MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles Smith Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 6, 2021

Court of Appeals Case No. 20A-CR-2311

Appeal from the Marion Superior Court

The Honorable Alicia Gooden, Judge

Trial Court Cause No. 49G21-1803-F2-009013

May, Judge.

[1] Charles Smith Jr. appeals following his conviction of Level 2 felony dealing in cocaine.[1] He presents two issues for our review, which we revise and restate as:

> 1. Whether the warrantless search of his home by a community corrections officer and four police officers was constitutional; and
>
> 2. Whether the State presented sufficient evidence to sustain his conviction.

We affirm.

Facts and Procedural History

[2] On November 3, 2016, Smith pled guilty to one count of Level 2 felony dealing in cocaine and one count of Level 4 felony unlawful possession of a firearm by a serious violent felon[2] in Cause Number 45G21-1510-F2-034977 ("Cause No. 034977"), and as part of Smith's sentence, the trial court placed him in community corrections. Later that day, Smith signed an acknowledgment of electronic monitoring terms and conditions through Marion County Community Corrections ("MCCC"). One of these conditions stated:

> You waive your right against search and seizure, and shall permit MCCC staff or any law enforcement officer acting on [ ] MCCC's behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found to

[1] Ind. Code § 35-48-4-1.

[2] Ind. Code § 35-47-4-5.

> [e]nsure compliance with the requirements of community corrections.

(State's Ex. 1 at 5.) The contract also prohibited Smith from violating any laws. In February 2018, MCCC received an anonymous tip that Smith was unemployed and possibly selling narcotics. MCCC also reviewed the data relayed by Smith's GPS monitoring equipment and learned that Smith made several unauthorized visits to residences and businesses in Indianapolis.

[3] On March 13, 2018, Jill Jones, a law enforcement liaison for MCCC, and four Indianapolis Metropolitan Police Department officers visited Smith's residence on North Layman Avenue in Indianapolis. When Smith answered the door, he allowed Jones to inspect his ankle bracelet. Jones then stepped inside to conduct a home visit, and Jones noted Smith "turned a shade whiter" and his eyes started darting back and forth. (Tr. Vol. II at 12.) Officer Jered Hidlebaugh performed a pat down search of Smith and the other officers conducted a protective sweep of the house. Inside Smith's kitchen, the officers found a pot with water boiling on the stove, a Pyrex container, a dish strainer, and two bags containing a white, powdery substance, which subsequent testing confirmed was cocaine. Each bag contained approximately twenty-eight grams of cocaine. The officers then handcuffed Smith and applied for a search warrant to search Smith's house.

[4] Pursuant to the search warrant, the officers found a digital scale, plastic bags with cut corners, body armor, bundles containing thousands of dollars of United States currency, and mail addressed to Smith. The officers also found a

bag with a white, powdery substance inside the refrigerator, and subsequent laboratory testing of this substance indicated that it was not a controlled substance. Laboratory testing revealed cocaine residue on the digital scale. While the other officers were searching Smith's residence, Officer Randy Weitzel asked[3] Smith if he had ever stopped selling drugs. Smith admitted he resumed selling drugs a few months before the search. He also told the officers that he bought the two bags of cocaine for approximately $1,100 each.

[5] On March 15, 2018, the State charged Smith with two counts of Level 2 felony dealing in cocaine, one count of Level 3 felony possession of cocaine,[4] and one count of Level 6 felony escape.[5] The State also alleged that Smith was a habitual offender.[6] The State later dismissed one of the Level 2 felony dealing in cocaine charges and the escape charge. Smith waived his right to trial by jury, and the trial court held a bench trial on September 11, 2020. At trial, Officer Hidlebaugh testified regarding the "reboiler method" of converting powder cocaine into crack cocaine:

> [Y]ou take a large pot of water that is boiling. You place your cocaine cut and your cocaine base, mix it together and put it into a Pyrex container outside of the boiling water into a Pyrex container, mix a little bit of water in there and then put the Pyrex

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[3] Officer Hidlebaugh read Smith his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), *reh'g denied*. Officer Weitzel believed he also read Smith his rights pursuant to *Miranda*.

