020, Bradley was transferred by ambulance to the ICU at Parkview Regional Medical Center ("the hospital") in Allen County. Bradley had previously been at an emergency room in a hospital in a neighboring county. When Bradley arrived at the ICU, he was dressed in a hospital gown, and his clothes were transferred along with him on the stretcher.[3]

[4] Upon Bradley's arrival, ICU registered nurse, Ellen Silva ("Nurse Silva"), began conducting the hospital's admission process for incoming patients, which included documenting Bradley's identifying information, medical history, current medications, primary contact information, and emergency contact information.[4] The hospital's admission process also required Nurse Silva to document Bradley's belongings. The documentation process, which was done for every incoming patient, was done for "safety" and "liability" reasons, and it provided the patient with an opportunity to secure any valuables. (Tr. Vol. 2 at 128).

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[2] We held an oral argument on November 9, 2023 at Culver Academies in Culver, Indiana. We thank Culver's students, faculty, and staff for their warm hospitality, and we thank counsel for their excellent advocacy.

[3] In Bradley's appellate brief, he asserts that his coat and clothes were transported to the hospital one day after his arrival. However, Nurse Silva's testimony during the suppression hearing and jury trial reveals that Bradley's coat and clothes were transferred with him to the hospital.

[4] Nurse Silva was working for a company named Fusion Health as a traveling nurse and was in the fifth month of a six-month work assignment in the hospital's ICU.

[5] When Nurse Silva informed Bradley that she had to document his belongings, Bradley was "very hesitant[.]" (Tr. Vol. 2 at 142). Bradley "told [her] no, no, no, don't worry about that" and that she "d[id]n't need to do that." (Tr. Vol. 2 at 132). The manner in which Bradley responded made Nurse Silva "feel uneasy" and "uncomfortable[,]" and she went to get another nurse to join her in Bradley's room. (Tr. Vol. 2 at 132, 140). Nurse Silva "reassured" Bradley that the documentation process was for "safety" reasons, and she then started looking through Bradley's coat. (Tr. Vol. 2 at 132). When Nurse Silva reached into Bradley's coat pocket, she discovered a plastic baggie containing a white powdery substance. Later lab testing determined the substance to be 17.32 grams of methamphetamine. Nurse Silva placed the baggie on a glove on a countertop and notified a hospital security officer, Larry Wiggins ("Officer Wiggins"), who was a law-enforcement officer with the hospital. Nurse Silva kept the baggie in her view until the officer arrived.

[6] When Officer Wiggins arrived at Bradley's hospital room, Nurse Silva pointed to the baggie of methamphetamine, and the officer took the baggie. Thereafter, Officer Wiggins told Bradley that he was going to search Bradley's belongings. Officer Wiggins and another officer further searched Bradley's coat and discovered another baggie that contained a smaller amount of a white powdery substance, which later testing revealed it to be 0.14 grams of methamphetamine.

[7] In April 2021, the State charged Bradley with Level 4 felony possession of methamphetamine. Thereafter, in June 2021, the trial court released Bradley on bond pending trial.

[8] In November 2021, Bradley filed a motion to suppress the two baggies of methamphetamine found in his coat, which included the baggie found by Nurse Silva and the second baggie found by Officer Wiggins. Bradley argued that the two baggies of methamphetamine were "searched for and seized by law enforcement authorities" and that the State's search and seizure of the drugs constituted an improper warrantless search that violated his rights under the Fourth Amendment of the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution. (App. Vol. 2 at 30).

[9] The trial court then held a hearing on Bradley's motion. During the hearing, Nurse Silva explained that she had looked in Bradley's coat as part of the hospital's policy to document patients' belongings and that she had not done it to benefit law enforcement. Officer Wiggins testified that he had been working in his capacity as a police officer when he had conducted his own search of Bradley's coat and had seized the smaller baggie of methamphetamine. The State argued that the trial court should not suppress the methamphetamine found by Nurse Silva because the testimony showed that she had not been acting as a state actor when she had searched Bradley's coat, rendering his constitutional arguments misplaced. In regard to the second baggie of methamphetamine found by Officer Wiggins, the State argued that the officer had been acting under exigent circumstances at the time he went into Bradley's room. The State also argued that Nurse Silva's discovery of the first baggie of methamphetamine had given the officer probable cause to believe that Bradley

had illegal substances on him and to conduct the subsequent search of Bradley's coat.

