MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kenyon Samie Stiff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 9, 2021

Court of Appeals Case No. 20A-CR-2028

Appeal from the Vanderburgh Circuit Court

The Honorable David D. Kiely, Judge

Trial Court Cause No. 82C01-1909-F3-6828

Bailey, Judge.

Case Summary

[1] Kenyon Samie Stiff ("Stiff") appeals his conviction, following a jury trial, of dealing a narcotic drug, as a Level 4 felony.[1]

[2] We affirm.

Issues

[3] Stiff raises two issues on appeal, which we restate as:

I. Whether the inventory search of the vehicle in which heroin and a cellular telephone were found violated the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution.

II. Whether the trial court abused its discretion when it admitted into evidence pictures of text messages retrieved from a cellular telephone.

Facts and Procedural History

[4] On September 26, 2019, at approximately 10:45-10:50 a.m., Detective Tony Johnson ("Det. Johnson") of the Evansville Police Department ("EPD") observed a black Mitsubishi parked facing the wrong direction in the 700 block of Negley Avenue in Vanderburgh County. Det. Johnson then observed a male get into the back passenger-side seat and exit the car approximately five minutes

[1] Ind. Code § 35-48-4-1(a)(1)(C) & (c)(1).

later. The male then got into a different car and drove away. Those circumstances seemed suspicious to Det. Johnson, "based on [his] training and experience over numerous years in numerous drug cases." Tr. Vol. II at 152-53. Via radio, Det. Johnson communicated the suspicious information to other officers in the area.

[5] Narcotics Detective Brian Watson ("Det. Watson") of the EPD then saw the Mitsubishi driving on First Street. Det. Watson identified the driver and sole occupant of the car as Stiff, and Det. Watson knew that Stiff's driver's license was suspended. Det. Watson observed Stiff drive to a car lot near a Wendy's restaurant and pick up a passenger who was later identified as Stiff's brother, Tyrell Stiff ("Tyrell"). Because Stiff's license was suspended and Det. Watson was in plain clothes in an unmarked car, Det. Watson radioed for an officer with a marked police car to pull Stiff over.

[6] Deputy Joshua Patterson ("Dep. Patterson") with the Vanderburgh County Sheriff's Department ("VCSD") heard the EPD detectives on the radio. Dep. Patterson ran Stiff's license plate number through his computer and confirmed that Stiff's driver's license was suspended. Det. Patterson located and followed Stiff's vehicle and "paced the vehicle traveling over the posted speed limit." *Id.* at 247. At approximately 11:28 a.m., Dep. Patterson initiated a traffic stop "for the speeding violation and for the fact that Mr. Stiff was operating a vehicle without a license." *Id.*

[7] After Dep. Patterson activated his lights, Stiff pulled his vehicle into an entrance that led to both a bank and an apartment complex. Stiff stopped the vehicle in the entrance, which was located off of Heidelbach Avenue. As Dep. Patterson exited his vehicle, he "observed a lot of movement" inside Stiff's vehicle; he witnessed Stiff and Tyrell "moving up and down, … wildly." *Id*. Stiff later admitted that he and Tyrell had been switching places because Stiff did not have a valid driver's license.

[8] Dep. Patterson and Det. Watson approached the car and ordered Stiff and Tyrell out of the vehicle. Tyrell exited the driver's side and was lowered to the ground and handcuffed by Dep. Patterson. Stiff exited from the front passenger's side and was lowered to the ground and handcuffed by Det. Watson. The officers read Stiff and Tyrell their *Miranda* rights. Dep. Patterson discovered a Samsung smartphone underneath Tyrell's body when Tyrell was allowed up off the ground. Det. Watson recovered $260 from Stiff's person.

[9] The officers decided to impound the vehicle Stiff was driving because it was blocking the entrance to the bank and apartment complex, it could not be left safely in that location, neither Stiff nor Tyrell were the owners of the vehicle, and the "actual owner of the vehicle [was] not … on scene" to move the vehicle. *Id*. at 249. VCSD Deputies Robert Schmitt ("Dep. Schmitt") and Matthew Knight ("Dep. Knight") began an inventory search of the vehicle before it was towed away, and Dep. Patterson joined in that search mid-way through it. After making an initial survey of the items in the front and rear seats

of the vehicle, Dep. Schmitt obtained a clipboard and wrote down an inventory of the vehicle, including the trunk.