[4] Ind. Code § 35-48-4-6.

[5] Ind. Code § 35-44.1-3-4.

[6] Ind. Code § 35-50-2-8.

> container into the boiling water container. That will usually bake it enough to where you are actually boiling that cocaine base and that cocaine cut together. And then that is how they make like crack cocaine cookies is what we see them as.

(*Id*. at 63.) Officer Hidlebaugh also testified that dealers will use small plastic bags to package their product, and that generally mere users of cocaine will not possess large quantities of cocaine at any one time.

[6] The court found Smith guilty of both Level 2 felony dealing in cocaine and Level 3 felony possession of cocaine. The court also found Smith to be a habitual offender. Further, the court found Smith violated the terms of his community corrections placement in Cause No. 034977. On December 8, 2020, the trial court entered judgment of conviction on only the Level 2 felony dealing in cocaine conviction to avoid any double jeopardy violation, and the court revoked Smith's community corrections placement and probation in Cause No. 034977. The court sentenced Smith to a term of thirty years in the Indiana Department of Correction and ordered the sentence to run consecutive to the nine-year remainder of Smith's term in Cause No. 034977.

Discussion and Decision

I. Constitutionality of Search

[7] The trial court enjoys broad discretion in deciding whether to admit or exclude evidence, and we review such decisions for an abuse of discretion. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). An abuse of discretion occurs if the trial

court's 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*. Smith contends the trial court abused its discretion when it admitted the evidence collected during the search of his house because the search was unconstitutional.

[8] We apply a de novo standard of review when assessing the constitutionality of a search or seizure. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). "Individuals have a constitutional right against arbitrary search and seizure by law enforcement. The Fourth Amendment to the United States Constitution, as applied to the states by virtue of the Fourteenth Amendment, protects individuals from illegal searches and seizures by state actors." *Bailey v. State*, 131 N.E.3d 665, 676 (Ind. Ct. App. 2019), *reh'g denied*, *trans. denied*. Warrantless searches are considered per se unreasonable unless a recognized exception applies. *Id*. The party seeking to introduce evidence obtained during a warrantless search is required to prove a valid exception to the warrant requirement existed. *Id*.

[9] Smith argues "his Community Corrections contract language did not waive his right to be protected from the warrantless, suspicionless search to which he was subjected in this instance." (Appellant's Br. at 10.) We interpret clear and unambiguous language in a contract according to its plain and ordinary meaning. *Wright v. Am. States Ins. Co.*, 765 N.E.2d 690, 693 (Ind. Ct. App. 2002). The plain language of the waiver Smith signed when he agreed to the terms and conditions of community corrections expressly stated that Smith

agreed to waive his search and seizure rights. (*See* State's Ex. 1 at 5 ("You waive your right against search and seizure, and shall permit MCCC or any law enforcement officer acting on [ ] MCCC's behalf, to search your . . . residence . . . to [e]nsure compliance with the requirements of community corrections.").) Our Indiana Supreme Court recently held that identical language included as a condition of placement in community corrections unambiguously waived the defendant's right against searches absent reasonable suspicion. *State v. Ellis*, 167 N.E.3d 285, 289 (Ind. 2021) (holding language defendant signed as condition of placement in community corrections unambiguously waived right against searches without reasonable suspicion). Therefore, we hold the search of Smith's residence was constitutional because Smith consented to the search as part of the terms and conditions of community corrections.[7] Therefore, the trial court did not abuse its discretion when it admitted the evidence collected during the search of Smith's home.

