MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Todd Norman,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

May 19, 2021

Court of Appeals Case No. 20A-PC-2349

Appeal from the Ripley Circuit Court

The Honorable Ryan J. King, Judge

Trial Court Cause No. 69C01-1801-PC-1

May, Judge.

[1] Todd Norman appeals the post-conviction court's denial of his petition for post-conviction relief. Norman argues the trial court erred when it did not conclude that his trial counsel was ineffective for (1) failing to file a motion to suppress the evidence found in Norman's home as part of a probationary search and (2) failing to object at trial to the admission of $8,500 in cash found in Norman's possession at the time of the search. We affirm.

Facts and Procedural History

[2] The facts of Norman's underlying convictions were set forth in our opinion deciding his direct appeal:

> On February 17, 2016, Versailles Town Marshall Joseph Mann and Ripley County Probation Officer Ethan Back conducted a routine probation visit at Norman's home. After some time had passed, Norman opened the door and allowed the officers to enter. Upon entering, Officer Back noticed alcohol inside Norman's home, which violated the terms of his probation and gave the officers a reason to inspect the home further. Marshall Mann discovered a bag that contained a white crystalline substance under a couch cushion. The substance was later identified as 12.59 grams of methamphetamine. Mann testified that this amount equals about 125 individual uses of the drug. After the discovery of methamphetamine, Mann contacted the Batesville Police Department, and Batesville Detective Blake Roope arrived on the scene. Mann then discovered a digital scale that contained residue similar in appearance to methamphetamine. Detective Roope decided not to have the residue on the scale tested. Officer Back and Detective Roope later observed a blue container sitting on a ladder inside one of Norman's rooms. Eight thousand dollars in cash was found

inside the container. Officers also found $500 inside Norman's pockets.

On February 18, 2016, the State charged Norman with Level 2 felony possession of methamphetamine with the intent to deliver and Level 4 felony possession of methamphetamine. On August 22, 2016, the State filed a motion to amend the Level 2 felony charge and dismiss the Level 4 felony charge. The trial court granted the motion, and a jury trial was held on August 23-24, 2016. During the trial, Mann testified that drug dealers often use scales to measure product intended for sale. He also testified that buyers of illegal substances typically use cash for their transactions. Mann also stated that methamphetamine is typically packaged in half gram to one gram quantities, but that it is not unusual to see it packaged in quantities of three to three-and-one-half grams. Mann also testified that a gram of methamphetamine typically costs $100 and three grams cost between $225 and $250. He also testified that dealers of illegal substances typically keep digital records of sales on phones and other electronic devices.

Norman testified in his own defense that the methamphetamine found in his home did not belong to him but that he entertains friends often and one of them could have left it. Norman also testified that he plays darts competitively and uses the scale to measure the weight of the darts. On cross-examination, the State questioned Norman about his missing cell phone; Norman objected to this questioning. The trial court overruled the objection. Norman then testified that his phone was missing. He also testified that he remembered talking to his sister about the phone, but he denied asking her to destroy it. Norman stated, "That's, I don't know if I, I don't know exactly what I said, but it wasn't nothing that drastic." Tr. Vol. III p. 235. Norman claimed that he did not trust banks and as such withdrew his paychecks every month. He also testified that he had recently made a cash withdrawal to buy a new television set.

> The jury found Norman guilty of Level 2 felony possession of methamphetamine with the intent to deliver. The trial court sentenced Norman to twenty-seven-and-one-half years in the Department of Correction with five years suspended to probation.

Norman v. State, 69A05-1611-CR-2661, 2017 WL 3429067, slip op. at *1-*2 (Ind. Ct. App. August 10, 2017), *trans. denied*. In his direct appeal, Norman argued the trial court abused its discretion when it allowed the State to question him about a missing cell phone; the State did not present sufficient evidence to prove Norman committed Level 2 felony possession of methamphetamine with intent to deliver; and his sentence was inappropriate based on the nature of his offense and his character. We affirmed the trial court's judgment. *Id*. at *5.

