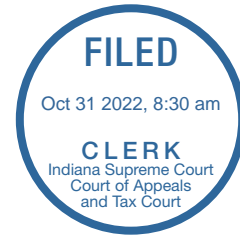


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Larry Farley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 31, 2022

Court of Appeals Case No.
22A-CR-483

Appeal from the Owen Circuit
Court

The Honorable Lori Quillen, Judge

Trial Court Cause No.
60C01-1707-F4-524

Riley, Judge

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Larry Farley (Farley), appeals the trial court's revocation of his probation and the imposition of his previously suspended sentence.
- [2] We affirm.

ISSUES

- [3] Farley presents this court with two issues on appeal, which we restate as:
- 1) Whether the trial court abused its discretion by admitting certain evidence; and
 - 2) Whether the trial court abused its discretion by ordering Farley to serve his entire previously suspended sentence after he violated the terms of his probation.

FACTS AND PROCEDURAL HISTORY

- [4] On April 11, 2018, Farley pleaded guilty to unlawful possession of a firearm by a serious violent felon, a Level 4 felony, and the trial court subsequently sentenced Farley to ten years in the Department of Correction (DOC), suspended to probation. According to the terms of his probation, he was prohibited from committing any offenses while he was on probation.
- [5] On September 29, 2021, the Owen County Sheriff's Department received a call that Bobby Forey (Forey) had shot Zebadiah Featherstone (Featherstone) while driving a Chevy Trailblazer. Officer Austin Combs (Officer Combs) and

Officer Michael Browning (Officer Browning) located Featherstone with a gunshot wound on the roadside. While these officers attended to Featherstone, other officers were dispatched to Forest Lane, an area which Forey was seen driving toward and where he was known to reside. When the responding officers arrived, they spotted Forey standing between the Chevy Trailblazer and a fifth-wheel camper, which was later revealed to belong to Farley. Forey was seen walking toward the camper. In the process of positioning themselves to approach Forey, the officers lost sight of him. Residents from other campers began to exit their homes due to the commotion. After radioing for assistance, the officers ordered all residents to exit their campers and stand in one place. Detective Brandon Gasparavic (Detective Gasparavic) conducted an initial sweep by briefly looking inside Farley's camper to locate Forey, and when he discovered that Forey was not there, he continued searching the other campers. In order to protect the officers and because only two officers were available to remain with the residents while the others searched for Forey, several individuals who were known to carry weapons, including Farley, were handcuffed. At some point, the handcuffed individuals began complaining of thirst. Deputy Mitchell Fleetwood (Deputy Fleetwood) searched the patrol vehicles for water but was unsuccessful. Farley then suggested that Deputy Fleetwood should retrieve water from his camper. As Deputy Fleetwood entered Farley's camper, he noticed the wood flooring was not original to the camper, it seemed like Farley was in the middle of a flooring project because the floor was incomplete and there were several boxes of wood flooring. To access the refrigerator, Deputy Fleetwood had to move one of the boxes of

wood flooring. Deputy Fleetwood could not find water in the refrigerator or a nearby cooler, so he exited the camper. When the officers realized they could not find Forey in the area, they released the individuals who had been handcuffed. Pursuant to a warrant, the Chevy Trailblazer that Forey was seen driving during the shooting and which belonged to Forey's girlfriend was later searched. The gun which Forey used during the shooting, several boxes of wood flooring, lights, floor jack, and other construction equipment were discovered inside the vehicle.

[6] In September 2021, Mark Outcalt (Outcalt) and his wife began remodeling a cottage in Poland, Indiana. On October 4, 2021, Outcalt and his wife noticed that several items were missing. Outcalt and his wife made an inventory of all the missing construction items before contacting the police. The missing items included boxes of "Vericore Plank [] Natural Pecan" flooring (Vericore flooring). (Transcript p. 10). Shortly after making that report, and as Officer Browning and Outcalt's wife were having a conversation while he was off duty, Outcalt's wife mentioned that several boxes of Vericore flooring had been stolen from her construction site. Officer Browning remembered that he had seen boxes of stolen wooden flooring from the search of the Chevy Trailblazer that Forey was driving on the day Featherstone was shot. As part of his initial sweep of Farley's camper, Detective Gasparavic also remembered seeing boxes of wood flooring. According to Officer Combs, the officers who were involved in the shooting and theft investigations collectively "had a reasonable feeling" that the boxes of wood flooring found in the Chevy Trailblazer were connected

to the items that Outcalt and his wife had reported missing in “some form or fashion.” (Tr. p. 71).