[10] During the inventory search, the officers located an Alcatel cellular flip telephone lying on the front passenger seat that Stiff had vacated. The officers also noticed scratches next to the ash tray in the middle console; the scratches appeared to be tool marks from prying up the ash tray, which contained loose change. Dep. Knight lifted up the ash tray, and Dep. Patterson pulled out a plastic bag from the compartment underneath it. Inside the plastic bag were forty-four smaller individual baggies containing a tan substance that later tested positive as heroin and fentanyl. In Dep. Patterson's experience, it is common for small items of value to be stored in compartments in a vehicle, such as the compartment under the ash tray.

[11] The State ultimately charged Stiff with Level 4 felony dealing in a narcotic drug. Prior to the jury trial, Stiff filed a motion to suppress evidence found in the search of the vehicle. At the suppression hearing, Stiff incorporated the evidence previously presented during Tyrell's suppression hearing, which included video from the dashboard camera on EPD Detective John Montgomery's ("Det. Montgomery") police vehicle at the August 26, 2019, stop of Stiff ("Montgomery video"), and the VCSD "General Order" regarding "Towing and Impounding Vehicles." Supp. Ex. at 5. The latter document provides, in relevant part:

> Policy
> The Vanderburgh County Sheriff's Office shall lawfully tow and

impound vehicles whose removal is pursuant to State Statute, a hazard, [a] nuisance[,] or is necessary to protect from theft or vandalism.

Procedure

* * *

To lawfully impound a vehicle under the community care-taking function[,] the vehicle must pose a threat or harm to the community or itself was [sic] imperiled. Situations would include the vehicle being a traffic hazard or nuisance; …an arrest of the driver would leave the vehicle unattended on a highway; …an unattended vehicle … otherwise would be a nuisance.

* * *

All vehicles towed at the direction of the Vanderburgh County Sheriff's Office shall be inventoried prior to removal to impound unless the vehicle towed is subject to an impending search warrant or circumstances indicate immediate removal for safety reasons to another location.

… The inventory shall be documented on the standard form…. The purpose of a vehicle inventory is to protect the owner's property, protect the Sheriff's Office from claims alleging lost or stolen property, and protect the deputy and tow service personnel from potential dangers in the vehicle. All areas (both locked and unlocked) of the vehicle will be inventoried. All containers (both locked and unlocked) will be inventoried regardless of size. This includes the passenger compartment, trunk, engine compartment[,] or specially designed/modified areas of the vehicle.

Id. The trial court denied the motion to suppress and also denied Stiff's subsequent objections at trial to the admission of the evidence.

[12] At trial, Dep. Patterson testified that the officers conducted an inventory search of the vehicle Stiff was driving pursuant to the above policy and procedure. Dep. Patterson testified that Dep. Schmitt's handwritten inventory of the vehicle was subsequently reduced to an electronic record, which is contained in Defendant's Exhibit F. That form, also completed by Dep. Schmitt, states that the vehicle Stiff was driving was owned by Ashley Smith, and the September 26, 2019, inventory search of the vehicle disclosed: "[c]harger, cellphone, orange juice, tattoo pens, tattoo kit, clothes, easel in box, pens, leopard [] backpack, canned goods, towel[.]" Ex. at 169. The video from the body camera Dep. Patterson wore during the vehicle search was admitted as State's Exhibit 19A.

[13] At trial, the State also submitted evidence—admitted over Stiff's objections—regarding how text messages were extracted from the Alcatel cellular flip telephone that was found on the front passenger-side seat of the vehicle. The State's admitted evidence also included pictures of those text messages that were sent and/or received in the period between August 27, 2019, and September 26, 2019. State's Exhibits 10 through 15 contained text messages to "Kenyon," "Key," or "Ke," and Dep. Patterson testified without objection that he knew that "Key" and "Ke" were Stiff's aliases or nicknames. Ex. at 29-39; Tr. Vol. III at 7, 80.

[14] State's Exhibits 16 and 17 contained text messages to and from "Dane" on September 26, 2019, between approximately 10:15 a.m. to 10:59 a.m. Ex. at 41, 43. Stiff's last message was sent at 10:43—i.e., approximately forty-five minutes before police stopped him. *Id.* Those text messages are as follows:

> From: Dane
> Hit me up I got $45 for 2 if that's cool
>
> From: Dane
> You around by any chance?
>
> To: Dane
> 1st ave
>
> From: Dane
> Alright same place as yesterday?
>
> To: Dane
> Wendy's
>
> From: Dane
> On my way
>
> From: Dane
> Here

Id.

