In the
Indiana Supreme Court

John C. Miller,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
22A-CR-01055

Trial Court Case No.
92C01-2006-F4-458

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 3/13/2025.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

EXHIBIT H

In the
Indiana Supreme Court

John C. Miller,
Appellant,

v.

State of Indiana,
Appellee.

Court of Appeals Case No.
22A-CR-1055

Trial Court Case No.
92C01-2006-F4-458

Order

On December 27, 2022, the Court of Appeals issued its opinion in this case, which the Clerk certified on February 22, 2023. *See* Ind. App. R. 65(E). Appellant, pro se, now files his "Verified Motion for Leave to File a Belated Petition to Transfer." He states the following in support: (1) he wishes to seek federal relief, and federal law requires him to exhaust all state court remedies before doing so; (2) he never received communication from his appellate counsel after the Court of Appeals issued its opinion; and (3) appellate counsel did not seek transfer to this Court, thereby failing to exhaust all state remedies. Further, the docket reflects that neither the Court of Appeals' opinion nor the Clerk's certification were able to be delivered to counsel.

Although Indiana Appellate Rule 57(C) provides that "no extension of time shall be granted" to file a petition to transfer, the Court retains authority to deviate from the Rules and chooses to do so in this instance.

Being duly advised, the Court, sua sponte, directs the Clerk to remove Stanley F. Wruble as Appellant's counsel of record, effective as of the date of this order. The Clerk is further directed to remove attorney Stanley F. Wruble from the e-notice list and show his appearance as VACATED. The party or attorney who added Stanley F. Wruble to the e-service list is ORDERED to remove him from that list.

The Court further GRANTS Appellant's "Verified Motion for Leave to File a Belated Petition to Transfer." Appellant shall file his Petition to Transfer no later than 45 days from the date of this order. No further extensions shall be granted absent extraordinary circumstances.

Done at Indianapolis, Indiana, on 9/19/2024.

Loretta H. Rush
Chief Justice of Indiana

EXHIBIT
D

ATTORNEY FOR APPELLANT

Stanley F. Wruble III
WRUBLE LAW LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Indianapolis, Indiana

Ian McLean
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

John C. Miller,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 27, 2022

Court of Appeals Case No. 22A-CR-1055

Appeal from the Whitley Circuit Court

The Honorable Matthew J. Rentschler, Judge

Trial Court Cause No. 92C01-2006-F4-458

May, Judge.

[1] John C. Miller appeals his convictions of Level 4 felony possession of methamphetamine[1] and Class C misdemeanor possession of paraphernalia.[2] Miller raises one issue for our review: Whether reasonable suspicion of criminal activity existed to justify a stop and pat down search of the defendant without violating his rights under the Fourth Amendment of the United States Constitution. We affirm.

Facts and Procedural History[3]

[2] Around midnight on May 31, 2020, Deputy Brendan Barber and Deputy Gary Archbold of the Whitley County Sheriff's Department were dispatched to a house in rural Whitley County after an anonymous 911 caller complained about noise at the residence. The caller reported a loud argument between a female and at least one male and excessive vehicle noise. Deputy Barber recognized the address of the house and described it as a "common nuisance" property because officers had been dispatched to the residence several times before and arrested the homeowner for dealing in methamphetamine five months earlier. (Tr. Vol. II at 6.)

---

[1] Ind. Code § 35-48-4-6.1(c).

[2] Ind. Code § 35-48-4-8.3.

[3] We heard oral argument in this case on November 16, 2022, at the Mid-America Science Park in Scottsburg, Indiana. We commend counsel for their advocacy and thank the Mid-America Science Park for its hospitality.