- [7] On October 14, 2021, the Owen County Sheriff’s Department executed an arrest warrant for Farley in relation to the theft. After being advised of his *Miranda* rights, Farley admitted to Officer Combs that he had permitted another individual to store the stolen wood flooring items in his camper. Farley’s camper was also impounded, and after a search warrant was obtained, four boxes of the Vericore flooring matching Outcalt’s description were found in the camper.
- [8] On October 15, 2021, the State filed a petition to revoke Farley’s probation, alleging that he committed a theft offense. On February 2, 2022, the trial court held a hearing on the probation violation. Farley did not object to the admission of the testimony or photographic evidence regarding the stolen Vericore flooring from Outcalt’s construction site being found in his camper. Instead, after the State rested, Farley argued that the search warrant violated his Fourth Amendment rights because there were no exigent circumstances for the officers to enter his camper. In rejecting Farley’s argument, the trial court found that exigent circumstances allowed the officers to enter Farley’s camper. At the close of the hearing, the trial court revoked Farley’s probation and ordered him to serve seven years remaining of his suspended ten-year sentence in the DOC.
- [9] Farley now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

A. *Admission of Evidence*

[10] We review decisions regarding the admission of evidence in probation revocation hearings for an abuse of discretion. *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010). A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* To determine whether a trial court has abused its discretion, we do not reweigh the evidence and we take into account conflicting evidence in favor of the trial court's decision. *Mogg v. State*, 918 N.E.2d 750, 756 (Ind. Ct. App. 2009).

[11] Farley contends that the trial court abused its discretion by admitting the officers' testimonies of their observation of the boxes of wood flooring located in his camper. He claims that his rights under the Fourth Amendment of the United States Constitution¹ were violated because the State failed to prove that the officers were operating under exigent circumstances when they entered his camper. The Fourth Amendment reads:

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

¹ While Farley argues that his rights under Article 1, section 11 of the Indiana Constitution were violated when he was detained by the officers, he did not raise a similar argument at his probation hearing, therefore his argument is waived. *See Sharp v. State*, 807 N.E.2d 765, 768 (Ind.Ct.App.2004).

particularly describing the place to be searched, and the persons or things to be seized.

[12] The Fourth Amendment to the United States Constitution requires law enforcement officials to obtain a valid warrant before conducting searches or seizures. *State v. Straub*, 749 N.E.2d 593, 597 (Ind. Ct. App. 2001). However, there are exceptions to the warrant requirement. *Id.* The State bears the burden of proving that an exception to the warrant requirement exists when a warrantless search is conducted. *Smock v. State*, 766 N.E.2d 401, 404 (Ind. Ct. App. 2002). A well-recognized exception to the warrant requirement is when exigent circumstances exist. *Vitek v. State*, 750 N.E.2d 346, 348-49 (Ind. 2001). Exigent circumstances have been found to exist where a suspect is fleeing or likely to take flight in order to avoid arrest. *Straub*, 749 N.E.2d at 597. The onus is on the State to demonstrate exigent circumstances to overcome the presumption of unreasonableness that accompanies all warrantless home entries. *Id.* at 598.

[13] The State argues that Farley waived his argument because he did not raise a contemporaneous objection at the time the evidence was introduced, consequently waiving his argument on appeal. “It is axiomatic that to preserve a claim of evidentiary error for purposes of appeal, a defendant must make a contemporaneous objection at the time the evidence is introduced.” *Shoda v. State*, 132 N.E.3d 454, 460 (Ind. Ct. App. 2019). A party’s failure to make a contemporaneous objection to the admission of evidence results in waiver of the issue. *Weedman v. State*, 21 N.E.3d 873, 881 (Ind. Ct. App. 2014), *trans. denied*.

Farley did not articulate any objection when the State presented the photographic evidence of the stolen Vericore flooring pursuant to the search, and he did not object to Detective Gasparavic's and Deputy Fleetwood's observations of the boxes of wood flooring in his camper. Therefore, Farley waived his challenge on the admission of that evidence on appeal.² *See Lewis v. State*, 755 N.E.2d 1116, 1123 (Ind. Ct. App. 2001) (holding that Lewis' failure to challenge the constitutionality of search until after evidence had been admitted and after he had completed his initial cross-examination of the officer resulted in a waiver of appellate review).

B. *Probation Revocation*

[14] Probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Id.* "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Id.* The State need only prove the alleged violations by a preponderance of the evidence, and we will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or

² "A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). Farley does not claim that the admission of the officers' testimonies constitutes fundamental error. Having failed to assert that fundamental error occurred, we decline to review Farley's evidentiary challenge.

judging the credibility of the witnesses. *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009).

[15] During the police investigation, Farley admitted that he had stored stolen wood flooring in his camper. Based on a search warrant, Vericore flooring from the Outcalts was found in Farley's camper. Here, the State met its burden of proving by a preponderance of the evidence that Farley had violated the terms of his probation by committing theft, a new offense; therefore, we hold that the trial court did not abuse its discretion by revoking Farley's previously suspended sentence.

CONCLUSION

[16] Based on the foregoing, we conclude that the trial court did not abuse its discretion by admitting the evidence obtained from the search of his camper, and that by a preponderance of the evidence, the State established that Farley had violated the terms of his probation by committing a new offense. Accordingly, we affirm the trial court's order that Farley serve the balance of his previously suspended sentence.

[17] Affirmed.

[18] Bailey, J. and Vaidik, J. concur