MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Martin Andrade-Gutierrez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 4, 2023

Court of Appeals Case No. 22A-CR-2902

Appeal from the Tippecanoe Circuit Court

The Honorable Sean M. Persin, Judge

Trial Court Cause No. 79C01-2111-F2-43

Memorandum Decision by Judge Kenworthy
Judges Crone and Felix concur.

Kenworthy, Judge.

Case Summary

[1] Martin Andrade-Gutierrez[1] was stopped for a traffic violation and ultimately gave consent to a search of his residence. Methamphetamine and paraphernalia were found in his bedroom. Following a bench trial at which he was assisted by a Spanish-speaking interpreter, Andrade-Gutierrez was convicted of Level 2 felony dealing in methamphetamine[2] and Class C misdemeanor possession of paraphernalia.[3] Andrade-Gutierrez appeals his convictions, raising several issues that we consolidate and restate as one: Did the trial court abuse its discretion by admitting statements made by Andrade-Gutierrez and evidence found in his residence following the traffic stop? We affirm.

Facts and Procedural History

[2] In late 2021, Andrade-Gutierrez—who was born in Mexico but had been in the United States since at least the early 2000s—was under investigation by the Tippecanoe County Drug Task Force for drug activity. The Task Force includes members of both the Tippecanoe County Sheriff's Department and the

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[1] The records of both the trial and appellate proceedings spell the defendant's surname as "Andrade-Gutierrez." On a document the defendant handwrote and filed with the trial court after his conviction, the defendant spelled his surname "Andrade-Guitierrez," *see Appellant's App. Vol. 2* at 76, and on several occasions, he signed his name as "Martin Andrade," *see, e.g., id.* We have used "Andrade-Gutierrez" throughout to remain consistent with the official trial and appellate court records.

[2] Ind. Code § 35-48-4-1.1(a)(2) (2017).

[3] I.C. § 35-48-4-8.3(b)(1) (2015).

Lafayette Police Department. As part of the investigation, Task Force members learned Andrade-Gutierrez did not have a valid driver's license.

[3] On November 2, Detective Ronald Dombkowski was conducting surveillance at Andrade-Gutierrez's apartment. Several other officers were in the area to assist if needed. Shortly before noon, Andrade-Gutierrez exited his apartment, entered the driver's side of a blue SUV, and drove away. Detective Dombkowski relayed details of Andrade-Gutierrez's vehicle and direction of travel to other members of the Task Force. An officer reported observing Andrade-Gutierrez's vehicle traveling nine miles per hour over the speed limit. Detective Alex Sliger heard the report and initiated a traffic stop at 12:18 p.m. Officer Evan McCain arrived "probably under a minute" later. *Tr. Vol. 2* at 36.

[4] Detective Sliger was wearing a body camera that was activated during the stop, but the video was accidentally deleted and unavailable at trial.[4] According to Detective Sliger's testimony, Andrade-Gutierrez immediately identified himself in English and told Detective Sliger he did not have a driver's license. Within three minutes of initiating the stop, Detective Sliger asked Andrade-Gutierrez to step out of the vehicle and read the *Miranda* warnings to him from a pre-printed card. Andrade-Gutierrez stated he understood his rights and Detective Sliger

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[4] Detective Sliger explained the Tippecanoe County Sheriff's Department had recently installed a new system for uploading body camera footage. After his interaction with Andrade-Gutierrez, Detective Sliger docked his body camera with the system for the video to be uploaded to the server. Unbeknownst to Detective Sliger, the system did not automatically assign the footage to Andrade-Gutierrez's case number because the case had been generated through the Lafayette Police Department. Detective Sliger was unaware he needed to manually assign the video to the case, and the video was deleted after six months. *See id.* at 38.

conducted a brief interview. Sometime during this interaction, Detective Sliger placed Andrade-Gutierrez in handcuffs. Andrade-Gutierrez was cooperative—when Detective Sliger said police thought Andrade-Gutierrez was "involved in meth dealing," Andrade-Gutierrez admitted he was and volunteered that although there was nothing in his car, he had three ounces of methamphetamine and a firearm in the bedroom closet at his apartment. *Id.* at 41. Andrade-Gutierrez agreed to go to the police station to continue talking with officers. Detective Sliger said the roadside conversation lasted "probably a few minutes, . . . it was very short." *Id.* at 42. At no time did Andrade-Gutierrez ask for someone who spoke Spanish to come to the scene, display difficulty understanding Detective Sliger, or have trouble making himself understood in English. *See id.*

