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IN THE
SUPREME COURT OF THE UNITED STATES

David Michael Jones - Petitioner;

v.

State of Indiana - Respondent(s);

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES SUPREME COURT

APPENDIX OF PETITIONER

Attorney for Petitioner:

David Michael Jones
DOC# 2-50168

Pendleton Correctional Facility
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Pendleton, Indiana. 46064-9001

Petitioner / *pro se*

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

David Michael Jones,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

August 19, 2024

Court of Appeals Case No.
23A-CR-1865

Appeal from the Madison Circuit Court

The Honorable Mark Dudley, Judge

Trial Court Cause No.
48C06-2007-F2-1583

Memorandum Decision by Judge Vaidik
Judges Weissmann and Foley concur.

Appendix A
-1-

Case Summary

- [1] David Michael Jones was convicted of Level 2 felony dealing in methamphetamine, Level 6 felony resisting law enforcement, and Class A misdemeanor dealing in a controlled substance and sentenced to thirty years. He now appeals, arguing the trial court erred in admitting the drugs into evidence. Finding no error, we affirm.

Facts and Procedural History

- [2] On July 3, 2020, Anderson Police Department officers were dispatched to a store on the report of someone breaking into vehicles. Officers arrived at the store and arrested Kourtney Landaker. Landaker asked if she could speak to someone with the Madison County Drug Task Force because she had information that Jones was supplying drugs to a woman named Amanda. Landaker was booked into jail.
- [3] About a week later, on July 9, officers met with Landaker at the jail. Landaker said she had been to Jones's trailer near Mounds Road in early July to smoke methamphetamine. She explained that Jones was holding Amanda against her will at the trailer, would not allow Amanda to talk to anyone, would not allow Amanda to have a cell phone, and hit Amanda. Although she didn't know Amanda's last name, she stated that Amanda was from Elwood and had arrest warrants for failing to return to work release. Officers contacted the director of work release and confirmed that a woman named Amanda Burke from Elwood

had active warrants for failing to return to work release. Landaker identified Jones and Burke in photographs.

[4] That same day, officers decided to do a welfare check on Burke. Due to the hostage allegation, around ten officers gathered down the road from Jones's trailer and devised a plan to knock on Jones's door to speak to him about Burke. The officers divided into several cars to drive there. The first car, which contained four officers wearing tactical vests, was an unmarked police car with lights and sirens; Lieutenant Shawn Richwine drove that car. Sergeant Josh Bowling and his trainee were in the second car, which was a marked police car. Both Sergeant Bowling and his trainee were wearing standard police uniforms.

[5] As the officers were waiting to turn onto Mounds Road to drive to Jones's trailer, Jones drove by on a motorcycle. The officers followed. When Lieutenant Richwine observed Jones turn onto Ulm Road without signaling, he activated his lights and sirens to initiate a traffic stop. Sergeant Bowling and his trainee, who were immediately behind Lieutenant Richwine, activated their lights to provide "back up for [the] traffic stop." Tr. Vol. VI p. 143. Jones looked back at the "convoy" of police cars and accelerated. *Id.* at 3. Jones, who was driving "erratic[ally]," turned into the trailer park and drove his motorcycle up onto a handicapped ramp attached to his trailer, coming to a "skidding" stop. *Id.* at 5, 6. Jones "[q]uickly" got off his motorcycle. *Id.* at 95. The officers drew their weapons, told Jones he was under arrest for resisting law enforcement, and ordered him to walk toward them. Jones, however, started walking toward his front door. The officers told him not to enter the trailer or

he would be tased. When Jones put his hand on the door handle and started to turn it, Sergeant Bowling tased him. Jones was then handcuffed and searched incident to arrest. During the search, methamphetamine, Alprazolam (a controlled substance), and \$2,546 in cash were found in his pocket.

[6] Meanwhile, Detective Chris Frazier (who had been in Lieutenant Richwine's car) saw that Jones's front door was open. Through the screen door, Detective Frazier saw a man sitting on a couch a few feet inside the trailer. Concerned about Burke, Detective Frazier asked the man if there was a woman inside, and he replied, "None that I'm aware of." *Id.* at 14. Detective Frazier thought the response was "odd" since the trailer was so small, so he opened the screen door and straddled the door threshold with one foot inside the trailer and one foot on the porch. *Id.* He then yelled out for Burke. Burke walked out from a back bedroom. She was "terrified," "sweating profusely from head to toe," and "trembling." *Id.* at 15. She spoke, but Detective Frazier had trouble understanding her because she was "mumbling" and "completely out of sorts." *Id.* Detective Frazier tried to get her to sit on the couch, but she "was having trouble even processing [his] request to sit down." *Id.* Detective Frazier eventually asked Burke if she was being held against her will, and she said yes but that she couldn't talk about it. When Detective Frazier asked her to exit the trailer, she responded, "If I go out there, he will kill me." *Id.* at 16.

