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**IN THE
COURT OF APPEALS OF INDIANA**

TARIK HOSKINS,)

Appellant-Defendant,)

vs.)

No. 49A04-0902-CR-105

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
The Honorable Melissa Kramer, Master Commissioner
Cause No. 49G17-0811-FD-261074

September 11, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Tarik Hoskins (“Hoskins”) was convicted in Marion Superior Court of Class D felony possession of cocaine and Class A misdemeanor resisting law enforcement. He appeals and argues that the trial court abused its discretion when it admitted evidence seized subsequent to the warrantless entry of his home. Concluding that the police officer’s warrantless entry into Hoskins’s home did not violate the Fourth Amendment of the United States Constitution or Article 1, Section 11 of the Indiana Constitution, we affirm.

Facts and Procedural History

On November 16, 2008, Indianapolis Metropolitan Police Officer Timothy Huddleston (“Officer Huddleston”) was dispatched to Hoskins’s apartment to investigate a disturbance between a male and female in the hallway of the apartment building. When Officer Huddleston arrived, he could hear Hoskins shouting and observed a female sitting on the floor of the apartment through the open doorway. The officer also observed items “strewn about” the apartment. Tr. p. 25. The female, later identified as Heather Lynch, (“Lynch”), was upset and crying. She was also trying to place a call on her cell phone but was unable to do so because she was so upset. Finally, the officer noted the presence of children in the apartment.

Officer Huddleston asked Hoskins to come out into the hallway to speak to the assisting officers while he went into the apartment to speak with Lynch and the children. After speaking with Lynch, Officer Huddleston placed Hoskins under arrest for domestic battery. Hoskins was placed in handcuffs, but shortly thereafter began to resist by

kicking a door and pulling away from the officer. After Hoskins was subdued, the officers performed a search incident to arrest. During the search, a digital scale was found in Hoskins's pocket. Residue found on the scale later tested positive for cocaine.

Hoskins was charged with Class D felony domestic battery, Class D felony criminal confinement, Class D felony possession of cocaine, Class A misdemeanor domestic battery, Class A misdemeanor battery, Class A misdemeanor resisting law enforcement, and Class A misdemeanor interference with reporting a crime. A bench trial was held on January 14, 2009, and because Lynch failed to appear, the State dismissed all counts except Class D felony possession of cocaine and Class A misdemeanor resisting law enforcement.

At trial, Hoskins moved to suppress all evidence obtained subsequent to the warrantless entry of his residence. The trial court denied the motion and Hoskins's continuing objections. The trial court found Hoskins guilty as charged and ordered him to serve concurrent terms of 270 days for his Class D felony possession of cocaine conviction and Class A misdemeanor resisting law enforcement conviction. Hoskins now appeals.

Discussion and Decision

Hoskins argues that the trial court abused its discretion when it admitted evidence seized subsequent to the warrantless entry into his residence. A trial court has broad discretion in ruling on the admissibility of evidence, and we will disturb its ruling only where it is shown that the trial court abused that discretion. McDermott v. State, 877

N.E.2d 467, 471 (Ind. Ct. App. 2007), trans. denied. An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. Id.

The Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution both protect citizens from unreasonable searches and seizures. However, our interpretation and application of the constitutional provisions require separate analysis. See id.

I. Fourth Amendment

Hoskins argues that Officer Huddleston violated the Fourth Amendment when he entered his home without a warrant.¹ Searches or seizures inside a home without a warrant are presumptively unreasonable. Holder v. State, 847 N.E.2d 930, 935 (Ind. 2006). However, there are a “few specifically established and well-delineated exceptions” to the warrant requirement. Id. “A search without a warrant requires the State to prove an exception to the warrant requirement applicable at the time of the search.” Id.

One such exception allows police to dispense with the warrant requirement in the presence of exigent circumstances. “The warrant requirement becomes inapplicable where the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” Id. at 936-37 (quoting Mincey v. Arizona, 437 U.S. 385 (1978)).

¹ In its brief, the State notes that there was a lack of evidence at trial to establish that Hoskins had standing to challenge the warrantless entry into the apartment aside from Hoskins’s own testimony that he paid rent for the apartment. See Br. of Appellee at 6. Given Hoskins’s unchallenged testimony and the State’s failure to raise the argument at trial, we do not address the issue of standing.