[5] As Detective Sliger was asking Andrade-Gutierrez to step out of the car, Officer Schutter arrived with his K-9 partner, Rocky. Within a minute of arriving, Officer Schutter walked Rocky around the car, and Rocky alerted "[i]n the area of the driver's door." *Id.* at 25. The driver's window was rolled down at the time. Officer Schutter informed the other officers at the scene of the alert. While Detective Sliger spoke with Andrade-Gutierrez, Officer McCain searched the car. He found nothing incriminating. When asked to explain why Rocky alerted when no drugs were in the vehicle, Officer Schutter said Rocky alerted to an odor—"How many times do you get carry out and you transport it in your car and the next day the food is not in your car but it still smells like that food or . . . you leave a restaurant and your clothes still smells [sic] like a

grill[?]" *Id.* at 32. Officer Schutter said the same is true of drugs—even though no drugs were found in the car, Rocky's alert meant drugs recently had been in the car or a person in the car recently had been around drugs. *See id.*

[6] By the time Officer McCain finished searching the vehicle, Andrade-Gutierrez had admitted to having drugs at his house and agreed to continue talking with police. Detective Sliger transported Andrade-Gutierrez to the Lafayette Police Department. Recording only with his body camera, footage from which was not saved, Detective Sliger read an advice of rights and consent to search form out loud to Andrade-Gutierrez. Detective Sliger asked if Andrade-Gutierrez understood his rights and would be willing to consent to a search of his apartment. Andrade-Gutierrez signed the form and agreed to the search. When Detective Dombkowski arrived, Detective Sliger turned on the video system in the interview room and they interviewed Andrade-Gutierrez for approximately an hour, ending the interview at 2:31 p.m. Detective Dombkowski did not independently inform Andrade-Gutierrez of his rights because he "was advised that was already taken care of." *Id.* at 82. The interview was conducted in English. Detective Sliger said Andrade-Gutierrez did not "demonstrate inability to understand" the detectives, answered questions in English, and never asked for a Spanish interpreter. *Id.* at 46.

[7] During the interview, Detectives Dombkowski and Sliger asked for consent to search Andrade-Gutierrez's cellphone, but Andrade-Gutierrez declined. Police ultimately got a warrant to search the phone; Andrade-Gutierrez's text messages were in Spanish.

[8] Detectives searching Andrade-Gutierrez's apartment found methamphetamine and a handgun in the bedroom closet. They found baggies and a notebook that "appeared to be a ledger with additions and subtractions" written in Spanish in a nightstand. *Id.* at 62. A pipe, a grinder, and several scales were also found in the apartment. The methamphetamine weighed 128.62 grams.

[9] The State charged Andrade-Gutierrez with Level 2 felony dealing in methamphetamine, Level 2 felony conspiracy to commit dealing in methamphetamine, Level 3 felony possession of methamphetamine, Level 6 felony maintaining a common nuisance, and Class C misdemeanor possession of paraphernalia. Andrade-Gutierrez requested and was provided a Spanish-speaking interpreter for the trial court proceedings. He waived a trial by jury and a bench trial was scheduled for July 21, 2022.

[10] Two weeks before Andrade-Gutierrez's bench trial, he moved to suppress his "statement to the police, consent to search, and all evidence obtained after the first ten minutes from his stop[.]" *Appellant's App. Vol. 2* at 48. He alleged police exceeded the scope of the stop by detaining him for an unreasonable length of time; his statements and consent to search were not knowingly made because they were obtained without determining if he could read, write, and understand the English language; and police violated Evidence Rule 617 during the interview at the police station.

[11] The trial court considered evidence on the motion to suppress during the bench trial. Andrade-Gutierrez's attorney interposed objections to the admission of

the challenged evidence at appropriate times. At the end of the bench trial, the trial court took the motion to suppress under advisement and allowed the parties to file briefs outlining their respective positions. The trial court issued an order on September 29 denying Andrade-Gutierrez's motion to suppress. The trial court found the stop was not "unreasonably extended" and did not violate Andrade-Gutierrez's federal or state constitutional rights because once Andrade-Gutierrez told officers he had methamphetamine in his apartment, the nature of the stop changed from a traffic stop to a "detention based on criminal activity." *Appellant's App. Vol. 2* at 72. The trial court also found that Andrade-Gutierrez's statements and consent to search were voluntarily made. And finally, the trial court found the failure to comply with Evidence Rule 617 did not require "the custodial interrogation or fruits of the search of the home" to be suppressed. *Id.* at 73.