[3] Norman filed a pro se petition for post-conviction relief on January 8, 2018, alleging, in relevant part:

> 8a) The trial court abused its discretion in admitting evidence obtained during a warrantless search of Norman's laptop computer,[1] which was obtained in violation of the Article I, section 11 of the Indiana Constitution and 4th Amendment of the United States Constitution.
>
> 8b) Trial counsel Ineffective for failing pursue a an illegal search of Norman's home under the pretence of a Probation Check, thus violating Article 11 and 4th amendment claim that is in violation

[1] It is not clear from the record how a laptop computer relates to this case.

> of the Article I, section 11, 12, and 13 of the Indiana Constitution and 4th 6th, and 14th Amendment to the United States Constition.

(App. Vol. II at 8) (errors in original). The State filed its answer and motion for summary disposition on February 5, 2018. On November 25, 2019, Norman filed an amended petition for post-conviction relief with the assistance of counsel. Therein, he alleged the matters before us on appeal:

> Norman's Trial Counsel, John Watson ("Mr. Watson"), provided ineffective assistance of counsel.
>
> (a) Mr. Watson provided ineffective assistance which violated the Sixth Amendment right to counsel when he failed to move to suppress the evidence seized on the basis of an unconstitutional search that violated the Fourth Amendment of the U.S. Constitution;
>
> (b) Mr. Watson provided ineffective assistance which violated the Sixth Amendment right to counsel when he failed to move to recover the $8500 law enforcement officers seized from Norman.

(*Id*. at 22-3.)

[4] The post-conviction court held an evidentiary hearing on Norman's amended petition for post-conviction relief on August 5, 2020. On October 5, 2020, Norman filed a motion to amend the pleadings to conform to the evidence pursuant to Indiana Trial Rule 15(B), which argued Norman's trial counsel was ineffective for failing to object, based on relevancy, to the admission of the $8,500 found as part of the probationary search of Norman's residence. The post-conviction court granted Norman's motion to amend on October 7, 2020.

On October 22, 2020, the post-conviction court entered its order denying Norman's amended petition for post-conviction relief.

Discussion and Decision

[5] Post-conviction proceedings are not "super appeals" through which a convicted person can raise issues that he failed to raise at trial or on direct appeal. *McCary v. State*, 761 N.E.2d 389, 391 (Ind. 2002), *reh'g denied*. Instead, they afford petitioners a limited opportunity to raise issues unavailable or unknown at trial and on direct appeal. *Davidson v. State*, 763 N.E.2d 441, 443 (Ind. 2002). As post-conviction proceedings are civil in nature, the petitioner must prove his grounds for relief by a preponderance of the evidence. *Id*. A party appealing[2] a negative post-conviction judgment must establish that the evidence is without conflict and, as a whole, unmistakably and unerringly points to a conclusion contrary to that reached by the post-conviction court. *Id*. Where, as here, the post-conviction court makes findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6), we do not defer to the court's legal conclusions, but "the findings and judgment will be reversed only upon a showing of clear error - that which leaves us with a definite and firm

[2] We note Norman proceeds on appeal pro se. A litigant is not given special consideration by virtue of his pro se status. *Sidener v. State*, 446 N.E.2d 965, 966 (Ind. 1983). Rather, "[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) (internal citations omitted), *reh'g denied*.

conviction that a mistake has been made." *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000) (citation omitted), *cert. denied*, 534 U.S. 830 (2001). We neither reweigh the evidence nor judge credibility of witnesses when reviewing the denial of a petition for post-conviction relief. *Mahone v. State*, 742 N.E.2d 982, 984 (Ind. Ct. App. 2001), *trans. denied*.

[6] The Sixth Amendment to the United States Constitution states that a defendant in a criminal prosecution is entitled "to have the assistance of counsel for his defense." U.S. Const., Am. VI. This right requires that counsel be effective. *Strickland v. Washington*, 466 U.S. 668, 686 (1984), *reh'g denied*. "Generally, to prevail on a claim of ineffective assistance of counsel a petitioner must demonstrate both that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance." *Davis v. State*, 139 N.E.3d 246, 261 (Ind. Ct. App. 2019), *trans. denied*. Counsel is deficient if his performance falls below the objective standard of reasonableness established by prevailing professional norms. *Id*. There is a strong presumption that trial counsel provided effective representation, and the petitioner must rebut that presumption with strong evidence. *Warren v. State*, 146 N.E.3d 972, 977 (Ind. Ct. App. 2020), *trans. denied*.