[10] The trial court issued an order in which it denied the motion to suppress in part and granted it in part. Specifically, the trial court denied Bradley's motion to suppress the methamphetamine found by Nurse Silva and granted his motion to suppress the methamphetamine found by Officer Wiggins.

[11] In October 2022, the State filed a motion to revoke Bradley's bond. Specifically, the State alleged that Bradley had been arrested for Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia in August 2022 in an unrelated case. The trial court revoked Bradley's bond.

[12] The trial court held a one-day jury trial in November 2022. At the beginning of the trial, the parties discussed the fact that the smaller baggie of methamphetamine that had been found by Officer Wiggins was not at issue and that only the larger baggie of methamphetamine found by Nurse Silva was relevant. Bradley informed the trial court that, as part of his defense, he had planned to continue his objection raised in the suppression hearing to the legality of the search conducted by Nurse Silva. The trial court overruled Bradley's objection and granted him a "standing objection" for "the duration of this trial" to the methamphetamine found by Nurse Silva. (Tr. Vol. 2 at 56-58).

[13] The State presented testimony from Nurse Silva and a forensic scientist from the Indiana State Police Lab. Nurse Silva testified about finding the baggie

inside Bradley's coat pocket, and the forensic scientist testified about the weight and identification of the methamphetamine contained in the baggie found by Nurse Silva. Nurse Silva also testified that, while the intake documentation process of a patient's belongings was done for every newly admitted hospital patient, that same documentation was not typically done for a patient in an emergency room because the patient was usually released that same day. (Tr. Vol. 2 at 146).

[14] Bradley's defense was that he did not know how the methamphetamine had gotten into his coat and that his coat had not remained in his possession. Bradley testified that he did not put a baggie of methamphetamine in his coat pocket and that he "ha[d] never done that before in [his] life." (Tr. Vol. 2 at 164). He also testified that his personal belongings had not been transported with him to the hospital and that he had not seen his coat at the hospital until the day he was discharged, which had been three to four days after he had been admitted. The jury found Bradley guilty as charged.

[15] During Bradley's sentencing hearing, the trial court noted that Bradley was seventy years old, had congestive heart failure, was on disability, and was "going to kill [him]self if [he] ke[pt] using meth[.]" (Tr. Vol. 2 at 200). The trial court sentenced Bradley to eight (8) years with 100 days executed and as time served, seven (7) years and 265 days suspended, and two (2) years on probation.

[16] Bradley now appeals.

Decision

[17] Bradley argues that the trial court abused its discretion by admitting into evidence the methamphetamine found in Bradley's coat pocket by Nurse Silva when she had been documenting Bradley's belongings. Specifically, Bradley contends that the search by Nurse Silva constituted a warrantless search and seizure and violated his rights under the Fourth Amendment of the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution.

[18] The admission and exclusion of evidence falls within the sound discretion of the trial court, and we review the admission of evidence only for an abuse of discretion. *Wilson v. State*, 765 N.E.2d 1265, 1272 (Ind. 2002). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Conley v. State*, 972 N.E.2d 864, 871 (Ind. 2012), *reh'g denied*. The constitutionality of a search and seizure is a question of law, which we review *de novo*. *Bailey v. State*, 131 N.E.3d 665, 675–76 (Ind. Ct. App. 2019), *reh'g denied*, *trans. denied*.

Fourth Amendment

[19] The Fourth Amendment provides, in part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. CONST. AMEND. IV. "Individuals have a constitutional right against arbitrary search and seizure *by law enforcement*. The Fourth Amendment to the United States Constitution, as applied to the states by virtue of the Fourteenth Amendment, protects

individuals from illegal searches and seizures *by state actors*." *Bailey*, 131 N.E.3d at 676 (emphases added). Warrantless searches are considered per se unreasonable unless a recognized exception applies. *Id.* The party seeking to introduce evidence obtained during a warrantless search is required to prove a valid exception to the warrant requirement existed. *Id.*

[20] Bradley argues that the trial court abused its discretion by admitting into evidence the methamphetamine found in Bradley's coat pocket. Specifically, Bradley asserts that Nurse Silva's search of his coat pocket constituted a warrantless search and violated his constitutional rights under the Fourth Amendment.[5]

[21] The State argues that the trial court properly admitted the baggie of methamphetamine into evidence because there were no constitutional violations. Specifically, the State asserts that Fourth Amendment constitutional protections do not apply where Nurse Silva was a private citizen and not a state actor when she searched and seized the methamphetamine from Bradley's coat pocket. We agree with the State.