[12] Having denied the motion to suppress, the trial court found Andrade-Gutierrez guilty on all counts but entered judgments of conviction only for Level 2 felony dealing in methamphetamine and Class C misdemeanor possession of paraphernalia. The trial court later sentenced Andrade-Gutierrez to seventeen and one-half years at the Indiana Department of Correction. Andrade-Gutierrez now appeals.

No Reversible Error in the Admission of Evidence

[13] Andrade-Gutierrez "raises four related issues pertaining to a traffic stop, the subsequent waiver of Miranda Rights, and a consent to search leading to the discovery of a large amount of methamphetamine." *Appellant's Br.* at 13. He

argues the trial court erred in failing to suppress 1) statements he made during the stop, 2) statements he made at the police station, and 3) the drugs and paraphernalia found in the search of his apartment. Although Andrade-Gutierrez filed a motion to suppress, this appeal occurs after a completed bench trial. The issue is therefore best framed as a challenge to the admission of evidence at trial. *See Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013).

[14] The trial court has broad discretion in ruling on the admission of evidence, and we review for an abuse of that discretion. *Johnson v. State*, 157 N.E.3d 1199, 1203 (Ind. 2020), *cert. denied*. We do not reweigh the evidence and consider conflicting evidence most favorably to the trial court's ruling. *Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009). We reverse only if the ruling is clearly against the logic and effect of the facts and circumstances and the error affects the defendant's substantial rights. *McCoy v. State*, 193 N.E.3d 387, 390 (Ind. 2022). We defer to the trial court's factual determinations, *Meredith*, 906 N.E.2d at 869, but "the ultimate determination of the constitutionality of a search or seizure is a question of law that we consider *de novo*," *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). In other words,

> when it comes to suppression issues, appellate courts are not in the business of reweighing evidence. . . . Remote from the hearing in time and frequently in distance, we review a cold paper record. Thus, unless that record leads us to conclude the trial judge made a clear error in his findings of fact, we will apply the law de novo to the facts as the trial court found them.

State v. Keck, 4 N.E.3d 1180, 1185–86 (Ind. 2014).

Police did not unlawfully prolong the traffic stop

[15] Andrade-Gutierrez first argues the investigating officers unreasonably extended the traffic stop, rendering his eventual consent to search his apartment invalid. In challenging the admission of evidence, Andrade-Gutierrez does not challenge the constitutionality of the initial traffic stop,[5] or allege the dog sniff prolonged the stop. *See Appellant's Br.* at 15. But he asserts the stop was "measurably extended" when he was transported to the police station after a search of his car revealed no contraband. *Id.* at 17.

[16] "If an officer observes a driver commit a traffic violation, he has probable cause—and thus also the lesser included reasonable suspicion—to stop that driver." *Keck*, 4 N.E.3d at 1184. But a traffic stop of a vehicle and temporary detention of its occupants constitutes a seizure under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution and "must pass constitutional muster." *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019), *cert. denied*. The United States Supreme Court

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[5] Andrade-Gutierrez does make three brief observations about the traffic stop itself: 1) Detective Sliger did not personally see him commit a traffic violation, 2) the stop was pretextual, and 3) no ticket was issued.

Detective Sliger was allowed to initiate the stop because he was acting on information provided by an officer with personal knowledge. *See Miller v. State*, 188 N.E.3d 871, 876 (Ind. 2022) (explaining the "collective-knowledge doctrine"). Moreover, the reasonableness of a traffic stop for purposes of the Fourth Amendment does not depend on the actual motivations of the individual officers involved, *Whren v. U. S.*, 517 U.S. 806, 813 (1996), and "although the issuing of a written warning or ticket is relevant to the inquiry, it is not dispositive of whether the traffic stop at issue was impermissibly extended[,]" *Kenny v. State*, 210 N.E.3d 321, 329 (Ind. Ct. App. 2023), *trans. denied*.

has described the parameters of a constitutionally permissible traffic stop as follows:

> A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquires do not measurably extend the duration of the stop.

Arizona v. Johnson, 555 U.S. 323, 333 (2009) (internal citations omitted).

[17] Within these bounds, officers can order the driver and any passengers to exit a lawfully stopped vehicle for the duration of the stop, *Pennsylvania v. Mimms*, 434 U.S. 106, 109–111 (1977) (per curiam); ask brief questions such as whether there are any weapons or drugs in the vehicle, *Muehler v. Mena*, 544 U.S. 93, 100–01 (2005); or conduct a dog sniff, *Illinois v. Caballes*, 543 U.S. 405, 408 (2005). That is, officers may conduct these "unrelated checks during an otherwise lawful traffic stop" as long as they do not prolong the stop. *Rodriguez v. U.S.*, 575 U.S. 348, 355 (2015).

