

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

TAFFANEE L. KEYS
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

BRANDON ROE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 49A02-0604-CR-297

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Master Commissioner
Cause No. 49G14-0508-FD-133874

December 22, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Brandon Roe appeals his convictions for possession of a controlled substance, a class D felony, possession of marijuana, a class A misdemeanor, and failure to signal a turn, a class C infraction. We affirm.

Issue

We restate the issue as to whether the trial court abused its discretion in admitting the contraband the police found on Roe's person.

Facts and Procedural History

On August 4, 2005, Indiana State Police Trooper Justin Hobbs witnessed Roe driving on Emerson Avenue in Indianapolis and initiated a traffic stop after Roe failed to use a turn signal while changing lanes. Upon approaching the vehicle, he asked Roe for his license and registration and instructed him to step outside the vehicle. As Roe exited the car, Trooper Hobbs noticed a knife tucked into Roe's clothing. Trooper Hobbs then asked Roe if he could pat him down for officer safety, and Roe consented. During the patdown, Trooper Hobbs felt a bulge in Roe's front pants pocket. Trooper Hobbs read Roe his *Miranda* rights and asked him what was in his pocket. Roe responded that it was a "bag of weed." Tr. at 11. Trooper Hobbs removed the bag, the contents of which he recognized as marijuana, and arrested Roe. Incident to the arrest, Trooper Hobbs searched Roe and found a plastic bag containing white pills. When asked, Roe identified the pills as Vicodin, for which he admitted he did not have a prescription. During a subsequent canine search, drug paraphernalia was found inside Roe's car.

On August 4, 2005, Roe was charged with four counts: possession of a controlled substance, a class D felony; possession of marijuana, a class A misdemeanor; possession of paraphernalia, a class A misdemeanor; and failure to signal a turn, a class C infraction. On January 18, 2006, at a bench trial, Roe objected to the admission of the marijuana and Vicodin, arguing that they were obtained in violation of his Fourth Amendment rights against unreasonable search and seizure.¹ The trial court overruled his objection and admitted the evidence. The State dropped the charge of possession of paraphernalia, and Roe was found guilty of the remaining three charges. Roe now appeals.

Discussion and Decision

The issue for review is whether the trial court abused its discretion by admitting the evidence over Roe's objections. "A trial court has broad discretion in ruling on the admissibility of evidence." *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Accordingly, we will reverse a ruling only when the trial court has abused its 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.* We will not reweigh the credibility of the witnesses or reweigh evidence, but will instead consider only the evidence most favorable to the court's ruling. *Smith v. State*, 780 N.E.2d 1214, 1216 (Ind. Ct. App. 2003).

Roe does not challenge the validity of the traffic stop or the propriety of Trooper Hobbs's request that he exit the vehicle. Rather, Roe contends that he was subjected to

¹ Although Roe objected under Article 1, Section 11 of the Indiana Constitution at trial and refers to it in his brief, he does not make a separate state constitutional argument. He has therefore waived any Indiana Constitution claim. *See Abel v. State*, 773 N.E.2d 276, 278 n.1 (Ind. 2002) (concluding that when the defendant presents no authority or independent analysis supporting the separate standard of the state constitution, the state constitutional claim is waived).

unreasonable search and seizure as prohibited by the Fourth Amendment of the U.S. Constitution. Specifically, he argues that Trooper Hobbs's initial patdown search of his person and subsequent retrieval of the bag of marijuana from his pocket were unconstitutional.

The Fourth Amendment protects the "privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures." *Burkett v. State*, 785 N.E.2d 276, 278 (Ind. Ct. App. 2003). Generally, a lawful search requires a warrant; however, there are exceptions to the rule. *Black v. State*, 810 N.E.2d 713, 715 (Ind. 2004). Consent to the search, *Primus v. State*, 813 N.E.2d 370, 373 (Ind. Ct. App. 2004), reasonable weapon searches conducted to ensure officer safety, *Wilson v. State*, 745 N.E.2d 789, 792 (Ind. 2001) (citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968)), and searches incident to arrest, *Jackson v. State*, 669 N.E.2d 744, 747 (Ind. Ct. App. 1994), all qualify as lawful warrantless searches.

Roe asserts that Trooper Hobbs did not have reason to fear for his safety and therefore conducted an illegal patdown search. We need not address this argument, however, because Roe consented to the patdown. *See Jones v. State*, 655 N.E.2d 49, 54 (Ind. 1995) (stating that governmental intrusion is presumably reasonable when an individual gives permission to search his person). Roe does not challenge the voluntariness of his consent on appeal.

Roe further asserts that Trooper Hobbs violated his rights when he removed the bag of marijuana from his pocket. Under the "plain feel doctrine" set forth in *Terry*, police officers may seize contraband detected during an authorized search for weapons if, during the lawful patdown, the officer feels an object whose contour or mass makes its identity as contraband

immediately apparent. *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993). Trooper Hobbs admitted that when he felt the bulge in Roe's pocket, he was unsure as to its identity. However, after being read his *Miranda* rights, Roe stated that it was a bag of marijuana. Roe does not challenge his voluntariness of his statement on appeal. At this point, Trooper Hobbs had probable cause to arrest Roe and conduct a search incident to arrest, during which he discovered Vicodin in Roe's pocket. *See Black*, 810 N.E.2d at 715 (stating that a search incident to arrest is a well-known exception to the Fourth Amendment's warrant requirement.) The trial court did not abuse its discretion in admitting the marijuana and Vicodin. We therefore affirm.

Affirmed.

SULLIVAN, J., and SHARNACK, J., concur.