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[5] Bradley also appears to challenge the subsequent search of his coat that was done by Officer Wiggins. He states that the search and seizure of the "two baggies" was improper and asserts that the police had "ample time to secure a warrant . . . after Nurse Silva's search and discovery of the baggie and . . . after she [had] turned it over to [the police]." (Bradley's Br. 10, 12). He also refers to the State's exigent circumstances argument, which was an argument that the State made during the motion to suppress hearing in regard to the subsequent search conducted by Officer Wiggins. However, as stated in the facts above, the trial court granted Bradley's motion to suppress in regard to the baggie of methamphetamine found by Officer Wiggins. Bradley's possession of methamphetamine conviction is based only on the methamphetamine found by Nurse Silva. Therefore, we will not review Bradley's apparent argument challenging Officer Wiggins' search and seizure of the second baggie of methamphetamine found in Bradley's coat pocket.

[22] "It is axiomatic that the Fourth Amendment does not apply to private entities." *United States v. Koenig*, 856 F.2d 843, 846 (7th Cir. 1988). *See also Rann v. Atchison*, 689 F.3d 832, 836 (7th Cir. 2012) ("Long-established precedent holds that the Fourth Amendment does not apply to private searches."), *cert. denied*. "Like much of the Constitution, '[the Fourth Amendment] was intended as a restraint upon the activities of sovereign authority.'" *Koenig*, 856 F.2d at 846-47 (quoting *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921)). "In *Burdeau* . . . , the Supreme Court held that the Fourth Amendment protects only against searches and seizures which are made under governmental authority, real or assumed, or under color of such authority and that the exclusionary machinery of the Fourth Amendment could not be employed to limit the admissibility of evidence seized by private individuals." *United States v. Harper*, 458 F.2d 891, 893 (7th Cir. 1971) (cleaned up), *cert. denied*. Even a "wrongful search or seizure conducted by a private party does not rise to a constitutional violation of the Fourth Amendment, nor [does it] prevent the government from using evidence that it has acquired lawfully." *Koenig*, 856 F.2d at 847 (cleaned up). *See also United States v. Jacobsen*, 466 U.S. 109, 114 (1984) (explaining that the Supreme Court has "consistently construed" the Fourth Amendment "protection as proscribing only governmental action" and that "it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official") (internal citations omitted).

[23] A defendant has "the burden of establishing a *prima facie* case that the search was instigated by a governmental agent rather than a private entity." *Koenig*, 856 F.2d at 847. "[T]he question whether a private searcher acts as an instrument or agent of the government must be made by the trial court on a case-by-case basis, and [a trial court's decision] may be reversed only if clearly erroneous." *Id.* at 848. "[T]wo critical factors in the instrument or agent analysis are whether the government knew of and acquiesced in the intrusive conduct and whether the private party's purpose for conducting the search was to assist law enforcement agents or to further [its] own ends." *Id.* at 847 (internal quotation marks and citation omitted). "Other useful indicators are whether the private actor performed the search at the request of the government and whether the government offered a reward." *Id.*

[24] Here, Bradley neither argues nor presented evidence to demonstrate that Nurse Silva was acting as a state actor or an instrument of the government. Even in Bradley's reply brief, he does not address the State's argument about the inapplicability of the Fourth Amendment to Nurse Silva's search as a private individual. Indeed, the testimony from Nurse Silva during the motion to suppress hearing and at trial show that she was acting as a private individual in the scope of her employment with the hospital when she conducted the search of Bradley's coat pocket. There is no evidence in the record to suggest that the State knew of Nurse Silva's search or that it had requested the search. Accordingly, because the record on appeal shows that Nurse Silva was acting as a private citizen, and not a state actor, when she searched Bradley's belongings

at the ICU, we hold that the Fourth Amendment is inapplicable to Nurse Silva's search. *See Jacobsen*, 466 U.S. at 113 (explaining that Fourth Amendment protections are "wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government") (internal citations omitted); *Koenig*, 856 F.2d at 846 ("It is axiomatic that the Fourth Amendment does not apply to private entities.").

[25] Bradley also appears to argue that Officer Wiggins' warrantless seizure of the baggie of methamphetamine found by Nurse Silva was improper because it did not fall within the plain-view doctrine. The State, on the other hand, argues that "the methamphetamine was properly seized pursuant to the plain-view doctrine." (State's Br. 13). However, in Bradley's reply brief, he seems to slightly retreat from his challenge that the methamphetamine was not in plain view when seized by Officer Wiggins. Specifically, Bradley asserts that the "incriminating nature [of the methamphetamine found by Nurse Silva] was not readily apparent and was not in plain view until placed there by Nurse Silva[.]" (Bradley's Reply Br. 5).