[18] "[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes upon interests protected by the Constitution." *Caballes*, 543 U.S. at 407. But information lawfully obtained during a traffic stop may provide an officer with reasonable suspicion of

criminal activity that will justify prolonging the stop to permit a reasonable investigation. *See Tinker v. State*, 129 N.E.3d 251, 258 n.6 (Ind. Ct. App. 2019) (deciding case on other grounds but noting smell of marijuana when defendant exited vehicle during traffic stop would have given officer reasonable suspicion of criminal conduct to justify prolonging the stop), *trans. denied*; *Hansborough v. State*, 49 N.E.3d 1112, 1115 n.5 (Ind. Ct. App. 2016) (same, when officer observed what he believed to be marijuana shake in the center console area of the vehicle), *trans. denied*. For instance, a dog sniff of the exterior of the vehicle indicating the presence of illicit substances provides probable cause to prolong the stop for a warrantless search of the interior of the vehicle under the automobile exception to the warrant requirement. *Harbaugh v. State*, 96 N.E.3d 102, 106 (Ind. Ct. App. 2018), *trans. denied*.

[19] Because Andrade-Gutierrez's statements to Detective Sliger are integral to an evaluation of this stop, we begin by addressing his claim that he did not make a knowing and intelligent waiver of his *Miranda* rights. Detective Sliger's body camera footage was unavailable at trial. There was therefore no independent confirmation of Detective Sliger's testimony that he gave Andrade-Gutierrez the *Miranda* warnings after which Andrade-Gutierrez admitted he had methamphetamine in his apartment. But there was also no evidence to the contrary.[6] We are in no position to second-guess the trial court's credibility

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[6] "[T]estimony at a hearing on a motion to suppress is not admissible at trial as evidence of the defendant's guilt." *Thomas v. State*, 734 N.E.2d 572, 574 (Ind. 2000). Andrade-Gutierrez could have testified for purposes of his motion to suppress but chose not to do so.

judgment of Detective Sliger's testimony. The trial court accepted Detective Sliger's testimony that he gave the required warnings. We must accept that testimony as well. *See Meredith*, 906 N.E.2d at 869 (noting we do not reweigh the evidence in reviewing a decision to admit evidence).

[20] The same is true for Andrade-Gutierrez's argument that he "struggled with English" and may not have fully understood the *Miranda* rights Detective Sliger read to him in English. *Appellant's Br.* at 16. The State bears the burden of proving beyond a reasonable doubt the defendant voluntarily and intelligently waived his rights and the defendant's statement was voluntarily given. *Treadway v. State*, 924 N.E.2d 621, 635 (Ind. 2010). A valid waiver occurs when a suspect who has been advised of his *Miranda* rights and "has acknowledged an understanding of those rights makes an uncoerced statement without taking advantage of them." *D.M. v. State*, 949 N.E.2d 327, 339 (Ind. 2011). The admissibility of a statement is controlled by determining from the totality of the circumstances whether it was made voluntarily and not induced by violence, threats, or other improper influences that overcame the defendant's free will. *Treadway*, 924 N.E.2d at 635. A waiver of *Miranda* rights is not knowing, voluntary, or intelligent if the warnings are not provided in a language the defendant understands. *Morales v. State*, 749 N.E.2d 1260, 1266-67 (Ind. Ct. App. 2001).

[21] Detective Sliger testified that when he approached the vehicle, Andrade-Gutierrez immediately spoke in English, spoke in English throughout their interaction, and never requested an interpreter or suggested he did not

understand the conversation. Detective Sliger also testified he read Andrade-Gutierrez his *Miranda* rights in English from a pre-printed card and Andrade-Gutierrez acknowledged and said he understood those rights. Even though Spanish is Andrade-Gutierrez's first language, he has been in the United States for at least twenty years and Detective Sliger testified he and Andrade-Gutierrez communicated in English without difficulty. It was the trial court's prerogative to accept or reject Detective Sliger's testimony, and we do not reweigh the evidence but defer to the trial court's factual determinations unless clearly erroneous. *See Meredith*, 906 N.E.2d at 869. Nothing in the record suggests the trial court's factual determinations here were clearly erroneous; the record supports the conclusion that Andrade-Gutierrez spoke and was able to understand English, was fully advised of his *Miranda* rights, acknowledged understanding them, and voluntarily spoke with Detective Sliger.

