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IN THE
COURT OF APPEALS OF INDIANA

RICHARD BROOKS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 33A01-1012-CR-636
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Mary G. Willis, Judge
Cause No. 33C01-1005-FA-4

July 19, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Richard Brooks brings this interlocutory appeal challenging the trial court's denial of his motion to suppress. Specifically, Brooks maintains that the evidence seized during a search of the vehicle in which he was riding violated the Fourth Amendment to the United States Constitution, and Article I Section 11 of the Indiana Constitution because he was detained for an unreasonably long period of time before a K-9 sniff of the vehicle was performed. Brooks also maintains that the search was improper because the police had no reason to believe that criminal activity was afoot.

Concluding the search of the vehicle was permissible under both the United States and Indiana Constitutions, we affirm the trial court's denial of Brooks's motion to suppress. Thus, we remand this cause for further proceedings consistent with this opinion.

FACTS

On May 19, 2010, Hancock County Deputy Sheriff Nicholas Ernstes was working in his capacity as a member of the Pro Active Criminal Enforcement (PACE) team along Interstate 70. At approximately 2:45 p.m., Deputy Ernstes pulled his police vehicle into the pavement across the meridian at mile marker 126 and began watching the traffic for driving violations, including unsafe lane movements, speeding, and following too closely.

Moments later, Deputy Ernstes noticed a Jeep traveling considerably below the speed limit and make a sudden and erratic lane change with only a single blink of the turn signal. Deputy Ernstes then saw the vehicle pull in between a semi tractor-trailer and

another car, which caused the semi to be too close to the Jeep. As a result, the semi initiated a sudden braking maneuver and changed lanes.

When Deputy Ernstes followed and pulled alongside the Jeep, he was not able to see into the vehicle because the windows were tinted. However, Deputy Ernstes noticed that a male was driving. Deputy Ernstes activated his emergency lights and stopped the Jeep at 3:02 p.m. The driver, who later identified himself as Anthony Bridges, exited the vehicle and walked toward Deputy Ernstes's police vehicle.

Bridges told Deputy Ernstes that the Jeep was a rented vehicle but that he had not paid for it. Bridges explained that his passenger, who was later identified as Brooks, had rented the Jeep and was carrying the rental documents. Although Bridges told Deputy Ernstes that Brooks was a friend, he could not immediately recall Brooks's name.

Deputy Ernstes approached Brooks, who displayed a Pennsylvania identification card. Brooks was not able to initially provide Deputy Ernstes with Bridges's name. When Deputy Ernstes inquired as to how Brooks, who was not a licensed driver, could have rented the Jeep, Bridges explained that Brooks had merely financed it. Bridges also told Deputy Ernstes that he and Brooks had flown from Pittsburgh to California and that they "were driving back." Tr. p. 17-18.

Deputy Ernstes then instructed Bridges to enter the front passenger seat of his police vehicle while processing the identification documents that both men had provided. Because of the conflicting and confusing information that Brooks and Bridges had supplied, Deputy Ernstes contacted Sergeant James Goodwin of the Henry County

Sheriff's Department to come to the scene with Cain, his K-9 unit. Sergeant Goodwin and the K-9 arrived at 3:36 p.m.

At some point, Deputy Ernstes told Bridges that if his license was valid and there were no other issues, he would issue him a warning ticket for the infractions. When Sergeant Goodwin arrived, Cain walked around the Jeep and began sniffing. Deputy Ernstes noticed that Bridges was visibly nervous. Thereafter, Sergeant Goodwin informed Deputy Ernstes that the dog had alerted to the odor of narcotics at the front wheel well on the driver's side.

Deputy Ernstes then requested permission to search the Jeep. In response, Bridges said, "This is crazy, go ahead." Tr. p. 20-21. When the men were asked if there was "anything" inside the Jeep, Brooks told Deputy Ernstes that he had $5,000 inside. Brooks also told Deputy Ernstes that he was currently on probation, following a conviction for dealing in cocaine in Pittsburgh.

The officers found the cash during the course of the search. The dog did a "sniff" of the money that indicated the presence of narcotics on the bills. Id. at 42-43. After searching the passenger compartment and not finding any drugs, the deputies dismantled the lift gate area of the Jeep and found bags of cocaine.