[7] During his "short time" in the trailer, Detective Frazier observed a digital scale and a metal grinder on a coffee table in the living room. *Id.* at 17; *see also id.* at 191 (Sergeant William Ray testifying that he observed "a little digital scale with

some white residue on it and I believe it was an ashtray that looked like some marijuana residue or what we call shake. There was also a grinder type thing that it pretty consistent with grinding up marijuana.”). The officers conducted a “cursory search” of the trailer to see if anyone else was inside. *Id.* at 138. Finding no one, they exited the trailer and applied for a search warrant.

- [8] The search-warrant affidavit detailed the hostage information received from Landaker as well as Landaker’s criminal history. The affidavit described Jones’s flight from the officers and his subsequent attempt to retreat into his trailer. The affidavit detailed the suspected drugs and large amount of cash found on Jones’s person during the search incident to his arrest as well as the paraphernalia the officers saw in plain view on the coffee table in the living room. A judge found that probable cause existed for the search warrant.
- [9] Once the judge issued the search warrant, officers searched Jones’s home and found, among other things, 35.02 grams of methamphetamine and several Alprazolam pills.
- [10] The State charged Jones with Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, Level 6 felony resisting law enforcement, and Class A misdemeanor dealing in a controlled substance. Jones represented himself. Before trial, he moved to suppress the drugs found during the search incident to arrest and the execution of the search warrant. Specifically, he argued that the officers initiated an illegal stop and unlawfully arrested him in violation of Indiana Code section 9-30-2-2 and violated the

Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution by entering his home without a warrant. Following a hearing, the trial court denied Jones's motion to suppress.

[11] A jury trial was held in June 2023. Jones, still representing himself, lodged a continuing objection to the admission of the drugs. The jury found Jones guilty as charged. The trial court vacated the possession conviction on double-jeopardy grounds and sentenced Jones to thirty years for Level 2 felony dealing in methamphetamine and concurrent terms of thirty months for Level 6 felony resisting law enforcement and twelve months for Class A misdemeanor possession of a controlled substance.

[12] Jones now appeals.

Discussion and Decision

[13] Jones contends the trial court erred in admitting the drugs into evidence. Admission of evidence is generally left to the discretion of the trial court. *Jacobs v. State*, 76 N.E.3d 846, 849 (Ind. 2017). When, however, admissibility turns on questions of constitutionality relating to the search and seizure of evidence, our review is de novo. *Id.*

I. The officers complied with Indiana Code section 9-30-2-2

[14] Jones first argues that the trial court erred in admitting the drugs found on his person during the search incident to arrest. Specifically, he asserts that the traffic stop and his subsequent arrest for resisting law enforcement were

unlawful because Lieutenant Richwine was not wearing a distinctive uniform or operating a clearly marked police car as required by Indiana Code section 9-30-2-2(a), which provides:

(a) Except as provided in subsection (b), a law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on a highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on a highway unless at the time of the arrest the officer is:

(1) wearing a distinctive uniform and a badge of authority;
or

(2) operating a motor vehicle that is clearly marked as a police vehicle;

that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle.

(Emphasis added). "The purpose of this statute is to protect drivers from police impersonators and to protect officers from resistance should they not be recognized as officers." *Cassidy v. State*, 222 N.E.3d 1007, 1011 (Ind. Ct. App. 2023) (quotations omitted). "The statute seeks to help distinguish law enforcement officers from those on our highways who, for illicit purposes, impersonate law enforcement officers." *Id.* (quotation omitted). As this Court has held, "there is no difference between an actual arrest or an investigatory stop" and thus as soon as an officer initiates a traffic stop, Section 9-30-2-2

applies. *Id.* (quotation omitted). Evidence obtained from an unlawful stop or arrest may be excluded upon proper motion by the defendant. *Id.*

- [15] The State doesn't dispute that Lieutenant Richwine wasn't wearing a distinctive uniform or operating a clearly marked police car. *See id.* at 1013 (holding that a black vest with the word "POLICE" written across it, worn over civilian clothes, does not satisfy the distinctive-uniform requirement of Section 9-30-2-2). Instead, it argues that the traffic stop and subsequent arrest were valid under subsection (b), which Jones didn't acknowledge in his opening brief:

(b) Subsection (a) does not apply to an officer in an unmarked police vehicle making an arrest or issuing a traffic information and summons:

(1) when there is a uniformed officer present at the time of the arrest

I.C. § 9-30-2-2(b) (emphasis added).