[22] Returning to the circumstances of the stop, Andrade-Gutierrez posits the traffic stop extended from the time he was first stopped at 12:18 p.m. until his interrogation at the police station ended at 2:31 p.m.—a period of 133 minutes—and claims that "extended way beyond what was required to issue traffic tickets[.]" *Appellant's Br.* at 18.

[23] Detective Sliger pulled Andrade-Gutierrez over for speeding at 12:18 p.m. Andrade-Gutierrez immediately identified himself and told Detective Sliger he did not have a valid driver's license. As Detective Sliger asked Andrade-Gutierrez to step out of the vehicle, Officer Schutter arrived with Rocky to conduct a dog sniff. Rocky alerted to the vehicle and Officer Schutter called in

the alert at 12:21 p.m., three minutes after the stop was initiated. Officer McCain was already on the scene and while he searched Andrade-Gutierrez's vehicle, Detective Sliger gave Andrade-Gutierrez *Miranda* warnings. Detective Sliger estimated this occurred "around 3 minutes probably plus or minus a minute" after the stop was initiated. *Tr. Vol. 2* at 42.[7] After Detective Sliger informed Andrade-Gutierrez of his rights and Andrade-Gutierrez said he understood, Detective Sliger told him police thought he was "involved in meth dealing[.]" *Id.* at 41. Andrade-Gutierrez "said that he was." *Id.* Andrade-Gutierrez told Detective Sliger there were no drugs in his car—and indeed, none were found—but said there were drugs in his apartment. Andrade-Gutierrez then agreed to go to the police station with Detective Sliger to answer further questions.

[24] Andrade-Gutierrez claims he "could not be arrested and charged with a drug offense without the drugs" and therefore the stop was improperly extended when he was transported to the police station and interrogated after no drugs were found in his vehicle. *Appellant's Br.* at 18. But when Andrade-Gutierrez—within a few minutes of the stop—admitted he possessed illegal substances at his home for the purpose of dealing, "the nature of the stop went from that of a simple traffic stop to a detention based on criminal activity" that ultimately led to Andrade-Gutierrez's arrest. *Graham v. State*, 971 N.E.2d 713, 717 (Ind. Ct.

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[7] The trial court noted the other officers' body camera footage showed Detective Sliger did not read Andrade-Gutierrez his rights before 12:22 p.m., but found he did so "shortly after" that. *Appellant's App. Vol. 2* at 72.

App. 2012) (reasoning traffic stop was not prolonged by officer's question about drugs or weapons; rather, it was defendant's willingness to answer the question and admit to possessing contraband that provided the basis for further inquiry), *trans. denied*. Detective Sliger had, at a minimum, reasonable suspicion of criminal activity that justified prolonging the stop and inquiring further even after no contraband was found in the vehicle. *See Taylor v. State*, 406 N.E.2d 247, 250 (Ind. 1980) ("The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.") (quoting *Adams v. Williams*, 407 U.S. 143, 145 (1972)).

[25] At each step of the stop, additional information was lawfully obtained that provided Detective Sliger with additional reasonable suspicion of criminal conduct that justified prolonging the stop. Andrade-Gutierrez's Fourth Amendment rights were not violated as the traffic stop was not unreasonably prolonged.

The consent to search was not invalid

[26] Andrade-Gutierrez next argues the search of his apartment was illegal because his consent to search was invalid. Specifically, he contends the State did not show he voluntarily waived the right to consult an attorney before giving consent because there is no evidence he could read and understand the English language.

[27] "A warrantless search based on lawful consent is consistent with both the Indiana and Federal Constitutions." *Campos v. State*, 885 N.E.2d 590, 600 (Ind. 2008) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973)). But under Article 1, Section 11 of the Indiana Constitution, "a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent." *Meredith*, 906 N.E.2d at 873 (quoting *Pirtle v. State*, 323 N.E.2d 634, 640 (Ind. 1975)). This protection is "unique to Indiana and has no federal counterpart." *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018). The right to consult counsel may be waived "by a knowing and intelligent waiver after full advice" of the right. *Larkin v. State*, 393 N.E.2d 180, 182 (Ind. 1979). To obtain lawful consent, police must inform the person of the right to consult counsel and the right must be explicitly waived. *Pirtle*, 323 N.E.2d at 640.

[28] When the State seeks to rely on consent to justify a warrantless search, it has "the burden of proving that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied." *McIlquham v. State*, 10 N.E.3d 506, 511 (Ind. 2014) (internal quotation omitted). Whether consent to a search was given voluntarily is a question of fact to be determined from the totality of the circumstances. *State v. Cunningham*, 26 N.E.3d 21, 25 (Ind. 2015).

