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IN THE
COURT OF APPEALS OF INDIANA

BRYAN WARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1011-CR-1250
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Becky Pierson-Treacy, Judge
The Honorable Shatrese M. Flowers, Commissioner
Cause No. 49F19-1007-CM-52367

June 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Bryan Ward ("Ward") appeals from his conviction for Possession of Paraphernalia, as a Class A misdemeanor[1], raising the single issue of whether the trial court erred in denying his motion to suppress evidence obtained from a pat down.

We affirm.

Facts and Procedural History

On July 3, 2010, at around 9:30 p.m., Indianapolis Metropolitan Police Officers Christopher Cooper ("Officer Cooper") and Theodore Cragen ("Officer Cragen") responded to a call regarding a disturbance on Racquet Club Drive. They found Ward and another man arguing with each other, and a crowd of onlookers began gathering about. Officer Cooper's pat down of the unidentified man produced a large knife; Officer Cragen's pat down of Ward produced a glass marijuana pipe. Officer Cragen arrested Ward.

On July 4, 2010, Ward was charged with Possession of Paraphernalia.[2] On August 20, 2010, Ward filed a motion to suppress evidence, arguing that the pat down was an illegal search. On November 4, 2010, a bench trial was conducted, at which evidence and argument was heard regarding the motion to suppress. The trial court denied the motion to suppress and subsequently found Ward guilty as charged.

The court sentenced Ward to 365 days imprisonment with 359 days suspended and six

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[1] See Ind. Code § 35-48-4-8.3(b).

[2] The charging information reflects an allegation that the pipe was intended for use with crack cocaine. Just prior to trial, the State amended the information to reflect use of a Schedule II narcotic; Ward timely objected to the amendment and sought a directed verdict, but does not raise these issues on appeal.

days of credit time, and imposed fees, counseling, and community service. This appeal followed.

Discussion and Decision

Ward challenges the trial court's denial of his motion to suppress during the bench trial, which we thus frame as whether the trial court abused its discretion by admitting the marijuana pipe into evidence. A.M. v. State, 891 N.E.2d 146, 148-49 (Ind. Ct. App. 2008), trans. denied. Ward contends that the search violated his rights under the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Indiana Constitution because Officer Cragen lacked a reasonable belief that Ward was armed and therefore did not provide a basis for a pat down search under Terry v. Ohio, 392 U.S. 1 (1968).

> Our standard of review on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. However, we must also consider the uncontested evidence favorable to the defendant. We will affirm the trial court's ruling if it is supported by substantial evidence of probative value.

Id. at 149 (citations and quotation marks omitted).

The United States and Indiana Constitutions afford protection from unreasonable searches and seizures, and generally require a search warrant for a constitutionally proper search or seizure. Malone v. State, 882 N.E.2d 784, 786 (Ind. Ct. App. 2008). Terry creates an exception to the warrant requirement when a law enforcement official has specific and articulable facts together with rational inferences to support brief detention of an individual for investigatory purposes because of a reasonable suspicion that criminal activity "may be

afoot." Id. (quoting Moultry v. State, 808 N.E.2d 168, 170-71 (Ind. Ct. App. 2004)). Terry also permits a reasonable search for weapons for the protection of the police officer where the officer has reason to believe that he is dealing with an armed and dangerous individual. The officer need not be certain that the individual is armed, so long as a reasonably prudent person in the same circumstances would be warranted in the belief that his safety or that of others was in danger. Id. at 786-87.

Ward challenges only the pat down search. Officer Cragen was presented with two angry men threatening to harm one another, near nightfall, in an area which Officer Cragen characterized as high crime due to the frequency of police calls to the apartment complex. Neither Ward nor the other man calmed down readily. A crowd had begun to gather around the officers and the two men. Officer Cooper's search of the unidentified man produced a large knife. Under the circumstances, Officer Cragen could reasonably be concerned that Ward was armed and that this posed a threat to officer safety, the onlookers' safety, and the safety of the man arguing with Ward.

Nor can we conclude that the pat down search as performed was unreasonable under the Indiana Constitution as interpreted in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005). Litchfield requires that a search be reasonable under the totality of the circumstances, with an analysis "turning 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 the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." Id. at 361.

Officer Cragen testified that he checked the waistband of Ward's jeans and felt the

outside of Ward's jeans pockets with his fingers. He only put his hand into Ward's left front pocket, where the marijuana pipe was found, after recognizing the shape of a pipe through Ward's jeans. Given the nature of the search—a quick check for weapons—we cannot say that the search was unreasonable.

The decision to perform a pat down search arose from a reasonable concern for officer and public safety during an altercation, and the search itself was conducted in a reasonable manner. We therefore cannot agree with Ward that the trial court abused its discretion in denying his motion to suppress.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.