[15] State's Exhibits 19 through 65 contained text messages from and to various individuals over the prior month, all from the Alcatel flip phone. Those messages contained conversations that Dep. Patterson recognized, through his

training and experience, as conversations "debating prices and amounts of illegal controlled substances." Tr. Vol. III at 13. Deputy James Budde ("Dep. Budde"), an investigator in the Joint Drug Task Force of the VCSD, also testified about the meaning of the text messages contained in State's Exhibits 16-17 and 19-65. Dep. Budde testified that a typical heroin user will use .1 gram at a time and will use the drug as soon as he obtains it. He testified that the street value for .1 gram of heroin is $20 to $30, that the street value for one gram of heroin is $120 to $175, and that the number of individual baggies found in the vehicle driven by Stiff was indicative of dealing. State's Exhibits 10 through 65 were admitted over Stiff's objections.

[16] The State produced evidence that the net weight of the forty-four baggies found in the vehicle Stiff drove was 4.92 grams. Eight of the bags, weighing a total of 1.13 grams, were tested, and all eight tested positive for heroin and indicated the presence of fentanyl. Stiff's DNA was found on one of the two individual bags from which swabs were taken, while Tyrell was excluded as the source of the DNA on that bag.

[17] Stiff testified at trial that he did not know the heroin was in the car he was driving, and that the heroin did not belong to him. Tyrell testified that "everything in the car belonged to [Tyrell,]" including the drugs. Tr. Vol. III at 94. He also stated in a letter, admitted without objection as Defendant's Exhibit E, that "Kenyon was unaware of the drugs [Tyrell] had in [his] possession." Ex. at 165.

[18] The jury found Stiff guilty of dealing in a narcotic, as a Level 4 felony, and the trial court sentenced Stiff to four years imprisonment. This appeal ensued.

Discussion and Decision

Search of Vehicle

[19] Stiff challenges the trial court decision to admit evidence from the Alcatel cellular flip telephone and the heroin found in the vehicle he drove; he contends the search of the vehicle violated both the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution.

> Although Fourth Amendment and Article 1, Section 11[,] questions require independent analyses, their answers turn on the same factor—reasonableness. The State bears the burden of proving warrantless impoundments and inventory searches are reasonable under both the Fourth Amendment and Article 1, Section 11. *Fair* [*v. State*], 627 N.E.2d [427,] 431 [(Ind. 1993)] (Fourth Amendment); *Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006) (Article 1, Section 11). Our evaluation requires that "we examine the evidence favorable to the trial court's decision, with all disputes resolved in favor of the ruling," and also consider "any uncontested evidence favorable to the appellant." *Fair*, 627 N.E.2d at 434. And we will overturn the trial court's factual findings only if they are clearly erroneous. *Id*. But the ultimate determination of "reasonableness" is a constitutional legal question meriting independent consideration by this Court. *Id*.

Wilford v. State, 50 N.E.3d 371, 374 (Ind. 2016).

[20] Both the Fourth Amendment and Article 1, Section 11, protect people from unreasonable searches and seizures of their automobiles. *Id*. "[W]hen police

impound a vehicle and inventory its contents, they effect a search and seizure, and both measures must be reasonable—that is, executed under a valid warrant or a recognized exception to the warrant requirement." *Id*. The inventory search is an exception to the warrant requirement because it is not an investigatory search but an administrative search conducted in order to document the vehicle's contents to preserve them for the owner and protect police from claims of lost or stolen property. *Id*. When an inventory search is challenged, the propriety of the decision to impound a vehicle is the threshold question because impoundment is what gives rise to the need to inventory. *Id*.; *see also Fair*, 627 N.E.2d at 431.

Decision to Impound

[21] The decision to impound a vehicle is reasonable if it is authorized either by statute or the police's discretionary community-caretaking function.[2] *Wilford*, 50 N.E.3d at 375. However, the decision to impound and inventory a vehicle must not be a pretext for conducting a warrantless investigatory search. *Id*. Therefore, to prove the decision to impound a vehicle was reasonable, the State must show: (1) consistent with objective standards of sound policing, the police believed the vehicle posed a threat of harm to the community or was itself imperiled; and (2) the police's decision to impound the vehicle adhered to

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[2] The police's "community care-taking function" is "a catchall term for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities," such as "aid[ing] those in distress, combat[ing] actual hazards, prevent[ing] potential hazards ... and provid[ing] an infinite variety of services to preserve and protect community safety." *Wilford*, 50 N.E.3d at 375.

established departmental routine or regulation. *Id.*; *see also Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006) (noting, under the state constitution, the impoundment and inventory search must be reasonable "in light of the totality of the circumstances").

