

Anthony Ballinger (“Ballinger”) was convicted in St. Joseph Superior Court of Class D felony possession of cocaine and Class A misdemeanor possession of paraphernalia. Ballinger appeals raising one issue, which we restate as: whether the trial court abused its discretion when it admitted the evidence seized during the warrantless search of Ballinger’s vehicle. Concluding that the warrantless search did not violate Article 1, Section 11 of the Indiana Constitution, we affirm.

Facts and Procedural History

On July 10, 2008, at approximately 3:00 a.m., Indiana State Trooper Mick Dockery (“Trooper Dockery”) observed Ballinger driving a vehicle with an inoperable license plate light. Trooper Dockery initiated a traffic stop of the vehicle, and during the stop, observed that Ballinger appeared to be nervous. When asked, Ballinger was unable to provide the trooper with a vehicle registration.

After Trooper Dockery ran a computer check on Ballinger’s license and the vehicle, he learned that the vehicle was not registered to Ballinger. Because of Ballinger’s nervous behavior, the trooper asked Ballinger to step out of the vehicle. Trooper Dockery began questioning Ballinger about where he was driving to and from at 3:00 a.m. and the ownership of the vehicle. Ballinger told the trooper that the vehicle belonged to his girlfriend.

Trooper Dockery then returned to his vehicle to print a warning ticket for the license plate light violation. While the ticket was printing, he deployed his canine “Hondo” to conduct an open air exterior sniff of the vehicle. Within twenty to twenty-five seconds, Hondo alerted at the driver’s side door. Trooper Dockery told Ballinger

that Hondo had alerted for narcotics, and Ballinger admitted that there were narcotics in the vehicle. Trooper Dockery then placed Hondo inside the vehicle and the dog alerted between the two front seats. Trooper Dockery found a rock of crack cocaine in that area the vehicle. During the search incident to arrest, the trooper found a crack pipe in Ballinger's pocket.

Ballinger was charged with Class D felony possession of cocaine and Class A misdemeanor possession of paraphernalia. Citing the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution, Ballinger moved to suppress the cocaine and crack pipe. A hearing was held on the motion on December 17, 2008, and Ballinger's motion was denied.

A jury trial commenced on February 12, 2009. At trial, Ballinger objected to the admission of the cocaine and the crack pipe on the same grounds raised in his motion to suppress. His objection was overruled and Ballinger was convicted as charged. He was ordered to serve an aggregate sentence of two years, and to serve his sentence consecutive to a sentence imposed in a separate cause. Ballinger now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Ballinger argues that the trial court erred when it denied his motion to suppress. However, Ballinger appeals following a completed trial, and therefore, the issue is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will

reverse such a ruling only upon a showing of an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. We will not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). We must also consider uncontested evidence favorable to Ballinger. See id.

Ballinger argues that the warrantless search of his vehicle violates Article 1, Section 11 of the Indiana Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

The purpose of this section is to protect those areas of life that Hoosiers consider private from unreasonable police activity. State v. Quirk, 842 N.E.2d 334, 339-40 (Ind. 2006).

The validity of a search pursuant to the Indiana Constitution turns on an evaluation of the reasonableness of officer conduct under the totality of the circumstances. Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005). The reasonableness of a search or seizure turns 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. It is the State's burden to show that under the totality of the circumstances, the officer's intrusion was reasonable. Id. at 360.

Ballinger does not challenge the basis for the traffic stop, and therefore, the first element of the Litchfield test is satisfied. See id. at 361; see also Thayer v. State, 904 N.E.2d 706, 711 (Ind. Ct. App. 2009). Although he concedes the validity of the traffic stop, Ballinger argues:

The detention and subsequent search of Ballinger's vehicle exceeded the time reasonably necessary to request a driver's license, run a license plate check, and issue a citation. The officer could have had Hondo with him when he first approached the vehicle. He did not.

The printing of a warning ticket was a pretext to extend the time of the stop, to allow Hondo to approach the vehicle. This court should not allow the officer to use a pretextual warning to allow a canine search which would otherwise not be permissible.

Appellant's Br. at 7.

