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IN THE COURT OF APPEALS OF INDIANA

KAWUAN BLUITT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0611-CR-681
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0607-CM-128762

August 2, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Kawuan Bluitt appeals his conviction for possession of marijuana as a class A misdemeanor.[1] Bluitt raises one issue, which we revise and restate as whether the trial court abused its discretion by admitting the marijuana seized from Bluitt's person. We affirm.

The relevant facts follow. On July 15, 2006, several Indianapolis police officers were standing on a street corner of downtown Indianapolis to provide security at a local event. Bluitt walked past the officers with some friends. When he came within three or four feet of Officer Aaron Snyder, Bluitt turned his back to the officers. Officer Snyder noticed that Bluitt was clutching, in a hand behind his back, a plastic bag containing a "leafy green substance" that he "immediately knew to be marijuana." Transcript at 6. Officer Snyder identified himself, grabbed Bluitt's wrist, and told Bluitt to "relax" and to open his hand and "let go of the marijuana." Id. at 12. Although Bluitt let Officer Snyder take the plastic bag, when the other officers began to handcuff him, he pushed them away and took off running. Officer Snyder and another officer chased Bluitt on foot until a third officer intercepted him, and they took him into custody. A forensic scientist later determined the substance in the plastic bag to be 5.53 grams of marijuana.

[1] Ind. Code § 35-48-4-11 (2004).

The State charged Bluitt with possession of marijuana as a class A misdemeanor and resisting law enforcement as a class A misdemeanor.[2] At a bench trial, Bluitt moved to suppress the marijuana, arguing that Officer Snyder's actions violated his rights secured by the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. The trial court denied the motion to suppress and found Bluitt guilty as charged, sentencing him to a term of 365 days, with 265 days suspended.

On appeal, Bluitt argues that the trial court abused its discretion by admitting the marijuana because Officer Snyder's actions violated his rights under the Fourth Amendment of the United States Constitution. Specifically, he argues that Officer Snyder did not have probable cause to seize him or the marijuana. We review the trial court's ruling on the admission of evidence for an abuse of discretion. Noojin v. State, 730 N.E.2d 672, 676 (Ind. 2000). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), reh'g denied.

In his appellate brief, Bluitt develops no state constitutional argument separate from federal constitutional law. Therefore, we will apply only Fourth Amendment search and seizure law in this case, and any state constitutional claim has been waived. See Lockett v. State, 747 N.E.2d 539, 541 (Ind. 2001) (holding that any state constitutional search and seizure claim is waived where the defendant presents no authority or

[2] Ind. Code § 35-44-3-3 (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1,

independent analysis supporting a separate standard under the state constitution). The Fourth Amendment, applicable to the States through the Fourteenth Amendment, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. Under the federal constitution, searches and seizures "conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Middleton v. State, 714 N.E.2d 1099, 1101 (Ind. 1999) (footnote omitted) (quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514 (1967)). The State carries the burden of demonstrating that a warrantless search or seizure falls within one of the exceptions. Taylor v. State, 659 N.E.2d 535, 537 (Ind. 1995). Any evidence seized in contravention of the Fourth Amendment may be considered "fruit of the poisonous tree," and hence, subject to exclusion from evidence. Trowbridge v. State, 717 N.E.2d 138, 144 (Ind. 1999), reh'g denied.

One exception to the warrant requirement is the plain view doctrine. "Three conditions must exist to justify the warrantless seizure of evidence under this doctrine: 1) 'the officer [must] not have violate[d] the Fourth Amendment in arriving at the place

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from which the evidence could be plainly viewed'; 2) the 'incriminating character' of the evidence must be 'immediately apparent'; and 3) the officer must 'have a lawful right of access to the object itself.'" Middleton, 714 N.E.2d at 1101 (alterations in original) (quoting Horton v. California, 496 U.S. 128, 136-137, 110 S.Ct. 2301, 2308 (1990)).

Here, Officer Snyder observed the plastic bag of marijuana in Bluitt's hand as Bluitt passed him on the street. Officer Snyder was, therefore, lawfully in a place where he could view the marijuana. The incriminating nature of the evidence—a plastic bag containing leafy green vegetation—was immediately apparent to Officer Snyder based on his experience and training.[3] Finally, because the marijuana is contraband, Officer Snyder had a lawful right to seize it. See Middleton, 714 N.E.2d at 1101 (noting that the officer could have immediately seized the marijuana because it was contraband). Thus, under the plain view doctrine, Officer Snyder had probable cause to make a warrantless seizure of the marijuana, or, alternatively, of Bluitt's person. See Crabtree v. State, 762 N.E.2d 217, 221 (Ind. Ct. App. 2002) (holding that the plain view doctrine supports the warrantless seizure of marijuana on the defendant's person). Accordingly, we cannot say

[3] Bluitt argues that Officer Snyder "could not know" that the bag contained marijuana. Appellant's Brief at 6. However, the "immediately apparent" prong of the plain view doctrine requires that law enforcement officials have probable cause to believe the evidence will prove useful in solving a crime. Taylor v. State, 659 N.E.2d 535, 538-539 (Ind. 1995). This does not mean that the officer must "know" that the item is evidence of criminal behavior. Id. at 539 (citing Texas v. Brown, 460 U.S. 730, 741, 103 S.Ct. 1535, 1542 (1983)). Probable cause requires only that the information available to the officer would lead a person of reasonable caution to believe the items could be useful as evidence of a crime. Id. A "practical, nontechnical" probability that incriminating evidence is involved is all that is required. Id.

that the trial court abused its discretion in admitting the marijuana as evidence.[4] See Lamonte v. State, 839 N.E.2d 172, 177 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion when admitting marijuana as evidence).

For the foregoing reasons, we affirm Bluitt's conviction for possession of marijuana as a class A misdemeanor.

Affirmed.

MAY, J. and BAILEY, J. concur

[4] Bluitt argues that this case is analogous to Dowdell v. State, 747 N.E.2d 564 (Ind. Ct. App. 2001), trans. denied. Dowdell, however, is distinguishable. In Dowdell, a police officer asked the defendant, who was smoking a "blunt" about fifteen feet away, to approach his patrol vehicle. The defendant threw the blunt down and approached the vehicle. When the officer smelled marijuana on him and observed plastic bags in his hands containing marijuana and cocaine, the officer arrested him. The officer later testified that he was unsure whether the defendant was smoking marijuana, or a normal cigar, when he asked the defendant to approach. On appeal, we held that the stop was illegal because the officer did not have reasonable suspicion that the defendant was committing or about to commit a crime. Id. at 566. Here, however, Bluitt concedes that Officer Snyder "may have had reasonable suspicion." Appellant's Brief at 9. Although Bluitt mentions Terry stops and intermingles the law of Terry stops and probable cause, the thrust of Bluitt's argument is that Officer Snyder did not have probable cause.