MEMORANDUM DECISION

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

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IN THE COURT OF APPEALS OF INDIANA

William Payne,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2022

Court of Appeals Case No. 22A-CR-43

Appeal from the Clinton Circuit Court

The Honorable Bradley K. Mohler, Judge

Trial Court Cause No. 12C01-2106-F5-643

Bailey, Judge.

Case Summary

[1] In a bifurcated trial, a jury found William Payne ("Payne") guilty of Possession of Methamphetamine, as a Level 6 felony,[1] Theft, as a Level 6 felony,[2] and Possession of Paraphernalia, as a Class C misdemeanor,[3] and subsequently adjudicated Payne a habitual offender.[4] Payne presents a single restated issue for appeal: whether evidence obtained in the warrantless search of his vehicle was admitted at trial in violation of his rights under the Fourth Amendment to the United States Constitution.[5] We affirm.

Facts and Procedural History

[2] In 2021, Mary Seest ("Mary") lived in a residence on a Clinton County farm, next door to her son, Mark Seest ("Mark"), and across the road from an empty farmhouse previously occupied by family employees. At around eleven o'clock p.m. on June 13, Mary noticed that a vehicle pulled into the driveway across the street and remained there. Aware that the farmhouse was empty, but that

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[1] Ind. Code § 35-48-4-6.1(a).

[2] I.C. § 35-43-4-2(a)(1)(C).

[3] I.C. § 35-48-4-8.3(b)(1).

[4] I.C. § 35-50-2-8.

[5] Payne refers to the Indiana Constitution in articulating his issues for review but presents no independent argument relative to the Indiana Constitution. To the extent the protections under the Indiana Constitution differ, Payne has waived his argument for appellate review.

the outbuildings contained an "assortment of things" from auction sales, Mary became concerned and called Mark to investigate. (Tr. Vol. II, pg. 101.)

[3] Mark drove across the street and parked his vehicle. He immediately saw that there was a small SUV parked in the driveway, with a rear door open, and that one of the exterior barns had an opened door. Mark called 9-1-1 to report a theft in progress and then waited with his vehicle lights and a spotlight illuminated.

[4] Carroll County Sheriff Deputies, who under the terms of a reciprocal agreement sometimes assisted Clinton County law enforcement officers, were the first to respond to the call. Deputy Kory Banes proceeded to the open barn door and repeatedly announced that the deputies were present. Receiving no response, Deputy Banes advanced into the barn, where he found Payne crouching down behind a barrel. Deputy Jared Yoder and Deputy Banes secured Payne in handcuffs and sat him down on the driveway in front of his vehicle.

[5] Clinton County Sheriff Deputy Melissa Ann Trump arrived shortly thereafter and took over investigative duties. After providing Payne with *Miranda* advisements, Deputy Trump asked him if he had taken any property from the barn. Payne responded that he had been looking for "antiques and stuff" to sell, and he had taken a tricycle. (*Id.* at 40.) Payne did not specify other items, explaining that he had been "just throwing stuff in the car" and didn't "really remember what [he] took." (*Id.* at 38.) Deputy Trump asked Mark whether he could identify any of the property in the vehicle. Mark responded that there

had been many items in the barn, but he was unable to make a positive identification of individual items, although maybe Mary could do so.

[6] Deputy Trump removed a tricycle from Payne's vehicle and continued to search the interior. Among the items, she found a canister filled with costume jewelry. Upon finding a tin container that "looked like an antique," Deputy Trump opened it to find two baggies with a crystal substance as well as drug paraphernalia. Deputy Trump conducted a field test of the crystal substance, obtaining a result positive for the presence of methamphetamine. Payne admitted that the contents of the tin were his property.

[7] On June 14, 2021, Payne was charged with Burglary,[6] Possession of Methamphetamine, Theft, and Possession of Paraphernalia. The State also alleged that Payne is a habitual offender.

[8] Payne filed a pretrial motion to suppress evidence obtained from his vehicle, other than the tricycle, arguing that the State could establish no justification for the continuance of a warrantless search after the tricycle was recovered. At a suppression hearing, evidence was adduced that Payne was seated out of the reach of his vehicle interior when the search was conducted, and that no routine inventory of the contents of the vehicle had been compiled. However, the State argued that the continued search was justified as a search incident to lawful arrest because of a reasonable belief that the vehicle contained evidence of the

[6] I.C. § 35-43-2-1.

theft for which Payne had been arrested. At the conclusion of the hearing, the motion to suppress was denied.

[9] A jury trial commenced on November 8, 2021, and Payne unsuccessfully objected to the admission of evidence seized from his vehicle, other than the tricycle. The jury acquitted Payne of Burglary and convicted him of the remaining charges. Payne was subsequently adjudicated a habitual offender. He received a sentence of two years' imprisonment for Possession of Methamphetamine, enhanced by four years due to his status as a habitual offender. Upon his convictions for Theft and Possession of Paraphernalia, Payne received concurrent sentences of two years and thirty days, respectively. Payne now appeals.

