MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Eric M. Cartwright,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 31, 2023

Court of Appeals Case No. 22A-CR-2327

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

The Honorable Eric S. Ditton, Magistrate

Trial Court Cause No. 20C01-2205-F6-621

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Eric Cartwright appeals his convictions for Level 4 felony possession of a narcotic, Level 5 felony possession of methamphetamine, and Level 6 felony unlawful possession of a syringe, and his adjudication as a habitual offender following a jury trial. Cartwright presents three issues for our review:

> I. Whether the trial court erred when it admitted evidence pursuant to a warrantless search of a rental car.
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> II. Whether the State presented sufficient evidence to support his convictions.
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> III. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] At approximately 11:45 a.m. on May 18, 2022, Cartwright was visiting a Target store in Goshen. Goshen Police Department Officer Robert Warstler was dispatched to the Target to investigate reports of a man "who was going through cars and got into a dispute with one of the employees at Target." Tr. Vol. 2, p. 120. When Officer Warstler arrived, he saw Cartwright standing outside a nearby Michaels store, and Cartwright's appearance matched the description of the man sought.

[4] Officer Warstler drove up to the sidewalk where Cartwright was standing, parked, and asked to talk to him. Cartwright agreed. Cartwright admitted that he had gotten into an argument with a Target employee, and he gave Officer

Warstler a State-issued identification card. Officer Warstler checked his computer for warrants and learned that Cartwright had a parole warrant. Accordingly, Officer Warstler exited his vehicle and arrested Cartwright.

[5] During a search of Cartwright's person incident to his arrest, Officer Warstler found a key fob in his pocket. Cartwright had earlier told Officer Warstler that some friends had dropped him off at Target that day, so Officer Warstler thought it was odd that he had a car key fob. Cartwright told the officer that he "wasn't real sure on what car it went to [sic]." *Id.* at 123. Officer Warstler eventually found the car, a Nissan, which was parked in front of Target. Officer Warstler walked around the outside of the car and saw what appeared to be marijuana on the front passenger seat.

[6] The car had Illinois license plates and was registered to Enterprise Rental Car company. Cartwright would not tell Officer Warstler to whom the car was rented. As someone with the Goshen Police Department attempted to contact Enterprise, Officer Warstler searched the car looking for a rental agreement. During that search, Officer Warstler found a grocery bag underneath the driver's seat. That bag contained a scale, syringes, powdery substances later determined to be .07 grams of methamphetamine and 6.21 grams of fentanyl, and two pills containing fentanyl. An assisting officer found "items" in the trunk of the car with Cartwright's name on them. Tr. Vol. 3, p. 59-60. Ultimately, Officer Warstler learned that the car was rented to a woman named Haley and that Cartwright was not listed as an authorized driver.

[7] The State charged Cartwright with Level 4 felony possession of a narcotic drug, Level 5 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, and a habitual criminal offender enhancement. Cartwright filed a motion to suppress the evidence officers obtained during the warrantless search of the car. The trial court denied that motion, finding that Cartwright did not have standing to challenge the evidence. A jury found Cartwright guilty as charged and found that he was a habitual offender. The trial court entered judgment of conviction and sentenced Cartwright to an aggregate term of twenty-eight years. This appeal ensued.

Discussion and Decision

Issue One: Admission of Evidence

[8] Cartwright first contends that the trial court abused its discretion when it admitted into evidence the contraband found in the car. Cartwright initially challenged the admission of this evidence through a motion to suppress, but he now appeals following a completed trial. Our standard of review is well settled:

> "The trial court has broad discretion to rule on the admissibility of evidence." *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017) (citation omitted). Ordinarily, we review evidentiary rulings for an abuse of discretion and reverse only when admission is clearly against the logic and effect of the facts and circumstances. *Id.* But when a challenge to an evidentiary ruling is based "on the constitutionality of the search or seizure of evidence, it raises a question of law that we review de novo." *Id.*
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> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

> shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.[] The Fourth Amendment, then, generally requires warrants for searches and seizures, and any "warrantless search or seizure is per se unreasonable." *Jacobs v. State*, 76 N.E.3d 846, 850 (Ind. 2017) (quotation omitted). "As a deterrent mechanism, evidence obtained in violation of this rule is generally not admissible in a prosecution against the victim of the unlawful search or seizure absent evidence of a recognized exception." *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). While the State can overcome this bar to admission by proving "that an exception to the warrant requirement existed at the time of" a warrantless search, *Bradley v. State*, 54 N.E.3d 996, 999 (Ind. 2016) (quotation omitted), it need not disprove every alternative explanation forwarded by a defendant.

