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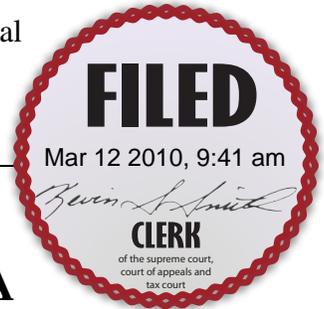
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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES CROOM,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-0906-CR-326

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
The Honorable Peggy Hart, Commissioner
Cause No. 49G23-0806-FA-146646

March 12, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James Croom (“Croom”) was convicted in Marion Superior Court of Class A felony dealing in cocaine. He was ordered to serve an executed forty-three year sentence.

Croom appeals and raises two issues:

- I. Whether the trial court abused its discretion when it admitted evidence obtained during the warrantless search of Croom’s vehicle; and
- II. Whether Croom’s forty-three year executed sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On June 16, 2008, Nika Posley called 911 to report that she was being followed by Croom, her estranged husband. Posley also alleged that Croom tried to run her off the road. Posley stated that Croom followed her to her home and was outside the home watching her. Posley told the 911 operator that Croom stated that he had a handgun.

Indianapolis Metropolitan Police Department Officer Marlin Sechrist received the 911 dispatch advising him to look for Croom, who was driving a red pickup truck in the area of 16th Street. Officer Sechrist was also advised that Croom was possibly armed with a handgun. Officers Michael Beatty and Thomas Jordan, who were on patrol in the area, observed Croom at a Shell gas station at 16th Street and Kessler Boulevard. Officer Jordan activated his emergency lights and pulled the squad car in front of Croom’s truck while Croom was getting into the truck. The officers, with weapons drawn, ordered him to raise his hands. Tr. p. 85. Croom hesitated for a moment, but then raised his hands and walked around to the front of the truck.

Officer Sechrist also proceeded to the gas station and when he arrived, he observed Officer Beatty handcuffing Croom. Croom was handcuffed for officer safety because Croom was allegedly in possession of a handgun illegally. Officer Beatty looked into the passenger compartment of the truck through the open driver's side door to search for a handgun and Officer Sechrist opened the passenger side door to do the same. As Officer Beatty searched the interior of the truck, he observed an open bag on the driver's side floorboard underneath the driver's seat. He shined his flashlight on the bag and saw plastic baggies containing a white substance. Tr. p. 91. The bag contained over thirty grams of crack cocaine. After Officer Beatty discovered the bag containing the cocaine, Officer Jordan read Croom his Miranda rights. Tr. p. 96. Officer Sechrist then asked Croom why he was "dealing crack," and Croom responded that he could not find a job and had rent to pay. Tr. pp. 72-73. The officers did not find a handgun in the truck.

Croom was charged with Class A felony dealing in cocaine and Class C felony possession of cocaine.¹ Prior to trial, Croom moved to suppress the evidence obtained as a result of the warrantless vehicle search. The trial court denied Croom's motion.

A jury trial commenced on April 28, 2009. Croom renewed his objection to admission of the evidence seized during, and as a result of, the search of his truck, but his objection was overruled. The jury found Croom guilty of dealing in cocaine and possession of cocaine. The trial court did not enter a verdict on the possession of cocaine charge after concluding that it merged with the dealing in cocaine charge. On May 18,

¹ The charging information was later amended to include charges of Class C felony intimidation and Class A misdemeanor intimidation, and an allegation that Croom was an habitual substance offender. However, the intimidation charges were dismissed prior to trial and the habitual substance offender allegation was dismissed after the jury returned guilty verdicts on the two cocaine charges.

2009, Croom was ordered to serve a forty-three-year executed sentence in the Department of Correction for his Class A felony dealing in cocaine conviction. Croom now appeals. Additional facts will be provided as necessary.