[3] When the two deputies arrived, they found Miller and another individual standing near a barn and a female sitting inside the cab of a pickup truck. As Deputy Barber started to walk toward the two individuals near the barn, Miller began to walk away in the direction of the pickup truck. Deputy Barber then walked toward Miller and asked him to return toward the deputy. Deputy Barber noticed Miller putting his hands in his pockets and taking them out, and Miller "positioned himself behind a bulldozer when [Deputy Barber] approached him." (*Id.* at 101.) As Deputy Barber continued to approach Miller, Miller walked back toward Deputy Barber, and once they met, Deputy Barber began to perform a pat down search of Miller.

[4] Deputy Barber instructed Miller to put his hands on the back of his head and interlock his fingers, and Deputy Barber told Miller he was performing the pat down search to make sure Miller did not have any weapons. As Deputy Barber began to perform the pat down search on the left side of Miller's body, Miller stepped forward, "almost as if you're blading your body, trying to get away from that person." (*Id.* at 102.) Miller tripped over Deputy Barber's leg and fell to the ground. Deputy Barber then secured Miller's hands behind his back in handcuffs.

[5] Deputy Barber escorted Miller to his police cruiser and completed the pat down search. During the pat down search, Deputy Barber discovered a methamphetamine pipe in Miller's right rear pocket. At that point, Deputy Barber believed he had probable cause to arrest Miller for possession of paraphernalia, and he proceeded to search inside Miller's pockets. Deputy

Barber then found a clear plastic bag containing what was later determined to be 24.17 grams of methamphetamine in the left front pocket of Miller's pants.

[6] The State charged Miller with Level 4 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia.[4] On December 2, 2020, Miller filed a motion to suppress the methamphetamine and glass pipe found during the *Terry*[5] stop. Miller asserted Deputy Barber lacked reasonable suspicion Miller was committing a crime when he stopped him and the stop was unreasonable given the totality of the circumstances. The trial court held an evidentiary hearing on July 27, 2021, regarding the motion to suppress. Deputy Barber testified at the hearing, and the State offered body camera footage from both Deputy Barber and Deputy Archbold. On July 28, 2021, the trial court issued an order denying Miller's motion to suppress. The trial court found:

> 11. Here, the State points to the scenario faced by the Sheriff's Deputies who were:
>
> a. Responding to a locale know[n] for drug activity
>
> b. Which locale was remote and rural

---

[4] The State subsequently amended the charging information to include an allegation of Level 6 felony failure to appear, Ind. Code § 35-44.1-2-9, after Miller failed to appear for a pretrial conference, but the State dismissed this count prior to trial.

[5] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

c. At midnight

d. Facing unknown persons who had been called in for creating a disturbance

e. Without knowing whether these persons had a right to be where they were

f. In a dark setting lit only by their car lights and flashlights

g. Dealing specifically with an unknown person who was initially unwilling to follow the deputy's directions

h. Which person was wearing a large coat that could potentially conceal a weapon.

12. Under our Federal jurisprudence, the question to be answered is whether Deputy Barber was acting as a reasonably prudent officer in assessing that the Defendant was so potentially dangerous that a pat-down for weapons was permitted. This Court finds that Deputy Barber appropriately assessed that in this locale and under these circumstances, the Defendant's initial failure to follow directions justified a quick pat-down to ensure that the Deputies need not have been concerned about a weapon.

(App. Vol. II at 33-34.)

[7] The trial court then held a jury trial on August 3, 2021. During Deputy Barber's testimony at trial, Miller objected to the admission of evidence obtained during Deputy Barber's pat down search of him on the basis that the search was unconstitutional. The trial court noted Miller's continuing objection

but overruled the objection. At the conclusion of the trial, the jury returned a verdict of guilty on both counts.

[8] On April 25, 2022, the trial court sentenced Miller to a term of six years for the Level 4 felony possession of methamphetamine conviction. The court ordered Miller to serve one-and-a-half years in the Indiana Department of Correction and suspended the remaining four-and-one-half years of his sentence to probation. The trial court also sentenced Miller to a term of sixty days incarceration for the Class C misdemeanor possession of paraphernalia conviction and ordered Miller to serve that sentence concurrent with his sentence for possession of methamphetamine.