Johnson v. State, 157 N.E.3d 1199, 1203 (Ind. 2020).

[9] Cartwright argues that the officers' warrantless search of the car violated his rights under the Fourth Amendment to the United States Constitution.[1] In particular, Cartwright maintains that the search did not fall under any exception to the Fourth Amendment and that the trial court erred when it concluded that he did not have standing to challenge the evidence.[2] The State argues that the trial court was correct to find that Cartwright did not have standing to challenge

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[1] Because Cartwright presents no independent analysis under the Indiana constitution, any such claim is waived. *See Lockett v. State*, 747 N.E.2d 539, 541 (Ind. 2001).

[2] The trial court found that, because the car rental was not in his name and he was not an authorized driver, he had no expectation of privacy in the car.

the search. In the alternative, the State contends that the search was valid "because the discovery of the marijuana in open view provided probable cause to search the Nissan under the automobile exception" to the Fourth Amendment. Appellee's Br. at 19.

[10] We need not address the standing issue because, regardless, the officers' search of the car was permissible under the well-established automobile and plain-view exceptions to the Fourth Amendment's warrant requirement.

> The "automobile exception" to the warrant requirement allows police to search a vehicle without obtaining a warrant if they have probable cause to believe evidence of a crime will be found in the vehicle. *Brinegar v. United States*, 338 U.S. 160, 164, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949); *Carroll v. United States*, 267 U.S. 132, 153-54, 45 S. Ct. 280, 69 L. Ed. 543 (1925). This doctrine is grounded in two notions: 1) a vehicle is readily moved and therefore the evidence may disappear while a warrant is being obtained, and 2) citizens have lower expectations of privacy in their vehicles than in their homes. *California v. Carney*, 471 U.S. 386, 391, 105 S. Ct. 2066, 85 L. Ed .2d 406 (1985); *South Dakota v. Opperman*, 428 U.S. 364, 367, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). . . .
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> . . . Under the exception, an operational vehicle is inherently mobile, whether or not a driver is behind the wheel or has ready access. *See Myers*[*v. State*, 839 N.E.2d 1146, 1152 (Ind. 2005)]. With probable cause, this inherent mobility is enough to conduct a warrantless search under the automobile exception. *Id.* . . .

State v. Hobbs, 933 N.E.2d 1281, 1285-86 (Ind. 2010).

[11] Here, Officer Warstler was standing outside the car when he saw marijuana in plain view on the front passenger seat. Thus, Officer Warstler had probable cause to conduct the warrantless search of the car. *See, e.g.*, *Wilkinson v. State*, 70 N.E.3d 392, 404 (Ind. Ct. App. 2017) (holding automobile exception supported warrantless search of car where officers investigating crash saw in plain view a partially full bottle of rum, cigarette rolling papers, and a small plastic vial). The trial court did not abuse its discretion when it admitted into evidence at trial the methamphetamine, fentanyl, and other contraband found during that search.

Issue Two: Sufficiency of the Evidence

[12] Cartwright next contends that the State presented insufficient evidence to support his convictions. Our standard of review is well settled.

> When an appeal raises "a sufficiency of evidence challenge, we do not reweigh the evidence or judge the credibility of the witnesses . . . ." We consider only the probative evidence and the reasonable inferences that support the verdict. "We will affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'"

Phipps v. State, 90 N.E.3d 1190, 1195 (Ind. 2018) (quoting *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011)).