[29] Here, *Pirtle* advisements were given to Andrade-Gutierrez, and he does not allege otherwise. Andrade-Gutierrez also does not contend the advisements

were incorrect,[8] and he does not contend he did not explicitly waive the right to counsel or give consent to the search of his apartment. He argues only that his waiver and consent were not valid due to the alleged language barrier. *See Appellant's Br.* at 21 ("Just because Andrade-Gutierrez could speak broken English does not mean he could understand the waiver of a constitutional right presented in English.").

[30] The evidence that Andrade-Gutierrez understood his rights and voluntarily consented to a search of his apartment is uncontested.[9] Detective Sliger testified that once at the police station, he read the "Advice of Rights/Consent to Search" form to Andrade-Gutierrez out loud and in English. Detective Sliger read the Advice of Rights portion out loud, asked Andrade-Gutierrez if he understood his rights, and asked if he would sign the form attesting that he understood. Andrade-Gutierrez signed below the statement, "I have read this statement of my rights and I understand what my rights are[.]" *Ex. Vol. 1* at 9. Detective Sliger then read the Consent to Search portion of the form, after which Andrade-Gutierrez indicated he did not want an attorney and gave his

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[8] Andrade-Gutierrez does say the *Pirtle* advisements were "inadequate," but he does not allege any way in which they failed to include the required information. *Appellant's Br.* at 19. The "Advice of Rights" included the following: "I have a Constitutional Right not to have a search made of the premises . . . under my control . . . without a search warrant first being obtained," "I have a Constitutional Right to refuse to consent to such a search," and "I have a Constitutional Right to consult an attorney before deciding whether to consent to such a search." *Ex. Vol. 1* at 9.

[9] As with the traffic stop, the only evidence comes from Detective Sliger's testimony. Detective Sliger did not turn on the in-room video system at the police station until after he had advised Andrade-Gutierrez of his rights and obtained his consent to search, relying on his body camera instead. As discussed above, the video from the body camera was not saved. *See supra* n.4.

consent to a search of his apartment.[10] Detective Sliger "made it clear" to Andrade-Gutierrez he could change his mind at any time and if he did, "nobody would search his apartment at that time." *Tr. Vol. 2* at 46. Throughout this discussion about Andrade-Gutierrez's rights and consent, Andrade-Gutierrez continued to speak in English, did not ask for an interpreter, and did not demonstrate difficulty understanding Detective Sliger. Detective Dombkowski confirmed that during his interaction with Andrade-Gutierrez—which lasted nearly an hour—"[t]here was no language barrier." *Id.* at 77.

[31] As further evidence that Andrade-Gutierrez understood his rights, Andrade-Gutierrez declined to give consent to a search of his cellphone. This demonstrates he did not feel compelled to acquiesce to a law enforcement request and knew he could decline. Once officers obtained a search warrant and gained access to his phone, they found his text messages were all in Spanish, as were the entries in the ledger detectives found in his apartment. But Andrade-Gutierrez's English reading and writing proficiency is not at issue—it

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[10] With respect to this form, the trial court noted:

> It is unclear why the Consent form admitted into evidence has a line for a person to sign to acknowledge they understand their rights; however, there is no place for them to sign to indicate they are waiving these rights and consenting to a search. Instead, there are two lines for the witness to sign.

Appellant's App. Vol. 2 at 73; *see Ex. Vol. 1* at 9. Although Andrade-Gutierrez only signed under the Advice of Rights portion of the form (Detective Sliger signed under the Consent to Search portion on a line marked "Witness"), Detective Sliger's testimony was unequivocal that Andrade-Gutierrez did consent to a search after that portion of the form was read to him.

is only his English comprehension that matters, as Detective Sliger read the form to him.

[32] Although Detective Sliger knew Andrade-Gutierrez was Hispanic when he stopped him, Andrade-Gutierrez immediately and exclusively talked to police in English for the next two hours. He did not ask for an interpreter or express difficulty understanding the officers. The officers had no difficulty understanding Andrade-Gutierrez despite his heavy accent. Based on the totality of the circumstances, the trial court did not find Andrade-Gutierrez's claim that he lacked understanding of the English language credible, noting there was "no evidence to refute Detective Sliger's testimony that [Andrade-Gutierrez] readily agreed to speak and agreed to the search." *Appellant's App. Vol. 2* at 72. Andrade-Gutierrez is inviting us to reweigh the evidence, which we will not do. The State established that Andrade-Gutierrez's consent to the search of his apartment was valid.