On May 24, 2010, the State charged Brooks with possession of cocaine, a class A felony, and dealing in cocaine, a class A felony.[1] Thereafter, Brooks filed a motion to

[1] Brooks was also charged with dealing in methamphetamine a class A felony, possession of methamphetamine, a class C felony, and possession of marijuana, a class A misdemeanor. However, it is

suppress, claiming that the warrantless search of the Jeep and the deputies' act of detaining him were improper and in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

Following a hearing, the trial court entered findings of fact and conclusions of law and denied Brooks's motion to suppress. The trial court determined, among other things, that

> 9. An automobile search falls within the 'automobile exception' when a vehicle is readily mobile and there is probable cause to believe it contains contraband or evidence of a crime. The Court finds that this vehicle was readily mobile and there was probable cause that it contained contraband based upon the totality of the circumstances. When there is probable cause to search a vehicle, a search is not unreasonable if it is based upon facts that would justify the issuance of a warrant, even though a warrant has not been obtained because of the existence of exigent circumstances arising out of the likely disappearance of the vehicle.
>
> 10. The Court finds that in the present case the degree of concern, suspicion or knowledge that a violation occurred was high after the alert from the dog sniff; the degree of intrusion from removing two bolts from the lift gate hatch was low; and the extent of the law enforcement needs to investigate illegal drug activity from a readily mobile vehicle was high.

Appellant's App. p. 37.

Thereafter, Brooks filed a motion to certify the suppression issue for interlocutory appeal. The trial court granted the certification, and we subsequently granted Brooks's petition for interlocutory appeal on December 16, 2010.

DISCUSSION AND DECISION

I. Standard of Review

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seemingly apparent from the suppression hearing that the drugs giving rise to those charges were not seized from the Jeep.

Our review of a trial court's denial of a defense motion to suppress is similar to other sufficiency of the evidence issues. Haynes v. State, 937 N.E.2d 1248, 1250 (Ind. Ct. App. 2010). We review de novo a trial court's ruling on the constitutionality of a search or seizure. Cohee v. State, 945 N.E.2d 748, 750 (Ind. Ct. App. 2011). However, we must determine whether substantial evidence of probative value supports the trial court's decision. State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006). We do not reweigh the evidence and consider conflicting evidence most favorably to the trial court's ruling. Id. We defer to the trial court's factual determinations unless they are clearly erroneous. Meredith v. State, 906 N.E.2d 867, 869 (Ind. 2009).

II. Brooks's Contentions

As noted above, Brooks maintains that the search of the Jeep violated his rights to be free from unreasonable search and seizure under the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. Specifically, Brooks contends that the police officers detained him for an unreasonably long period of time before the K-9 unit began the drug sniff around the vehicle. Brooks also maintains that the search was improper because Deputy Ernstes had no reason to believe that criminal activity was afoot.

A. Fourth Amendment

The Fourth Amendment to the United States Constitution protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. U.S. Const. amend. IV; Krise v. State, 746 N.E.2d

957, 961 (Ind. 2001). Generally, a search warrant is a prerequisite to a constitutionally proper search and seizure. Halsema v. State, 823 N.E.2d 668, 676 (Ind. 2005). Warrantless searches are per se unreasonable subject to a few well-delineated exceptions. Frensemeier v. State, 849 N.E.2d 157, 161 (Ind. Ct. App. 2006).

A police officer may stop a vehicle for minor traffic violations. Quirk, 842 N.E.2d at 340. Moreover, the police are permitted to detain individuals whom they believe have committed infractions. Haynes, 937 N.E.2d at 1251. However, a traffic stop that at its inception is justified solely for the purpose of issuing a warning or traffic citation may become unlawful if it is prolonged beyond the time reasonably required to complete that purpose. Bush v. State, 925 N.E.2d 787, 790 (Ind. Ct. App. 2010). Where the detention for the traffic stop exceeds its proper investigative scope, the continued detention of the individual and any subsequent evidence obtained may be subject to suppression. Thayer v. State, 904 N.E.2d 706, 709 (Ind. Ct. App. 2008).

We also note that a dog sniff that is conducted during a lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment. Illinois v. Caballes, 543 U.S. 405, 410 (2005). Moreover, our Supreme Court has recently observed that no degree of suspicion is required to summon the canine unit to the scene to conduct an exterior sniff of the car or to conduct the sniff itself. State v. Hobbs, 933 N.E.2d 1281, 1286 (Ind. 2010). Put another way, a canine sweep is not a search within the meaning of the Fourth Amendment. Bradshaw v. State, 759 N.E.2d 271, 273 (Ind. Ct. App. 2001). As long as

the canine sniff occurs during the course of an otherwise valid traffic stop without prolonging the length of the stop, the seizure is reasonable because it is still attributable to the valid stop. Myers v. State, 839 N.E.2d 1146, 1149-50 (Ind. 2005). The State bears the burden of showing that the time for the traffic stop was not increased due to a canine sweep. Wells v. State, 922 N.E.2d 697, 700 (Ind. Ct. App. 2010), trans. denied. Finally, when the canine alerts to the presence of narcotics in the vehicle, the police will have probable cause to search. Hobbs, 933 N.E.2d at 1286.