Discussion and Decision

[9] Although Miller originally challenged admission of the methamphetamine and glass pipe by means of a pretrial motion to suppress, he appeals following a completed trial and contests admission of that evidence at trial. Therefore, our standard of review is whether the trial court abused its discretion in admitting the evidence at trial. *Hill v. State*, 169 N.E.3d 1150, 1154 (Ind. Ct. App. 2021), *trans. denied.* "A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misapplies the law." *Mack v. State*, 23 N.E.3d 742, 750 (Ind. Ct. App. 2014), *trans. denied.* However, when a party argues the admission of evidence constituted a constitutional violation, we apply a de novo standard of review. *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018).

[10] "The Fourth Amendment provides protection against unreasonable searches and seizures by generally prohibiting such acts without a warrant supported by probable cause." *Robinson v. State*, 5 N.E.3d 362, 367 (Ind. 2014). However, one exception to the warrant requirement is the *Terry* stop, which "permits an officer to 'stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *Id.* (quoting *U.S. v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968))). "The requirement of reasonable suspicion is satisfied when the facts known to the officer, together with the reasonable inferences arising therefrom, would permit an ordinary prudent person to believe that criminal activity has or was about to occur." *Williams v. State*, 745 N.E.2d 241, 244 (Ind. Ct. App. 2001). Nonetheless, reasonable suspicion requires more than an officer's "hunch" or "unparticularized suspicions." *Id.*

[11] The existence of reasonable suspicion cannot be reduced to a neat set of legal rules. *Platt v. State*, 589 N.E.2d 222, 226 (Ind. 1992). Suspicious behavior is by its very nature ambiguous. *Id.* Therefore, we look to the totality of the circumstances surrounding a *Terry* stop to determine whether it was supported by reasonable suspicion. *Paul v. State*, 189 N.E.3d 1146, 1154-55 (Ind. Ct. App. 2022), *trans. denied.* "Reasonable suspicion 'depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Id.* at 1155 (quoting *Navarette v. California*, 572 U.S.

393, 402, 134 S. Ct. 1683, 1690 (2014)). We expect officers to assess whether reasonable suspicion exists by relying upon their training and experience as well as commonsense judgments and inferences about human behavior. *Id.*

[12] Miller argues Deputy Barker lacked reasonable suspicion of criminal activity to stop him and perform a pat down search. He contends "there is no indication of who the caller was and if [the caller] was reliable. Moreover, the anonymous tip was for a disturbance, and officers admittedly found no disturbance on their arrival." (Appellant's Br. at 10.) An anonymous 911 call without independent indicia of reliability or officer observation of predicted behavior does not give rise to reasonable suspicion. *See, e.g., Washington v. State*, 740 N.E.2d 1241, 1246 (Ind. Ct. App. 2000) (holding anonymous telephone tip lacked sufficient indicia of reliability to support traffic stop), *trans. denied.* Likewise, mere presence in a high crime area also does not give rise to reasonable suspicion. *See Brown v. Texas*, 443 U.S. 47, 52, 99 S. Ct. 2637, 2641 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct. In short, the appellant's activity was no different from the activity of other pedestrians in that neighborhood."); *see also Swanson v. State*, 730 N.E.2d 205, 207 (Ind. Ct. App. 2000) (holding pat down search was unlawful "[b]ecause the record reveals that the only facts upon which the officers relied to conduct a pat down were Swanson's presence in an area known for drugs and Swanson having his hands in his pockets"), *trans. denied.*

[13] However, the United States Supreme Court has explained: "[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000). One purpose of a *Terry* stop is to allow an officer to make an "inquiry necessary to confirm or dispel the officer's suspicions." *Hardister v. State*, 849 N.E.2d 563, 570 (Ind. 2006). Deputy Barber and Deputy Archbold responded to a call regarding a disturbance at a residence in rural Whitley County near midnight on Memorial Day, and they encountered three individuals there, including Miller. The officers believed the residence belonged to Michael Wilcoxson, but Wilcoxson was not one of the three individuals they encountered. Further, Deputy Barber recognized the property as a "common nuisance." (Tr. Vol. II at 6.)