- [16] We agree with the State that subsection (b) applies here. Lieutenant Richwine drove behind Jones in his unmarked car and activated his lights and sirens when Jones turned without signaling. Sergeant Bowling and his trainee were immediately behind Lieutenant Richwine in a clearly marked police car. They activated their lights as soon as Lieutenant Richwine activated his lights and sirens. During the pursuit, Jones looked back at the "convoy" of police cars and accelerated. Although Lieutenant Richwine exited his unmarked car first at Jones's trailer, Sergeant Bowling arrived soon thereafter in his clearly marked

police car and wearing a distinctive uniform, ordered Jones to stop, and then tased him when he didn't. Because Sergeant Bowling was present when Lieutenant Richwine initiated the stop and when Jones was arrested, the requirements of Section 9-30-2-2 were satisfied. Accordingly, the traffic stop and Jones's arrest for resisting law enforcement were lawful, and the trial court did not err in admitting the drugs found during the search incident to arrest.¹

II. The officers did not violate the Fourth Amendment to the United States Constitution or Article 1, Section 11 of the Indiana Constitution

- [17] Jones argues that the officers violated the Fourth Amendment to the United States Constitution when they entered his home without a warrant and observed paraphernalia. He claims that the officers' unlawful entry "undisputably tainted" the subsequent search warrant, which was based in part on the observation of the paraphernalia. Appellant's Br. p. 32. Accordingly, Jones's argument continues, the trial court erred by admitting the drugs found during the execution of the search warrant.
- [18] The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

¹ In his reply brief, Jones cites (for the first time) *Gaddie v. State*, 10 N.E.3d 1249 (Ind. 2014). There, our Supreme Court held that a person cannot be convicted of resisting law enforcement unless the officer's order to stop rests on specific, articulable facts that would lead the officer to reasonably suspect that criminal activity is afoot. *Id.* at 1255. Jones says *Gaddie* applies here because he was "resisting an illegal stop." Appellant's Reply Br. p. 9. But as just explained above, the stop was not illegal. *Gaddie* therefore does not apply.

seizures, shall not be violated.” The ultimate touchstone of the Fourth Amendment is “reasonableness.” *Lange v. California*, 594 U.S. 295, 301 (2021). “That standard generally requires the obtaining of a judicial warrant before a law enforcement officer can enter a home without permission.” *Id.* (quotation omitted). The warrant requirement, however, is subject to certain exceptions. *Id.* One “important” exception is for exigent circumstances, which applies when “the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable.” *Id.* (quotation omitted). This exception enables law-enforcement officers to handle “emergenc[ies]—situations presenting a compelling need for official action and no time to secure a warrant.” *Id.* (quotations omitted). The United States Supreme Court has identified several exigencies. For example, an officer may enter a home without a warrant to (1) render emergency assistance to an injured occupant, (2) protect an occupant from imminent injury, (3) ensure the officer’s own safety, (4) make a warrantless entry to prevent the imminent destruction of evidence, and (5) prevent a suspect’s escape. *Id.*

- [19] The exigent-circumstances exception is applied on a “case-by-case basis.” *Id.* (quotation omitted). This approach reflects the nature of emergencies. *Id.* “Whether a ‘now or never situation’ actually exists—whether an officer has no time to secure a warrant—depends upon facts on the ground.” *Id.* (quotations omitted). The issue is therefore “most naturally considered by look[ing] to the totality of circumstances confronting the officer as he decides to make a warrantless entry.” *Id.* (quotation omitted).