As noted above, Deputy Ernstes lawfully stopped the Jeep after observing several traffic violations. Thayer, 904 N.E.2d at 709, 711. As a consequence, it was appropriate for Deputy Ernstes to order Brooks from the vehicle and maintain contact with him because he had the car rental paperwork in his possession that was needed to conduct the traffic investigation. Moreover, when it was discovered that Brooks did not have a valid driver's license, Deputy Ernstes became curious as to how the men were able to obtain a rental vehicle.

After some preliminary questioning, Bridges was instructed to enter the police car, whereupon the deputies began to process the car rental and identification information. The record shows that the questioning related to the traffic stop and did not prolong the stop. Moreover, the traffic stop investigation was still ongoing when Deputy Ernstes requested the K-9 unit at 3:26 p.m. Tr. p. 37.

Deputy Goodwin arrived on the scene of the traffic stop approximately ten minutes later, and Detective Ernstes was still in the process of trying to verify the

identification information that Brooks and Bridges had supplied. Id. at 16, 18, 38-39. Deputy Goodwin commenced the K-9 sniff immediately after arriving at the scene, and it was conducted before any traffic warning ticket had been issued.

In these circumstances, there is no showing that the canine sniff prolonged the investigation any longer than what was required for the issuance of a warning or traffic citation. Bush, 925 N.E.2d at 790. In other words, the traffic stop was not prolonged in light of the request for—or the wait for—the arrival of the K-9 unit. Moreover, the K-9 unit conducted the sniff immediately after their arrival at the scene. Tr. p. 19, 39. And once the dog alerted to the presence of narcotics in the Jeep, the police had probable cause to search the vehicle for illegal drugs. See Hobbs, 933 N.E.2d at 1286 (holding that a dog sniff provided probable cause that the vehicle contained illicit drugs). Hence, the automobile exception to the warrant requirement under the Fourth Amendment became applicable, which provides that the police may conduct a warrantless search of a motor vehicle that is stopped by the police where the police have probable cause to believe that the vehicle contains contraband. U.S. v. Ross, 456 U.S. 798, 799 (1982).

In light of these circumstances, Brooks does not prevail on his argument that the canine sniff subjected him to an impermissible search and seizure under the Fourth Amendment, or that the police lacked probable cause to search the vehicle.[2] Therefore,

[2] Although the evidence at the suppression hearing suggests that Brooks or Bridges may also have consented to the search of the Jeep, we need not address this exception to the warrant requirement in light of our discussion above.

we conclude that the trial court properly denied Brooks's motion to suppress on the basis of his Fourth Amendment claims.

B. Indiana Constitutional Claim

Brooks also argues that his right to be free under Article I, Section 11 of the Indiana Constitution was violated. Although the text of this provision of the Indiana Constitution is identical to the Fourth Amendment, the two have been afforded somewhat different interpretations. Shotts v. State, 925 N.E.2d 719, 726 (Ind. 2010). More specifically, conformity of a search to the Indiana Constitution turns on an evaluation of the "reasonableness" of the conduct of the law enforcement officers under the circumstances, rather than on the expectation of privacy that is commonly associated with analysis under the Fourth Amendment. Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005).

Relevant considerations in evaluating the reasonableness of a search under the totality of the circumstances include the degree to which the search or seizure disrupts the suspect's normal activities, and those facts and observations that support the officer's decision to initiate the search or seizure. Myers, 839 N.E.2d at 1153.

In this case, Deputy Ernstes's stop of the vehicle was lawful in light of the traffic violations that occurred, the law enforcement needs were substantial because of the traffic law violations, and the initial degree of intrusion was minimal.

Deputy Goodwin's canine sweep of the vehicle intruded only minimally on Brooks's freedom of movement because it occurred when the vehicle was already

lawfully stopped. State v. Gibson, 886 N.E.2d 639, 643 (Ind. Ct. App. 2008). Once the K-9 alerted, the officers developed a high degree of confidence that the Jeep contained evidence of a crime, and the police officers' need to eradicate drug trafficking was great. Hobbs, 933 N.E.2d at 1287.

As a result, when considering the totality of the circumstances, we conclude that the search of the vehicle was reasonable. Thus, the trial court properly denied Brooks's motion to suppress regarding his claims under Article I Section 11 of the Indiana Constitution.

The judgment of the trial court is affirmed, and we remand with instructions for further proceedings consistent with this opinion.

MAY, J., and BRADFORD, J., concur.