In this case, after Trooper Dockery asked Ballinger for his license and registration, Ballinger stated that he could not find the registration. The trooper suggested that Ballinger look in the glove box, and Ballinger complied, but turned his back towards the trooper as he did so. Because Ballinger turned his back to the trooper more than most people do, Trooper Dockery became suspicious that Ballinger that was trying to obstruct the trooper's view into the vehicle. The trooper also observed that Ballinger seemed nervous, touched "his mouth quite a bit" and was spitting. Tr. pp. 13-14. Specifically, Trooper Dockery testified, "[i]t was very suspicious, not the normal attitude or behavior I normally see, especially with the touching of the face and spitting." Tr. p. 14.

The trooper then returned to his vehicle to perform a vehicle registration check and a driver's license inquiry. When those checks were completed, the trooper returned to Ballinger's vehicle to discuss the ownership of the vehicle with him. The trooper

asked Ballinger to step out of the vehicle, and when questioned, Ballinger indicated that the vehicle belonged to his girlfriend. He also asked Ballinger “where he was going [and] where he was coming from.” Tr. p. 16. Ballinger indicated that he was traveling to an area well known to the trooper for narcotics and prostitution. During the conversation, Ballinger continued to spit and touch his mouth, and generally acted nervous.

Trooper Dockery told Ballinger to remain on the sidewalk, and he returned to his vehicle to print the electronic warning citation for the inoperable license plate light. While the citation was printing, the trooper deployed his canine, and the dog immediately alerted on the driver’s side door of the vehicle. Tr. p. 18. The trooper testified that a citation takes thirty seconds to print, and the dog alerted within twenty to twenty-five seconds after being deployed. Tr. pp. 18-19. Trooper Dockery told Ballinger that the canine had alerted to the vehicle for the odor of narcotics, and Ballinger admitted that there were narcotics inside the vehicle.

We conclude that Trooper Dockery had reasonable suspicion that criminal activity was afoot because of Ballinger’s nervous behavior and inability to produce the vehicle registration. Therefore, the trooper was justified in detaining Ballinger for further investigation. See Meredith v. State, 906 N.E.2d 867, 873 (Ind. 2009) (citing State v. Washington, 898 N.E.2d 1200, 1204 (Ind. 2008) (“Established law allows an officer making a traffic stop to detain a person upon reasonable suspicion of criminal activity and to ask questions to determine identity and verify or disprove the officer’s suspicions.”)).

In addition, Trooper Dockery's deployment of his canine did not extend the length of the stop because the dog immediately alerted to the presence of narcotics before the warning ticket was finished printing.¹ We cannot conclude that Trooper Dockery's decision to print the warning ticket was a pretext to extend the time of the stop where Ballinger conceded the validity of the traffic stop. Finally, the trooper's conduct in making the stop and detaining Ballinger was "consistent with [Trooper Dockery's] concern for his own safety and law enforcement's responsibilities to deter crime, to intercept criminal activity, and to apprehend its perpetrators." See Washington, 898 N.E.2d at 1206.

For all of these reasons, we conclude that the warrantless search of Ballinger's vehicle was not unreasonable under the totality of these circumstances and did not violate Article 1, Section 11 of the Indiana Constitution.² Accordingly, the trial court did not abuse its discretion when it admitted the challenged evidence.

Affirmed.

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

¹ For this reason, Ballinger's reliance on State v. Quirk is unavailing. In that case, the officers extended the length of the stop beyond the time necessary to issue a warning ticket. 842 N.E.2d at 340.

² Ballinger also argues that the warrantless search of his vehicle violated the Fourth Amendment. However, Ballinger does not develop a separate argument under a Fourth Amendment analysis in his brief, and therefore his Fourth Amendment claim is waived. See Evans v. State, 855 N.E.2d 378, 384 n.3 (Ind. Ct. App. 2006), trans. denied. Waiver notwithstanding, for the same reasons expressed above, Trooper Dockery had reasonable suspicion to briefly detain Ballinger for investigatory purposes. Further, "[a] dog sniff conducted during a concededly 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." State v. Gibson, 886 N.E.2d 639, 641 (Ind. Ct. App. 2008) (quoting Illinois v. Caballes, 543 U.S. 405, 410 (2005)).