II. Sufficiency of the Evidence

[10] Our standard of review regarding challenges to the sufficiency of the evidence is well-settled:

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[7] While Smith objected under both the Fourth Amendment and Article I, Section 11 of the Indiana Constitution at trial, Smith does not provide an argument specific to the Indiana Constitution on appeal because "a separate analysis has been deemed unnecessary with this set of facts, so [Smith] will rely primarily on the Fourth Amendment argument above." (Appellant's Br. at 12.) Nonetheless, a warrantless search of a person's residence pursuant to the terms of a community corrections contract does not violate the Indiana Constitution. *See McElroy v. State*, 133 N.E.3d 201, 208 (Ind. Ct. App. 2019) (search of common area of home detention participant's house was reasonable under Indiana Constitution), *reh'g denied*, *trans. denied*.

> In assessing whether there was sufficient evidence to support a conviction, we consider the probative evidence in the light most favorable to the verdict. *Burns v. State*, 91 N.E.3d 635, 641 (Ind. Ct. App. 2018). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). "Reversal is appropriate only when no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Thus, the evidence is not required to overcome every reasonable hypothesis of innocence and is sufficient if an inference may reasonably be drawn from it to support the verdict." *Burns*, 91 N.E.3d at 641 (internal citation omitted).

Bailey, 131 N.E.3d at 683.

[11] Indiana Code section 35-48-4-1 provides:

> (a) A person who:
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> * * * * *
>
> (2) possesses, with intent to:
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> (A) manufacture;
>
> (B) finance the manufacture of;
>
> (C) deliver; or
>
> (D) finance the delivery of;

> cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II;
>
> commits dealing in cocaine or a narcotic drug,
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> * * * * *
>
> (e) The offense is a Level 2 felony if:
>
> (1) the amount of the drug involved is at least ten grams[.]

Smith argues the State failed to present sufficient evidence that Smith intended to deliver the cocaine found in his possession to others. A defendant's intention to deal drugs may be deduced from circumstantial evidence, including the quantity of narcotics found in the defendant's possession. *See Richardson v. State*, 856 N.E.2d 1222, 1227 (Ind. Ct. App. 2006) ("Circumstantial evidence showing possession with intent to deliver may support a conviction. Possessing a large amount of a narcotic substance is circumstantial evidence of intent to deliver. The more narcotics a person possesses, the stronger the inference that he intended to deliver it and not consume it personally." (internal citations omitted)), *trans. denied*.

[12] Smith possessed over fifty-five grams of cocaine, which Officer Hidlebaugh testified is far more than the amount of cocaine a typical user possesses at any one time. Smith also possessed several items indicative of cocaine dealing, including a digital scale with cocaine residue, large amounts of United States currency, small plastic bags, and body armor. When MCCC conducted a

compliance check, Smith had a pot of water boiling on the stove and two bags of cocaine laying on the kitchen counter. Officers also found a Pyrex dish in Smith's kitchen. Officer Hidlebaugh testified that dealers commonly utilize these items to convert powder cocaine into crack cocaine. Smith also admitted to the officers at the scene that he resumed selling drugs months before the search. Smith's contention that he was a user who bought in bulk rather than a dealer is an invitation to reweigh the evidence, which we will not do. *See McGill v. State*, 160 N.E.3d 239, 247 (Ind. Ct. App. 2020) (refusing invitation to reweigh evidence). Thus, the evidence the State presented is sufficient to sustain Smith's conviction of Level 2 felony dealing in cocaine. *See Davis v. State*, 863 N.E.2d 1218, 1222 (Ind. Ct. App. 2007) (holding State presented sufficient evidence that defendant who possessed a large quantity of cocaine intended to deliver it), *trans. denied*.

Conclusion

[13] Smith unambiguously waived his right to be free from searches without reasonable suspicion as a condition of his placement in community corrections, and therefore, MCCC had Smith's consent to search his residence. The State also presented sufficient evidence to sustain Smith's conviction of dealing in cocaine given the large quantity of cocaine found in his possession, his possession of items commonly associated with drug dealing, and his admissions to officers at the scene. Therefore, we affirm the trial court.

[14] Affirmed.

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