[7] "Isolated poor strategy, inexperience, or bad tactics does not necessarily constitute ineffective assistance of counsel." *McCullough v. State*, 973 N.E.2d 62, 74 (Ind. Ct. App. 2012), *trans. denied*. "To meet the appropriate test for prejudice, the petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Davis*, 139 N.E.3d at 261 (internal citation omitted). If we determine that the petitioner cannot succeed on the prejudice prong of his claim, we need not to address whether counsel's performance was deficient. *Lee v. State*, 892 N.E.2d 1231, 1233 (Ind. 2008).

1. Ineffective Assistance Based on Failure to File Motion to Suppress Evidence from Search

[8] Norman argues the post-conviction court erred when it denied his claim of ineffective assistance of trial counsel based on the failure of his trial counsel, Watson, to file a motion to suppress the evidence found as part of the probationary search of Norman's home. Norman contends the search was unconstitutional under the Fourth Amendment of the United States Constitution. Specifically, Norman asserts that even though he signed the Ripley County Community Corrections Home Detention Rules and Regulations ("Home Detention Rules") "that authorized warrantless searches of his person and property, this did not give law enforcement *carte blanche* authority to search his home." (Br. of Appellant at 13) (emphasis in original).

[9] Regarding this issue, the post-conviction court found:

> a. Mr. Watson is an experienced criminal defense attorney who was appointed and privately retained for criminal matters in Ripley County and surrounding counties. At the time of Petitioner's trial, Mr. Watson practiced criminal defense law for approximately 22 years.

B . Mr. Watson served as trial counsel in numerous criminal trials throughout his career. The majority of those trials were felonies.

c. Mr. Watson has handled hundreds of criminal cases ranging from misdemeanors to murder charges.

d. In preparation for and during Petitioner's criminal trial, Mr. Watson made the following efforts:

> 1. He met with the Defendant regularly throughout the pendency of the case to assist with the development and creation of his defense.
>
> 2. He conducted depositions in the case of Det. Blake Roope and Field Officer Joe Mann.
>
> 3. He investigated and met with potential defense witnesses.
>
> 4. He filed and litigated pre-trial motions including, but not limited to, a successful motion in limine regarding the extent the Petitioner's in-home detention rules and regulations could be referenced at trial.
>
> 5. He subpoenaed witnesses to testify at trial.
>
> 6. He reviewed and prepared all potential evidence provided by the State in discovery.
>
> 7. He met and prepared all possible defense witnesses in the case including the preparation of Defendant's testimony at trial. He prepared and performed a direct

examination of witnesses in support of Petitioner's defense.

8. He prepared cross-examinations for potential State's witnesses and cross-examined each witness called by the State.

9. He prepared and gave an opening statement and closing argument.

10. He developed and instituted a trial strategy that rebutted the State's presentation of evidence. Specifically, the State's theory relied on the methamphetamine, scale, and $8,500 cash located at Petitioner's residence to prove their case. Mr. Watson presented testimony, admitted exhibits, and made arguments in direct opposition to the State's case in an attempt to create reasonable doubt. He further highlighted pieces of possible evidence that the State did not present. Specifically, Mr. Watson highlighted that this case lacked any controlled buys, confidential informants, or any record of any potential transfer of methamphetamine. Mr. Watson made explicit decisions to institute that strategy throughout each stage of the trial.

e. Mr. Watson stated he evaluates every criminal case for potential suppression issues throughout the entire pendency of each case. Throughout his career, Mr. Watson has filed and litigated numerous motions to suppress. He could not recall whether he has ever filed a motion to suppress addressing a search conducted when the defendant was serving a community corrections sentence when the search occurred.

f. On February 17, 2016, the date Petitioner's residence was searched, Petitioner was serving a sentence on in-home detention

through Ripley County Community Corrections in a previous unrelated case.

g. Prior to serving his sentence, Petitioner signed the Ripley County Community Corrections Home Detention Rules and Regulations ("Home Detention Rules") form on February 3, 2016. The pertinent portions of the Home Detention Rules are as follows:

> 1. Paragraph 2: "You will not consume or posses [sic] any alcoholic beverages, illegal drugs, any synthetic form of any illegal drug or controlled substance, without a valid prescription and submit to testing as required by Community Corrections, Probation or a Law Enforcement Officer. You are not permitted to have alcohol in your residence, to include any type of attached structures."
>
> 2. Paragraph 3: "You are required to submit to any tests to detect the presence of alcohol or drugs at the request of Community Corrections, the Probation Department or the Court. Failure to provide an adequate urine specimen within a reasonable amount of time will be considered a refusal and treated as a positive result…"
>
> 3. Paragraph 25: "You will allow Community Corrections to enter your residence at any time, without prior notice, without Warrant or Court Order and make reasonable inquiry into your activities and others in the home. Furthermore, you will submit to searches of your person and property, including any computer or electronic device used to send, received [sic], transmit or store any type of electronic data or images, by any Community Corrections Officer, Probation Officer, Police or Police K9 dog at any time, including any residence and/or vehicle

> you occupy, to ensure compliance with Community Corrections rules."

h. Mr. Watson had numerous clients who served Ripley county community corrections and/or probation services. Mr. Watson was familiar with the requirements of individuals serving community corrections or probationary sentences.

i. Mr. Watson evaluated Petitioner's case for potential grounds for a motion to suppress and continued to do so throughout its pendency. Specifically, Mr. Watson closely reviewed any potential grounds regarding the search of Petitioner's home. The search consisted of the following:

> 1. On February 17, 2016, at approximately 12:00 p.m., Field Officer Ethan Back and Joe Mann, working in his capacity as part-time Court Service's Field Officer, went to Petitioner's house to conduct a community corrections home visit.
>
> 2. Once the officer's [sic] knocked on the door, the officer's [sic] observed Petitioner walk passed [sic] the door in the direction of another room. Shortly thereafter, he returned to the door to let the officers into the residence.
>
> 3. While inside Field Officer Back requested a urine sample from Petitioner and Petitioner walked to his kitchen to get a drink of water. While in the kitchen, the field officers observed alcohol in plain view. Petitioner then showed the officers more alcohol in his kitchen refrigerator. The possession of alcohol was a violation of Home Detention Rules. Petitioner was then administered a portable breath test and tested positive for alcohol. The consumption of alcohol was also a violation of Home Detention Rules.

> 4. Both Field Officer Back and Mann then began to search Petitioner's residence. During the search, methamphetamine and a digital scale was [sic] located in the living space of the residence, $8,000 cash was located in in [sic] plain view in a cup without a lid in a bedroom of the residence, and $500 cash was located in the Petitioner's pocket. Due to the nature of the items located, Field Officer Back and Mann contacted the Batesville Police Department.

j. Mr. Watson testified that he made a strategic decision to not challenge the search of Petitioner's residence. He stated that if he felt a motion to suppress had no merit, he would not file it. He indicated that he would not file a suppression motion that he knew he would not win, because he wanted to prevent revealing any characterization of information or strategy that he might present at trial unnecessarily. Further, Mr. Watson emphasized that in a suppression hearing he would have cross-examined the officers involved, potentially "tipping" the officers with what he would ask them at trial and assisting the officers with their own trial preparation without any chance of succeeding on the suppression motion. Mr. Watson felt, based on the law, his experience, and the facts of the case, that nothing could be gained by the filing of a motion to suppress and it could only hurt the Petitioner in this particular case.

k. Petitioner admitted an affidavit from appellate counsel, Leanna Weissmann, where she indicated in her notes: "Concerned about the breadth of the search after discovery of a beer. But it does not appear trial counsel objected so not available for direct appeal. Maybe PCR?" While Ms. Weissmann cited some cases in her affidavit, no additional evidence was presented by the Petitioner that provided any further basis or reasoning supporting Ms. Weismann's [sic] suggestion.