[26] "The plain view exception to the Fourth Amendment's warrant requirement allows police to warrantlessly seize an object if they are lawfully in a position from which to view the object, if its incriminating character is immediately apparent, and if [police] have a lawful right of access to the object." *Combs v. State*, 168 N.E.3d 985, 991 (Ind. 2021) (cleaned up), *cert. denied*. Pursuant to the plain-view exception, "objects which are in plain view of an officer who

rightfully occupies a particular location can be seized without a warrant and are admissible as evidence." *Id.* at 991-92 (cleaned up).

[27] Here, the record reveals that after Nurse Silva searched Bradley's coat pocket and found the baggie of methamphetamine, she put it on a glove on the countertop and notified Officer Wiggins, who was a security officer with the hospital. Nurse Silva kept the baggie in her view until Officer Wiggins arrived. When Officer Wiggins arrived at Bradley's hospital room, Nurse Silva pointed to the baggie of methamphetamine, and the officer took the baggie. The record on appeal reveals that the baggie of methamphetamine was in the plain view of Officer Wiggins and that he rightfully occupied the hospital room when called there by Nurse Silva. Accordingly, we conclude that the officer properly seized the baggie of methamphetamine and that the trial court did not abuse its discretion by admitting the methamphetamine into evidence during the jury trial. *See Combs*, 168 N.E.3d at 991 (explaining that "objects which are in plain view of an officer who rightfully occupies a particular location can be seized without a warrant and are admissible as evidence").

Indiana Constitution

[28] Article 1, Section 11 of the Indiana Constitution also 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[.]" IND. CONST. ART. I, § 11. "The purpose of this section is to protect those areas of life that Hoosiers consider private from unreasonable *police activity*." *State v. Washington*, 898

N.E.2d 1200, 1206 (Ind. 2008) (emphasis added), *reh'g denied*. "When *police conduct* is challenged as violating this section, the burden is on the State to show that the search was reasonable under the totality of the circumstances." *Id.* (emphasis added). The reasonableness of a search and seizure under the Indiana Constitution turns 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 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).

[29] Bradley applies the *Litchfield* factors to argue that Nurse Silva's search violated his rights under the Indiana Constitution. On the other hand, the State argues that the Indiana Constitution also does not apply to Nurse Silva's search because she was not a state actor. Again, we agree with the State.

[30] Much like the inapplicability of the Fourth Amendment to a search conducted by a private individual, our supreme court has explained that "[t]he constitutional proscriptions against unreasonable searches and seizures are intended only to protect against such actions by the government" and that state constitutional provisions do not apply to the "unauthorized acts of private individuals." *Zupp v. State*, 283 N.E.2d 540, 542 (Ind. 1972). *See Hutchinson v. State*, 477 N.E.2d 850, 853 (Ind. 1985) (explaining that the state constitution protects against unreasonable searches and seizures by the government and does not apply to acts of private citizens); *Torres v. State*, 442 N.E.2d 1021, 1023 (Ind. 1982) (same). *See also Gunter v. State*, 275 N.E.2d 810, 812 (Ind. 1971)

(rejecting the defendant's state constitutional violation claim where the search of the defendant's garage had been conducted by a private citizen who was "acting without the supervision or knowledge of the police").

[31] Again, Bradley neither argues nor presented evidence to demonstrate that Nurse Silva was acting as a state actor or an instrument of the government. Even in Bradley's reply brief, he does not address the State's argument about the inapplicability of Article 1, Section 11 of the Indiana Constitution to Nurse Silva's search as a private individual. Indeed, the testimony from Nurse Silva during the motion to suppress hearing and at trial show that she was acting as a private individual in the scope of her employment with the hospital when she conducted the search of Bradley's coat pocket. There is no evidence in the record to suggest that the State knew of Nurse Silva's search or that it had requested the search. Accordingly, because the record on appeal shows that Nurse Silva was acting as a private citizen, and not a state actor, when she searched Bradley's belongings at the ICU, we hold that Article 1, Section 11 is inapplicable to Nurse Silva's search. *See Hutchinson*, 477 N.E.2d at 853 (explaining that the state constitution protects against unreasonable searches and seizures by the government and does not apply to acts of private citizens).

[32] Affirmed.

Riley, J., and Baker, S.J., concur.