[14] We agree with the State that consideration of all these facts supports "a reasonable concern that the officers may have been encountering illegal activity such as trespassing, offenses involving entry into structures or dwellings, criminal mischief, or yet another instance of drug-dealing at the property." (Appellee's Br. at 9.) Moreover, as Deputy Barber approached Miller, Miller "turned away from [Deputy Barber] and started walking back towards the pickup truck that was parked on the east side." (Tr. Vol. II at 7.) As Miller walked away, he put his hands in and out of his pockets, and he "positioned himself behind a bulldozer when [Deputy Barber] approached him." (*Id.* at 101.)

[15] As part of a valid *Terry* stop, an officer is also entitled to take reasonable steps to ensure his own safety. *Smith v. State*, 121 N.E.3d 669, 675 (Ind. Ct. App. 2019), *trans. denied*. This includes conducting "a limited search of the individual's outer clothing for weapons if the officer reasonably believes that the individual is armed and dangerous." *Patterson v. State*, 958 N.E.2d 478, 482-83 (Ind. Ct. App. 2011). Given Miller walked away from Deputy Barber, was wearing a large coat that could have concealed a weapon, put his hands in and out of his pockets, and positioned himself behind a bulldozer, Deputy Barber was justified in conducting a pat down search to see if Miller was armed. *See Berry v. State*, 121 N.E.3d 633, 637-38 (Ind. Ct. App. 2019) (noting many factors informed detective's "objectively reasonable basis to believe that [defendant] may have been armed and potentially posed a threat to officer or public safety" including that defendant backed away from uniformed officer, put hands in his pockets, and was congregating after dark in a high-crime area), *trans. denied*. Miller's lack of cooperation during the pat down search only increased the degree of suspicion that he was armed. Therefore, Deputy Barber's pat down search of Miller did not violate Miller's Fourth Amendment rights.[6] *See id.* at 638

---

[6] While Miller asserts in his summary of argument that the search "violated the Fourth Amendment and the Indiana Constitution's prohibition against unreasonable search and seizure," (Appellant's Br. at 5), Miller does not separately analyze the search under the Indiana Constitution. In *Myers v. State*, our Indiana Supreme Court explained:

> Where a party, though citing Indiana constitutional authority, presents no separate argument specifically treating and analyzing a claim under the Indiana Constitution distinct from its federal counterpart, we resolve the party's claim "on the basis of federal constitutional doctrine and express no opinion as to what, if any, differences there may be" under the Indiana Constitution.

(holding police officer had objectively reasonable suspicion that defendant was armed and, therefore, pat down search did not violate the defendant's Fourth Amendment rights).

Conclusion

[16] The trial court did not abuse its discretion when it admitted evidence recovered during a pat down search of Miller. The pat down search was supported by reasonable suspicion and thus did not violate Miller's Fourth Amendment rights. Therefore, we affirm the trial court.

[17] Affirmed.

Bailey, J., and Weissmann, J., concur.

---

839 N.E.2d 1154, 1158 (Ind. 2005) (quoting *Williams v. State*, 690 N.E.2d 162, 167 (Ind. 1997)). Thus, we decline to separately address whether the search violated the Indiana Constitution. *See Armfield v. State*, 918 N.E.2d 316, 318 n.4 (Ind. 2009) (addressing defendant's arguments in light of federal, not state, constitutional law because he presented no argument in his brief that the search violated his state constitutional rights).

During oral argument, Miller discussed the three-factor test from *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005), for determining whether a search or seizure violates the Indiana Constitution. However, a party cannot raise an issue for the first time during oral argument. *See Harris v. State*, 76 N.E.3d 137, 140 (Ind. 2017) ("issues are waived when raised for the first time at oral argument").

Additional material from this filing is available in the Clerk's Office.