(App. Vol. II at 56-61) (citation to the related documents omitted). Based thereon, the post-conviction court concluded:

> 19. By signing the Home Detention Rules, the Petitioner was clearly informed by an unambiguous community corrections' term that he may be subject to warrantless and suspicionless searches. Unlike the term referenced in *Vanderkolk* [*v. State*, 32 N.E.3d 775, 779 (Ind. 2015)] that explicitly stated a search must be predicated upon probable cause, the term signed by the Petitioner had no such requirement and made no reference to a required standard for search. The term in the present case used clear language easily comprehended by a lay person that Community Corrections can enter Petitioner's residence at any time and search his person and property to ensure compliance with the Community Corrections' rules.
>
> 20. Even if the terms signed by the Petitioner regarding the search of his residence were to be found ambiguous, reasonable suspicion existed that justified the search. The "reasonable inquiry" language in the Community Corrections' search term addressed the method of the search rather than the standard required to justify the search. However, even if the term [sic] were found to address the standard required before the search was allowed, reasonable suspicion existed that justified the search. Prior to opening his door, Petitioner was observed walking past the door before returning to the door to let the officers in. After consenting to the field officers' entry into his residence, the Petitioner requested to get a drink of water after Field Officer Back requested a drug screen. Probation officers can order a probationer to conduct a random, unannounced drug or alcohol screen. *See Harvey v. State*, 751 N.E.2d 254, 259 n.7 (Ind. App. 2001) (The Court of Appeals rejected the argument that reasonable suspicion is required to conduct a 'random' drug test.) While going to get a drink of water, Field Officer Back observes [sic] alcohol in plain view, a community corrections violation. When asked about the alcohol, Petitioner explained

that there was more in the refrigerator and showed the field officer more alcohol, another community corrections violation. Field Officer Back then administered a portable breath test to the Petitioner where the Petitioner registered positive for alcohol, another community corrections violation. The possession and consumption of alcohol clearly violated the community corrections' terms. Field Officer Back's observations created specific and identifiable facts that violations had occurred and provided reasonable suspicion to search Petitioner's residence to ensure further compliance with the Community Corrections' rules.

21. The method and execution of the [search of] Petitioner's residence was [sic] reasonable. The search was non-destructive, conducted by only two field officers, and occurred in the middle of the day. Only after methamphetamine was located, were the police called and informed about the potential criminal violations. The field officers began the search in the room directly off the living room because that was the direction Petitioner had come from when he walked passed [sic] the front door before letting the field officers [in the house]. Ultimately, the officers located methamphetamine in that room. Due to the significant governmental interest in ensuring probationers are complying with community corrections' rules, that Petitioner was on probation where he consented to the search of his residence, and that the field officers had already observed multiple rule violations, the search was clearly reasonable.

22. Petitioner is not entitled to relief on his claim that trial counsel was ineffective for failing to file a motion to suppress. Based on prevailing professional norms, trial counsel did not provide representation that fell below an objective standard of reasonableness.

* * * * *

> 24. Even if Mr. Watson had made unprofessional errors, which there is no evidence of, there is not a reasonable probability that, but for Mr. Watson's unprofessional errors, the result of Petitioner's trial would have been different. The Petitioner has failed to meet his burden that, had a motion to suppress been filed, it would have been successful. Had the motion been successful, the outcome of the case would have likely been affected. However, the evidence presented indicated a strong likelihood that any motion to suppress would have been denied. The Petitioner has failed to show that there was a reasonable probability that sufficiently undermined confidence in the outcome of Petitioner's case. Whether Mr. Watson filed a motion to suppress or not, the outcome of the case would have remained the same.

(*Id*. at 64-7.)

[10] While Norman recognizes the Home Detention Rules allow for warrantless searches, he argues the officers' searches of his couch cushions were unreasonable because they were not "related in scope to either a probationary search, or to Norman's conduct." (Br. of Appellant at 17.) Based on that argument, he contends his trial counsel Watson would have been successful and, thus, Watson rendered ineffective assistance of counsel when he did not file a motion to suppress the evidence collected as part of the search of Norman's home. In support of his argument, Norman relies upon a portion of our holding in *Hensley v. State*, 962 N.E.2d 1284 (Ind. Ct. App. 2012), in which we stated, "to qualify as a constitutional search . . . the police would have needed to have reasonable suspicion that Robert was engaged in criminal activity." (Br. of Appellant at 17) (quoting *Hensley*, 962 N.E.2d at 1291).