Exigent circumstances that have justified a warrantless search or seizure include (1) preventing bodily harm or death; (2) aiding a person in need of assistance; (3) protecting private property; and (4) preventing actual or imminent destruction or removal of incriminating evidence before a search warrant may be obtained. McDermott, 877 N.E.2d at 474 (citing Weis v. State, 800 N.E.2d 209, 213 (Ind. Ct. App. 2003)). “The burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries.” Id.

In this case, Officer Huddleston testified that he was dispatched to Hoskins’s residence due to a report of a male and female involved in a disturbance in the hallway outside of the apartment. Tr. p. 22. As the officer proceeded to the apartment, he could hear Hoskins shouting. The door of the apartment was open, and Officer Huddleston observed Hoskins “involved in a verbal altercation” with Lynch who was sitting on the floor. Id. Lynch was visibly upset and crying. She was attempting to place a call on her cell phone, but could not do so because she was so upset. The officer also observed signs of “physical disturbance,” which included a flipped over ashtray, ashes and cigarettes all over the floor of the apartment, and “other items strewn about.” Tr. p. 25. There were also children present in the apartment.

Hoskins argues that because the officer did not witness any physical contact between himself and Lynch, and Lynch did not appear to be physically injured, the State failed to prove any exigent circumstances to justify Officer Huddleston’s warrantless entry into his residence. We disagree.

Lynch's demeanor and the state of the apartment reasonably led Officer Huddleston to conclude that some type of struggle had occurred. The officer also reasonably concluded that Lynch was in need of assistance because she was upset and crying, and Hoskins was yelling at her when the officers arrived. Officer Huddleston was justifiably concerned for the safety of Lynch and the children present in the apartment. We conclude that these exigent circumstances justified Officer Huddleston's warrantless entry into Hoskins's apartment.

II. Article 1, Section 11 of the Indiana Constitution

“Investigation under Article 1, Section 11 places the burden on the State to demonstrate that each relevant intrusion was reasonable in light of the totality of the circumstances.” Holder, 847 N.E.2d at 940.

As we consider reasonableness based upon the particular facts of each case, the Court also gives Art. 1, § 11, a liberal construction to angle in favor of protection for individuals from unreasonable intrusions on privacy. At the same time, “Indiana citizens have been concerned not only with personal privacy but also with safety, security, and protection from crime.” 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. Thus, we have observed “that the totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure.”

Id. (internal citations omitted). To determine whether police conduct was reasonable under the totality of the circumstances, we consider “(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. (quoting Litchfield v. State, 824 N.E.2d 356, 360 (Ind. 2005)).

Officer Huddleston was dispatched to Hoskins's apartment due to a report of an altercation between a male and female. The officer noted Lynch's state of distress and the state of the apartment, which led the officer to believe that a physical struggle had occurred. Consequently, the officer had a reasonable suspicion that Hoskins's had battered Lynch.

The degree of intrusion was also reasonable. The door of the apartment was open, which allowed Officer Huddleston to view the interior of the apartment. Huddleston asked Hoskins to leave the apartment while he spoke to Lynch and the children. The officer's entry into the apartment was brief and effectively ended the altercation between Hoskins and Lynch. Officer Huddleston did not search the apartment, but only spoke to Lynch and the children while he remained inside.

Finally, Officer Huddleston reasonably believed that entry into the apartment was required to ensure the safety of Lynch and the children. The officer suspected that a physical struggle had occurred, Lynch was visibly upset and crying, and Hoskins was shouting at her when the officers arrived.

Upon consideration of these factors, we conclude that Officer Huddleston's warrantless entry was reasonable under the totality of the circumstances. The State proved that the officer's entry was reasonably aimed toward ensuring the safety of Lynch and the children and to protect them from Hoskins. Accordingly, Officer Huddleston's warrantless entry into Hoskins's residence does not run afoul of Article 1, Section 11 of the Indiana Constitution.

Conclusion

Because the warrantless entry into Hoskins's residence did not violate the Fourth Amendment or Article 1, Section 11, the trial court did not abuse its discretion when it admitted the evidence seized subsequent to the officer's warrantless entry. We therefore affirm Hoskins's convictions for Class D felony possession of cocaine and Class A misdemeanor resisting law enforcement.

Affirmed.

DARDEN, J., and ROBB, J., concur.