Discussion and Decision

[10] Although Payne filed a pretrial motion to suppress, because he appeals following a completed trial, the issue is properly framed as whether the trial court abused its discretion in admitting the evidence. *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). The admission of evidence is within the discretion of the trial court. *Id*. at 259-60. We will reverse a ruling on the admission of evidence only for an abuse of that discretion, which occurs when the ruling is clearly against the logic and effect of the facts and circumstances before the court and the error affects a party's substantial rights. *Id*. at 260.

[11] But "to the extent those claims implicate constitutional issues, we review them de novo." *Ramirez v. State*, 174 N.E.3d 181, 189 (Ind. 2021). In so doing, we give deference to a trial court's factual determinations, which will not be overturned unless clearly erroneous. *State v. Lagrone*, 985 N.E.2d 66, 71 (Ind. Ct. App. 2013). A reviewing court looks to the totality of the circumstances and considers all uncontroverted evidence together with conflicting evidence that supports the trial court's decision. *Id*.

[12] Here, Payne contends that the warrantless search of his vehicle after the stolen tricycle was seized violated the Fourth Amendment to the United States Constitution. The State responds that the search was proper as a search incident to Payne's arrest, and that it was also justified under the automobile exception to the search warrant requirement.[7]

[13] The Fourth Amendment provides "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches or seizures shall not be violated." This is understood as a general prohibition against warrantless searches and seizures of personal property "subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514 (1967). "When a search is conducted without a warrant, the State has the burden of proving that the search falls into

[7] That is, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S. Ct. 2485, 2487 (1996).

one of the exceptions to the warrant requirement; a search incident to arrest is one such exception." *Meister v. State*, 933 N.E.2d 875, 878 (Ind. 2010).

[14] In *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710 (2009), the Supreme Court addressed the basic scope of a warrantless search of a vehicle incident to a lawful arrest. Police are authorized:

> to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search....
>
> ... [or] when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle."

556 U.S. at 343, 129 S. Ct. at 1719 (quoting *Thornton v. United States*, 541 U.S. 615, 629, 124 S. Ct. 2127, 2135 (2004) (Scalia, J., concurring)).[8]

[15] Payne observes that he was under arrest, handcuffed, and placed in front of his vehicle when the warrantless search was conducted. His claim that he was outside reaching distance of the vehicle interior at that time is not disputed by the State. That said, however, Payne had been arrested for theft. Under these circumstances, the dispute between Payne and the State distills to whether the officers could reasonably believe they would find additional evidence of theft once the tricycle had been recovered.

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[8] The *Gant* decision did not disturb other established exceptions to the warrant requirement authorizing a vehicle search when safety or evidentiary concerns dictate. *Meister*, 933 N.E.2d at 878.

[16] According to Payne, "the only item which was legally seized by police in the present case was the tricycle." Appellant's Brief at 22. He directs our attention to *Gonser v. State*, 843 N.E.2d 947 (Ind. Ct. App. 2006). There, the defendant had been arrested for the theft of a clock. The arresting officer had the defendant's vehicle towed to a towing company building, where he conducted a search of the vehicle and found methamphetamine, paraphernalia, and a switchblade knife. *See id.* at 948. On interlocutory appeal from the trial court's denial of a motion to suppress, a panel of this Court observed that "a search must end once the police find the item for which they have probable cause to search." *Id.* at 949 (citing *Horton v. California*, 496 U.S. 128, 141, 110 S. Ct. 2301, 2310 (1990). In conjunction with finding other exceptions to the warrant requirement inapplicable, the Court held that "the search incident to arrest exception does not apply to the facts of this case because the search of [the defendant]'s vehicle did not occur contemporaneously in both time and place with his arrest." *Id.* at 950. Here, unlike the search at issue in *Gonser*, the warrantless search of Payne's vehicle was contemporaneous in time and place with his arrest.

[17] Payne suggests that the officers no longer had any probable cause to search his vehicle once they seized a tricycle, which seizure was consistent with Payne's confession that he had stolen a tricycle. But Payne would have us ignore the testimony that he had admitted to taking other property from the barn as well. Notwithstanding an inability or unwillingness to specifically describe other items, Payne confessed to Deputy Trump that he had been "throwing stuff in

the car … just grabbing stuff." (Tr. Vol. II, pgs. 38, 40.) He explained that he was searching for items to sell, including antiques. Deputy Trump found Payne's "vehicle full of stuff" and some of it appeared to Deputy Trump to fit the description of "antique." (*Id.* at 40.) The totality of the circumstances is consistent with the trial court's determination that the search of Payne's vehicle was based upon a reasonable belief that evidence relevant to the crime of theft would be found therein. The State established an exception to the warrant requirement, consistent with *Gant*; that is, a search incident to a lawful arrest.[9]

Conclusion

[18] Payne's rights under the Fourth Amendment were not violated by the warrantless search of his vehicle. Accordingly, the trial court acted within its discretion in admitting into evidence the methamphetamine and paraphernalia found during the search.

[19] Affirmed.

Najam, J., and Bradford, C.J., concur.

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[9] Thus, we need not separately address whether the State also established the applicability of the automobile exception to the warrant requirement.