[11] *Hensley* is inapposite. In *Hensley*, the motion to suppress was not filed in a case involving the probationer, Robert, but in a case involving his wife, Pamela. *Hensley*, 962 N.E.2d at 1286. Officers conducted a search as part of Robert's probation and found a tin of marijuana under a mattress and Xanax in the dresser of a room used exclusively by Pamela. *Id*. at 1286-7. Based thereon, the State charged Pamela with multiple drug-related offenses. *Id*. at 1287. The trial court denied Pamela's motion to suppress the evidence found as part of the search, and we accepted her discretionary interlocutory appeal. *Id*.

[12] On appeal, Pamela argued the warrantless search of her home was illegal under the Fourth Amendment to the United States Constitution because "(1) '[s]he was not the person on probation'; (2) 'the search exceeded the scope and regulatory scheme of a probation search'; and (3) 'the search was merely a pretext to conduct an investigatory search without first securing a warrant.'" *Id*. (quoting appellant's brief). Our court agreed. However, in *Hensley*, we drew a distinction between searches of the property of those who are on probation and searches of the property of those who are not on probation. The complete quote from the case upon which Norman relies reads:

> To qualify as a constitutional search under [*United States v*.] *Knights*, [534 U.S. 112 (2001),] the police would have needed to have reasonable suspicion that Robert had engaged in criminal activity. In the State's response to Hensley's motion to suppress, the State makes no mention of the reasoning in *Knights*, nor does it contend that these unsubstantiated tips provided "reasonable suspicion" to believe that Robert was engaging in criminal activity. Furthermore, the evidence found in Hensley's home was discovered under her bed and in her dresser drawer. Hensley

> was not on probation nor was she the person suspected of criminal activity. The search by Officer Tharp, which uncovered the marijuana and generic Xanax violated her Fourth Amendment right against unreasonable search and seizure under *Knights*.

Id. at 1291. Therefore, because the holding was with regard to Pamela, who was the subject of the search, and not Robert, who was on probation like Norman, *Hensley* does not apply to Norman.

[13] Further, officers did not need reasonable suspicion to search Norman's home. The Home Detention Rules, to which Norman agreed, provided in relevant part that Norman was required to

> allow Community Corrections to enter [his] residence at any time, without prior notice, without Warrant or Court Order, and make reasonable inquiry into [his] activities. Furthermore, [he] will submit to search of [his] person and property . . . by any Community Corrections Officer, Probation Officer, Police or Police K9 Dog at any time, including any residence and/or vehicle you occupy, to ensure compliance with Community Corrections rules.

(App. Vol. II at 37.) In *State v. Ellis*, 2021 WL 1588836 (Ind. April 23, 2021), our Indiana Supreme Court held Ellis' home detention agreement, which contained language almost identical to the Home Detention Rules here, clearly informed Ellis "that a search may be conducted without reasonable suspicion." *Id*. at *1.

[14] As the search of Norman's home was legal pursuant to the Home Detention Rules, there was no basis for a motion to suppress the evidence collected therefrom. Therefore, even if Norman's trial counsel had filed a motion to suppress, it would not have been successful. Thus, Norman has not demonstrated that his trial counsel was ineffective for failing to file a motion to suppress. *See Wales v. State*, 768 N.E.2d 513, 523 (Ind. Ct. App. 2002) ("To prevail on an ineffective assistance of counsel claim based upon counsel's failure to file motions on a defendant's behalf, the defendant must demonstrate that such motions would have been successful."), *affirmed on reh'g*, 774 N.E.2d 116, *trans. denied*.

2. Ineffective Assistance of Counsel Based on Failure to Object to Relevancy of $8,500 Found During Search

[15] Following the evidentiary hearing on Norman's petition for post-conviction relief, Norman filed a Motion to Amend the Pleadings to Conform to the Evidence Pursuant to Trial Rule 15(B). Therein, Norman argued:

> 13. During Mr. Watson's post-conviction testimony, Mr. Norman, by counsel, asked him why he did not object to the admission of the $8500 based upon relevancy. Mr. Watson did not have a good answer for that.
>
> 14. Because the State conceded that the $8500 rightfully belongs to Mr. Norman and should be returned and because Mr. Watson submitted evidence (the bank statements) showing Mr. Norman earned that money working at [Employer], there was a solid basis for a relevancy objection at trial.