I. Warrantless Search of Croom's Vehicle

Croom argues that the trial court abused its discretion when it admitted the evidence obtained during the warrantless search of his vehicle. Specifically, Croom contends that the search violated his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

Croom originally challenged the admission of the evidence through a pretrial motion to suppress, but appeals following a completed trial at which he objected to its admission. Our standard of review of rulings 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. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied. We review the admission of evidence for an abuse of the trial court's discretion. Taylor v. State, 891 N.E.2d 155, 158 (Ind. Ct. App. 2008), trans. denied. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id. We do not reweigh the evidence, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). We also consider uncontroverted evidence in the defendant's favor. Id.

A. Croom's Fourth Amendment Claim

Croom argues that the State failed to prove an exception to the warrant requirement to justify the warrantless search of his vehicle. The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. Krise v. State, 746 N.E.2d 957, 961 (Ind. 2001). A search warrant is generally a prerequisite to a constitutionally proper search and seizure. Halsema v. State, 823 N.E.2d 668, 676 (Ind. 2005). When a search or seizure is conducted without a warrant, the State bears the burden of proving that an exception to the warrant requirement existed at the time of the search or seizure. Id.

The State argues that “the officers who arrested Croom were entitled to search his vehicle” because they had probable cause to arrest Croom at the time of the search. Appellee’s Br. at 6. A search incident to a lawful arrest is an exception to the Fourth Amendment’s warrant requirement. Fentress v. State, 863 N.E.2d 420, 423 (Ind. Ct. App. 2007). However, in Arizona v. Gant, 129 S.Ct. 1710 (2009), the United States Supreme Court significantly curtailed the ability of law enforcement to search a vehicle incident to arrest, holding that a law enforcement officer may conduct a vehicle search “when an arrestee is within reaching distance of the vehicle” or when “it is reasonable to believe the vehicle contains evidence of the offense of arrest.”

Pertinent to the facts and circumstances of this appeal, the Gant Court reaffirmed the principle that law enforcement may search a vehicle “under additional circumstances when safety or evidentiary concerns demand.” Id. at 1721. Gant and Indiana’s prior law both support the search of Croom’s truck. See Gant, 129 S.Ct. at 1721 (recognizing that

“[i]f there is probable cause to believe a vehicle contains evidence of criminal activity,” law enforcement may search “any area of the vehicle in which the evidence might be found”); Myers v. State, 839 N.E.2d 1146, 1151 (Ind. 2005) (noting that the automobile exception is a well-recognized exception to the Fourth Amendment’s warrant requirement, and a search falls within this exception when a vehicle is readily mobile and probable cause exists to believe it contains contraband or evidence of a crime).

In this case, Croom’s estranged wife called 911 because Croom was following her and standing outside her house watching her. She also reported that Croom told her that he had a gun, and that Croom was not supposed to have a weapon. The dispatcher told the police officers that they were looking for Croom, who was driving a red pickup truck, and had been involved in a domestic dispute. The officers were also advised that Croom was armed with a gun. Tr. pp. 46, 60, 83. Officer Sechrist, who had previously arrested Croom,² told Officers Beatty and Jordan that Croom would likely resist law enforcement. Tr. pp. 311, 326. Officer Sechrist was aware that Croom had been convicted of a felony as a result of that prior arrest. Tr. p. 347.

When Officers Beatty and Jordan first observed Croom, he was getting into his pickup truck. The officers pulled their vehicle directly in front of Croom’s truck, and immediately exited the vehicle with guns drawn. Croom raised his hands and moved to the front of the truck as ordered. Officer Jordan then handcuffed Croom and performed a pat-down search for officer safety. Officer Sechrist arrived on the scene as Officer Jordan was placing Croom in handcuffs.

² Officer Sechrist had arrested Croom for possession of cocaine and resisting law enforcement. Tr. p. 338.

Officer Beatty then looked inside the truck from the open driver's side door to search for weapons, and Officer Sechrist opened the passenger door to search the passenger side. Officer Beatty observed an open black bag on the driver's side floorboard. After shining his flashlight on the bag, the officer saw plastic baggies containing a white substance, which he suspected was cocaine. Tr. pp. 51, 68-70, 91. Officer Jordan was then told to Mirandize Croom. Tr. p. 96.