Admission of statements from the police station interview was harmless error

[33] Andrade-Gutierrez claims the trial court erroneously admitted into evidence statements made during his interview at the police station because the recording of the interview does not comply with Indiana Evidence Rule 617.[11]

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[11] Neither officer testified to the substance of any incriminating statements Andrade-Gutierrez made during this interview. The video of the interview was admitted into evidence subject to the trial court's ruling on the motion to suppress. *See Tr. Vol. 2* at 76.

[34] Indiana Evidence Rule 617 provides, in part:

> (a) In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of [certain enumerated circumstances].
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> * * *
>
> (c) The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.

This rule is "not a constitutional requirement or a prophylactic rule meant to enforce the Constitution; rather, it is a rule of judicial administration." *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018). Rule 617 "conditions the use of otherwise admissible evidence of certain custodial statements on the availability of a recording of the statement unless specific exceptions apply." R. Miller, 12 Indiana Practice: Indiana Evidence § 617.102 (4th ed.); *see Fansler*, 100 N.E.3d at 253 (stating Rule 617 "heightens the requirements for admissibility of statements in certain circumstances").

[35] Andrade-Gutierrez argues the recording of his interview violates Rule 617 because the recording was not started until after Detective Sliger informed Andrade-Gutierrez of his *Pirtle* rights and obtained Andrade-Gutierrez's consent to search his apartment. In other words, he argues the recording is not "complete" as required by Rule 617(c). The State argues the advisement of

rights is not an interrogation and need not be recorded. The trial court agreed with the State's interpretation of Rule 617 and denied Andrade-Gutierrez's motion to suppress his statements from the police station interview. We have found no reported case that has interpreted this aspect of Rule 617.[12]

[36] But even if Andrade-Gutierrez is correct that an Electronic Recording must include any advisements that were given to be admissible under Rule 617, the erroneous admission of evidence is subject to harmless error analysis. *Turner v. State*, 953 N.E.2d 1039, 1059 (Ind. 2011). The improper admission of evidence is harmless error "if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction." *Id.* Moreover, any error in the admission of evidence that is merely cumulative of evidence properly admitted is harmless. *Hoglund v. State*, 962 N.E.2d 1230, 1240 (Ind. 2012). Here, police found 128 grams of methamphetamine, items indicating the methamphetamine was being sold to others, and paraphernalia in Andrade-Gutierrez's apartment. This is substantial independent evidence of Andrade-Gutierrez's guilt, and cumulative of any relevant information Andrade-Gutierrez offered about his dealing activities during the interview.

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[12] Although we have found no reported cases discussing what constitutes a "complete" Electronic Recording, when the Indiana Supreme Court issued its order adopting Rule 617, it included a lengthy statement explaining the process and policy behind adding the rule. Neither party cited the Court's order, and given our resolution of this issue, we need not consider the Court's intention behind this aspect of the rule.

Accordingly, even if we assume it was error for the trial court to admit the police station interview, the error was harmless.[13]

The search and seizure were not unreasonable under Article 1, Section 11

[37] Finally, Andrade-Gutierrez contends the search and seizure violated Article 1, Section 11 of the Indiana Constitution. Article 1, Section 11 safeguards the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure." Thus, the police actions here "must live up to our Constitution's expectations—[they] must not be 'unreasonable.'" *Watkins v. State*, 85 N.E.3d 597, 600 (Ind. 2017).

[38] Under Section 11, the State bears the burden of proving police conduct was "reasonable under the totality of the circumstances." *Carpenter*, 18 N.E.3d at 1001–02. Rather than focusing on the defendant's expectation of privacy as with a Fourth Amendment analysis, the Indiana analysis focuses on the actions of the police. *Austin*, 997 N.E.2d at 1034. We evaluate whether the conduct was reasonable 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 v. State*, 824 N.E.2d 356, 361 (Ind. 2005). We construe Section 11 liberally to guarantee the rights of people

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[13] Andrade-Gutierrez alleges only that the statement should not have been admitted because it was not complete; he does not allege the failure to record the advisements has any bearing on the validity of his waiver of rights and consent to search.

against unreasonable searches and seizures. *Mundy v. State*, 21 N.E.3d 114, 118 (Ind. Ct. App. 2014).