* * * * *

> 16. Therefore, Mr. Norman, by counsel, moves to amend the pleadings to conform to the evidence to include the allegation that Mr. Watson provided sub-standard assistance when he failed to object to the admission of the $8500 on the basis of relevance.

(App. Vol. II at 42-3.) The post-conviction court granted Norman's motion to amend his pleading. Norman argues on appeal that the post-conviction court erred when it did not make findings or conclusions on the issue and asks that we remand the matter and require the post-conviction court to do so.

[16] Indiana Post-Conviction Rule 1(6) requires the "court shall make specific findings of fact, conclusions of law on all issues presented, whether or not a hearing is held[.]" Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Indiana Evidence Rule 401. Regarding the $8,500 in cash admitted during Norman's trial, the post-conviction court found:

> The money was admitted as two separate marked exhibits in the State's case-in-chief. The State attempted to use the exhibits to support their claim that, based on the relatively large sum of cash, Petitioner possessed the illegal drugs to sell them. The exhibits were extremely probative and inextricably bound to the evidence collected at the Petitioner's residence.

(App. Vol. II at 86.) The post-conviction court's language that the money was "extremely probative" indicates the post-conviction court found the money was

relevant during Norman's trial. *See, e.g., Meisberger v. State*, 640 N.E.2d 716, 725 (Ind. Ct. App. 1994) (videotape of victim's autopsy was relevant because it contained "extremely probative" depictions of the victim's skull), *trans. denied*. Norman does not argue on appeal that his counsel was ineffective for failing to make an objection to the relevancy of the $8,500. Rather, he just contends that remand is necessary for the post-conviction court to make a finding regarding the issue. However, in an effort to address Norman's appeal on the merits despite procedural deficiencies, we will analyze whether Norman has demonstrated his trial counsel was ineffective when he failed to object to the relevance of the $8,500 found as part of the probationary search of Norman's home.

[17] The State charged Norman with Level 3 felony possession of methamphetamine with intent to deliver pursuant to Indiana Code section 35-48-4-1.1(a)(2). Intent may be inferred based on the items found as part of a search, such as the quantity of drugs present, large amounts of currency, and the presence of scales or packaging materials. *See, e.g., Chandler v. State*, 581 N.E.2d 1233, 1237 (Ind. 1991) (presence of a large quantity of drugs, a large amount of currency, and a beeper were sufficient to prove intent to deliver cocaine); *and see Richardson v. State*, 856 N.E.2d 1222, 1228 (Ind. Ct. App. 2006) (presence of large quantity of drugs and a scale, coupled with statements made by defendant, were sufficient prove intent to deliver methamphetamine). The presence of the $8,500 in Norman's residence was relevant to whether he had the intent to sell the large quantity of methamphetamine found in his couch.

Therefore, had his counsel made an objection to the admission of the money based on relevance, the argument would have been unsuccessful. *See, e.g., Wilson v. State*, 754 N.E.2d 950, 957 (Ind. Ct. App. 2001) (possession of a large quantity of drugs, money, and packaging materials sufficient to prove Wilson committed Class A felony dealing in cocaine). Thus, Norman has not demonstrated that his trial counsel was ineffective for failing to object to the admission of the $8,500 in cash based on relevance. *See McKnight v. State*, 1 N.E.3d 193, 202 (Ind. Ct. App. 2013) ("To demonstrate ineffective assistance of counsel for failure to object, a defendant must prove an objection would have been sustained if made and that he was prejudiced by counsel's failure to make an objection.").

Conclusion

[18] Norman has not demonstrated his trial counsel was ineffective for failing to file a motion to suppress the evidence found as part of the probationary search or for failing to object on the basis of relevance to the admission of the $8,500 in cash found as part of the same search. Therefore, we conclude the post-conviction court did not err when it denied Norman's petition for post-conviction relief. Accordingly, we affirm.

[19] Affirmed.

Bailey, J., and Robb, J., concur.