[13] To prove that Cartwright committed Level 4 felony possession of a narcotic drug, the State had to prove that Cartwright, without a valid prescription, knowingly possessed cocaine or a narcotic drug classified in schedule I or II weighing at least five grams, but less than ten grams, with an enhancing

circumstance. Ind. Code § 35-48-4-6. To prove Level 5 felony possession of methamphetamine, the State was required to prove that Cartwright knowingly possessed methamphetamine without a valid prescription weighing at least five grams, but less than ten grams, with an enhancing circumstance. I.C. § 35-48-4-6.1. To prove Level 6 felony unlawful possession of a syringe, the State was required to prove that Cartwright, with intent to violate a statute regarding the regulation of controlled substances, possessed a hypodermic syringe or needle or an instrument adapted to the use of a legend or controlled substance by injection into a human being. I.C. § 16-42-19-18.

[14] Cartwright argues that the State did not prove that he possessed any of the contraband found in the car. It is undisputed that Cartwright did not have actual possession of the items. And he maintains that the evidence did not show that he constructively possessed the contraband. We do not agree.

[15] "Constructive possession can be inferred when a person had the capability and intent to maintain dominion and control over the item." *Grubbs v. State*, 132 N.E.3d 451, 453 (Ind. Ct. App. 2019) (citing *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011)). The capability requirement is met when the State shows that the defendant is able to reduce the controlled substance to the defendant's personal possession. *Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997), *modified on reh'g*, 685 N.E.2d 698. And where, as here, "possession of the automobile in which drugs are found is not exclusive, the inference of intent must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence." *Id.* Our supreme

court has identified "a variety of means" of showing the required additional circumstances, including – but not limited to – proof of

> (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant.

Henderson v. State, 715 N.E.2d 833, 836 (Ind. 1999).

[16] Cartwright admitted he had been in Target earlier that morning; he had the key fob to the Nissan in his pocket; the car was parked in the Target parking lot; and there was an item with his name on it in the trunk of the car. The State also presented evidence that, while he was in jail pending trial, Cartwright made statements during recorded phone calls suggesting that he had lied to Officer Warstler when he denied having driven the Nissan. The State presented sufficient evidence to show both Cartwright's capability and intent to control the items in the car. *See, e.g.*, *Thurman*, 602 N.E.2d at 554 (holding defendant constructively possessed cocaine found in car trunk where he had only key to trunk and told the officer that no one else in the car had anything to do with the cocaine).

Issue Three: Sentence

[17] Finally, Cartwright contends that his sentence is inappropriate in light of the nature of the offenses and his character. The trial court imposed more than the

advisory sentence but less than the maximum sentence on each of Cartwright's convictions. In particular, the court sentenced him to eleven years for the Level 4 felony, enhanced by seventeen years for being a habitual offender. And the court imposed concurrent sentences of four years and two years, respectively, for the Level 5 and Level 6 felony convictions. *See* I.C. § § 35-50-2-5.5 to -8. Thus, Cartwright's aggregate sentence is twenty-eight years, all executed.

[18] Under Indiana Appellate Rule 7(B), we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Making this determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[19] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the trial court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes.

Robinson v. State, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[20] Cartwright argues that the offenses are "simple possession offenses" that involved no violence or harm to people or property. Appellant's Br. at 29. He describes the offenses as "relatively mild" and asks that we reduce his eleven-year sentence to the advisory six-year sentence for a Level 4 felony. *Id.* But Cartwright ignores the fact that he was convicted of possessing more than six grams of fentanyl, which is an extremely deadly and addictive substance. We cannot say that Cartwright's sentence is inappropriate in light of the nature of the offenses.

[21] With regard to his character, Cartwright contends that "the record contains information that speaks well of [his] character" including a letter stating that he "has much potential[and] is a kind individual with tenacious habits." *Id.* at 30. Cartwright acknowledges his extensive criminal history, but he maintains that he is "more than his criminal history." *Id.* However, as the State points out, Cartwright's lengthy criminal history includes ten misdemeanors and nine felonies, including convictions for dealing and possession of methamphetamine, possession of cocaine, possession of a narcotic drug, and driving while intoxicated. The fact that Cartwright's criminal history includes multiple drug offenses similar to those at issue here undermines his assertion that he has "potential" and a "kind" character. *Id.* We cannot say that his twenty-eight year sentence is inappropriate in light of his character.

Conclusion

[22] For all these reasons, we affirm Cartwright's convictions and sentence.

[23] Affirmed.

Vaidik, J., and Pyle, J., concur.