[39] Applying the *Litchfield* factors here, the degree of concern, suspicion, or knowledge that a violation had occurred was significant. When we evaluate this factor, we consider all the information available to the officer at the time of the search or seizure. *Ramirez v. State*, 174 N.E.3d 181, 191 (Ind. 2021). Andrade-Gutierrez was stopped for speeding and a traffic violation gives an officer probable cause to conduct a traffic stop. *Austin*, 997 N.E.2d at 1034. Even if the traffic stop were a pretext, that does not necessarily render police conduct unreasonable. Our Supreme Court has observed:

> We find nothing unreasonable in permitting an officer, who may have knowledge or suspicion of unrelated criminal activity by the motorist, to nevertheless respond to an observed traffic violation. It is likewise not unreasonable for a motorist who commits a traffic law violation to be subject to accountability for said violation even if the officer may have an ulterior motive of furthering an unrelated criminal investigation.

Mitchell v. State, 745 N.E.2d 775, 787 (Ind. 2001). In addition, officers had information that Andrade-Gutierrez did not have a valid license and the dog sniff provided probable cause for the search of Andrade-Gutierrez's vehicle and bolstered law enforcement's already-existing suspicion that Andrade-Gutierrez was involved in criminal activity.

[40] The degree of police intrusion was at most moderate. The Supreme Court has held a traffic stop "amount[s] to a small intrusion" on a defendant's "ordinary

activities." *Marshall v. State*, 117 N.E.3d 1254, 1262 (Ind. 2019), *cert. denied*. But Andrade-Gutierrez argues his "ongoing detention" was akin to the prolonged detention our Supreme Court found unreasonable in *State v. Quirk*, 842 N.E.2d 334 (Ind. 2006). *Appellant's Br.* at 25.

[41] The defendant in *Quirk* was told he was free to go after being given a warning for an unilluminated headlight. 842 N.E.2d at 339. But then officers re-engaged with him twice, searching his truck trailer and eventually calling for a narcotics dog to conduct a drug sniff of the truck cabin, which prolonged the traffic stop by at least twenty minutes. The trial court granted the defendant's motion to suppress, and the Supreme Court affirmed, determining police acted unreasonably in detaining the defendant "beyond the period necessary to issue a warning ticket" and searching his truck based on "a combination of irrelevant conduct and innocent conduct" that, "*without more*, cannot be transformed into a suspicious conglomeration." *Id*. at 343 (emphasis added). Here, there was more. Within just a few minutes of the initial stop and after having advised Andrade-Gutierrez of his *Miranda* rights, Detective Sliger asked about drug activity. Although Andrade-Gutierrez was under no obligation to answer a question unrelated to the purpose of the stop and was certainly under no obligation to volunteer additional information, he gave an honest response that justified his continued detention. Moreover, Andrade-Gutierrez admitted he did not have a valid driver's license and that fact alone would have prevented him from resuming his ordinary activities at the end of the traffic stop. The

degree to which the police intruded on Andrade-Gutierrez's activities was far less than in *Quirk*.

[42] As for the needs of law enforcement, we examine not only the needs of officers "to act in a general way," but also their need "to act in the particular way and at the particular time they did." *Ramirez*, 174 N.E.3d at 192 (quoting *Hardin v. State*, 148 N.E.3d 932, 946–47 (Ind. 2020), *cert. denied*). As for the general need to act in this situation, law enforcement has a "legitimate" need to enforce traffic laws. *Marshall*, 117 N.E.3d at 1262. And courts have recognized that law-enforcement needs in combating drug activity are great. *See Austin*, 997 N.E.2d at 1036. Andrade-Gutierrez was stopped for speeding. By the time Rocky alerted to the vehicle, Andrade-Gutierrez had admitted to having, if not dealing, methamphetamine. Law enforcement needs in this particular case were elevated by the interest in not letting an unlicensed driver return to the streets and in investigating drug activity and preserving evidence.

[43] The cumulative effect of the various issues Andrade-Gutierrez has raised regarding police conduct here require a close look. But most of those issues were caused by the failure to save Detective Sliger's body camera footage and there is no evidence that failure was unreasonable. When we consider the *Litchfield* factors and especially the fact that within minutes of the stop, Rocky alerted to the vehicle and Andrade-Gutierrez admitted to having methamphetamine, we conclude the length of the detention and overall police conduct were not unreasonable considering the totality of the circumstances.

Conclusion

[44] The trial court did not commit reversible error in admitting into evidence statements Andrade-Gutierrez made during the traffic stop and at the police station or the drugs and paraphernalia found in the search of his apartment. Accordingly, we affirm Andrade-Gutierrez's convictions for dealing in methamphetamine and possession of paraphernalia.

[45] Affirmed.

Crone, J., and Felix, J., concur.