Under these facts and circumstances, we conclude that the officers had probable cause to believe that Croom's truck contained evidence of criminal activity. Specifically, law enforcement was aware that Croom had followed his estranged wife and was parked outside her home, that he had allegedly attempted to run her off the road, that he was a convicted felon, and of his wife's statement that he was allegedly in possession of a handgun. Moreover, due to concerns for officer safety, it was not unreasonable for Officer Beatty to look into the passenger compartment through the open driver's side door to briefly search for a handgun. A permissible search for a weapon revealed other contraband, namely cocaine. We conclude that the warrantless search of Croom's truck did not violate the Fourth Amendment, notwithstanding Gant.³

B. Croom's Article 1, Section 11 Claim

"While almost identical to the wording in the search and seizure clause of the federal constitution, Indiana's search and seizure clause is independently interpreted and

³ Under the plain view doctrine, Officer Beatty was authorized to seize the bag containing the cocaine. See Warner v. State, 773 N.E.2d 239, 245 (Ind. 2002) (stating that the plain view doctrine authorizes a police officer to seize an object without a warrant "if police are lawfully in a position from which to view the object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object").

applied.” Baniaga v. State, 891 N.E.2d 615, 618 (Ind. Ct. App. 2008). Under the Indiana Constitution, the legality of a governmental search turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005). Although other relevant considerations under the circumstances may exist, our Supreme Court has determined that the reasonableness of a search or seizure turns on a balance of the Litchfield factors: 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 citizens’ ordinary activities, and 3) the extent of law enforcement needs. Baniaga, 891 N.E.2d at 618. The burden is on the State to show that under the totality of the circumstances, the intrusion was reasonable. Id.

For the same reasons discussed in our Fourth Amendment analysis, we conclude that the warrantless search of Croom’s truck was reasonable in light of the totality of the circumstances. Here, the degree of concern that Croom had violated the law was high. The officers were concerned that Croom, a known convicted felon, was in possession of a handgun illegally, and that he had allegedly tried to run his estranged wife off the road before following her to her home. Although the degree of intrusion was significant, the officers reasonably searched the truck due to their belief that Croom was in possession of a handgun illegally, and a justifiable concern for officer safety. Accordingly, we conclude that the warrantless search of Croom’s truck did not violate Article 1, Section 11 of the Indiana Constitution,

Because Croom has not established a violation of either the state or federal constitution, we hold that the trial court did not abuse its discretion when it admitted the evidence seized during, and as a result of, the warrantless search of Croom's truck.

II. Inappropriate Sentence

Croom also argues that his forty-three-year executed sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Anglemyer, 868 N.E.2d at 491. The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Croom committed Class A felony dealing in cocaine, for which the sentence range is twenty to fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4. The trial court sentenced Croom to forty-three years executed in the Department of Correction. Croom concedes that a “significant sentence is appropriate” because of his criminal history, but argues that “his background and his recognition of what he has done

would suggest that the sentence here, near the maximum, was not appropriate.” Br. of Appellant at 16.

While Croom’s offense was a Class A felony, the nature of his offense was not particularly heinous. By itself, it is arguable that the nature of Croom’s offense does not support the lengthy sentence imposed.

However, our second consideration when we review a sentence under Appellate Rule 7 (B) is the character of the offender. At the time of sentencing and at the age of forty-four, Croom’s criminal history included six misdemeanor convictions and eight felony convictions. This is Croom’s second conviction for dealing in cocaine. He was also charged with dealing in cocaine in two additional cases, but was convicted of the lesser-included offense of possession of cocaine. Among Croom’s felonies are convictions for Class D felony escape, and Class D and Class C felony carrying a handgun without a license. Croom’s criminal history more than supports the conclusion that Croom is unable to lead a law-abiding life. Under these facts and circumstances, we cannot conclude that Croom’s forty-three year executed sentence is inappropriate.

Conclusion

The trial court did not abuse its discretion when it admitted the cocaine discovered during the warrantless search of Croom’s vehicle. Croom’s forty-three-year executed sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BARNES, J., and BROWN, J., concur.