[20] The State says that exigent circumstances existed because “officers believed Jones was holding Burke hostage based on a corroborated tip.” Appellee’s Br. p. 17. We agree. Landaker told officers that Jones was holding Burke against her will at his trailer. Landaker explained that Burke was from Elwood and had arrest warrants for failing to return to work release. Officers corroborated this information with the director of work release, and Landaker identified Jones and Burke in photographs. Additionally, Landaker said Jones had methamphetamine in his home, and officers found methamphetamine on Jones’s person during the search incident to arrest that occurred right outside his home. After Jones was arrested, officers saw a man inside the trailer. When officers asked the man through the screen door if a woman was inside, the man gave a response that they thought was odd. Based on the totality of these circumstances, the officers’ decision to enter the trailer without a warrant to search for and check on Burke was objectively reasonable. There was no Fourth Amendment violation, and the trial court did not err in admitting the drugs found during the execution of the search warrant.

[21] Jones next argues that the officers’ “conduct” was unreasonable in violation of Article 1, Section 11 of the Indiana Constitution and thus the trial court erred in admitting the drugs into evidence.² Appellant’s Br. p. 34. Article 1, Section 11 provides that “[t]he right of the people to be secure in their persons, houses,

²It isn’t clear whether Jones is challenging the admission of the drugs found during the search incident to arrest, the execution of the search warrant, or both under the Indiana Constitution.

papers, and effects, against unreasonable search or seizure, shall not be violated” Although Article 1, Section 11 is worded similarly to the Fourth Amendment, we interpret it independently and “ask whether the State has shown that a particular search or seizure was reasonable based on the totality of the circumstances.” *Ramirez v. State*, 174 N.E.3d 181, 191 (Ind. 2021). In doing so, we employ the framework provided in *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005). *Id.* Although there may be other relevant considerations, we evaluate the reasonableness of a law-enforcement officer’s search or seizure by balancing three 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 citizen’s ordinary activities, and 3) the extent of law enforcement needs.” *Litchfield*, 824 N.E.2d at 361.

- [22] As for the first factor, officers had a high degree of concern, suspicion, or knowledge that a violation had occurred. First, officers received information from Landaker that Jones had methamphetamine in his home and was holding a woman named Amanda—who was from Elwood and had arrest warrants for failing to return to work release—against her will. Officers confirmed that Burke had absconded from work release, had active arrest warrants, and was from Elwood, and Landaker identified Jones and Burke in photographs. Second, officers had a high degree of knowledge that Jones resisted law enforcement when a “convoy” of police cars—which included a fully marked car and a fully uniformed officer—initiated a traffic stop. Jones then accelerated on his motorcycle and drove erratically until he came to a “skidding” stop on

his porch before attempting to retreat into his home. Finally, officers had a high degree of concern for Burke's safety when they entered Jones's home without a warrant as a man inside the trailer gave an evasive answer when asked whether Burke was inside.

- [23] As for the second factor, "when examining the degree of intrusion into [a] citizen's ordinary activities, we consider the intrusion into both the citizen's physical movements and the citizen's privacy." *Hardin v. State*, 148 N.E.3d 932, 944 (Ind. 2020). The degree of intrusion of the traffic stop was low. Although the traffic stop culminated in Jones being tased, Jones's actions in fleeing from the officers caused that to happen. However, the degree of intrusion of the warrantless entry into Jones's home to search for and check on Burke was high. See *Carpenter v. State*, 18 N.E.3d 998, 1002 (Ind. 2014) ("[W]arrantless searches of a home are presumptively unreasonable.").
- [24] As for the final factor, "law-enforcement needs exist not only when officers conduct investigations of wrongdoing but also when they provide emergency assistance or act to prevent some imminent harm." *Id.* Officers were investigating a report that Jones was holding Burke against her will, and when they arrived at Jones's trailer, the circumstances only confirmed their concern for Burke's safety.
- [25] Balancing the three *Litchfield* factors, we find that the officers acted reasonably under the Indiana Constitution. Accordingly, the trial court properly admitted the drugs into evidence.

[26] Affirmed.

Weissmann, J., and Foley, J., concur.

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In the
Indiana Supreme Court

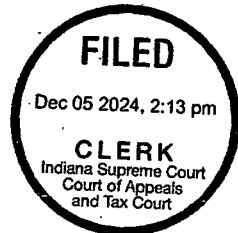
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State Of Indiana,
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Court of Appeals Case No.
23A-CR-01865

Trial Court Case No.
48C06-2007-F2-1583



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 12/5/2024

A handwritten signature in black ink, appearing to read "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Appendix B

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