[22] Here, the decision to impound the vehicle was consistent with objective standards of sound policing and the established VCSD policy and procedure requiring that the police "shall" impound a vehicle that poses a "hazard [or] nuisance." Supp. Ex. at 5. The police testified that they decided to impound the vehicle because it was blocking the entrance to a bank and an apartment complex[3] and could not be left safely in that location. That is, in order for anyone to drive into the parking lot for the bank and apartments, the person would have to drive around the vehicle, into the exit lane. That was a traffic hazard that posed a threat of harm. Moreover, neither Stiff nor Tyrell were the owners of the vehicle, and the owner of the vehicle was not present to move the vehicle to a safe location. In addition, the police are not required to give a motorist "an opportunity to make alternative arrangements"—such as calling the owner of the vehicle—that avoid impoundment and inventory. *Colorado v. Bertine*, 479 U.S. 367, 373-74 (1987); *see also Jones v. State*, 856 N.E.2d 758, 761-62 (Ind. Ct. App. 2006) (noting an officer is not required to move a dangerously parked vehicle himself or allow the defendant to contact a friend or relative to

[3] The police videos admitted into evidence also showed that the vehicle Stiff drove was parked in, and blocking, the entrance to the bank and apartments.

move the vehicle before impounding it), *trans. denied*. Thus, the impoundment was reasonable under both the Fourth Amendment and Article 1, Section 11.

Inventory Search

[23] To be reasonable under the Fourth Amendment, an inventory search must be conducted pursuant to standard police procedures. *Sansbury v. State*, 96 N.E.3d 587, 592 (Ind. Ct. App. 2017). Similarly, under Article 1, Section 11, of the Indiana Constitution, an inventory search must be reasonable under the totality of the circumstances, including standard police procedures. *See, e.g.*, *Ector v. State*, 111 N.E.3d 1053, 1059 (Ind. Ct. App. 2018) (noting evidence of local police policy and procedure regarding inventory searches is required in an Article 1, Section 11, analysis to ensure the inventory search is not a pretext for "a general rummaging" in order to discover incriminating evidence (quotation and citation omitted)), *trans. denied*.

[24] Inventory searches are not always unreasonable when there are minor deviations from standard procedures. *Sansbury*, 96 N.E.3d at 592. However, major deviations may give rise to an inference of pretext, such as where the search did not actually produce an inventory of items in a vehicle. *Id*. at 592-93. On the other hand, if an inventory search was reasonable, "we will not fault it because a searching officer wanted or expected to find evidence of a crime as he searched." *Sams v. State*, 71 N.E.3d 372, 377 (Ind. Ct. App. 2017) (citing *Moore v. State*, 637 N.E.2d 816, 820 (Ind. Ct. App. 1994), *trans. denied*.).

[25] The VCSD "General Order" regarding "Towing and Impounding Vehicles" provides in relevant part that "[a]ll vehicles towed at the direction of the Vanderburgh County Sheriff's Office *shall be inventoried* prior to removal to impound." Supp. Ex. at 5[4] (emphasis added). The inventory must be documented on a standard form, and the officers "will" inventory all areas of the car "(both locked and unlocked)[,]" including all containers in the vehicle. *Id*. The policy provides that the officers' inventory search "will" include "the passenger compartment, trunk, engine compartment[,] or specially designed/modified areas of the vehicle." *Id*.

[26] VCSD deputies Schmitt, Knight, and Patterson conducted the inventory search of the car, and Dep. Schmitt wrote down the items they found. Dep. Schmitt later reduced his handwritten inventory to an electronic record on the required form, which Stiff admitted into evidence as his Exhibit F. The inventory form notes that the deputies discovered in the car: "[c]harger, cellphone, orange juice, tattoo pens, tattoo kit, clothes, easel in box, pens, leopard [] backpack, canned goods, towel[.]" Ex. at 169. Thus, the evidence shows the deputies inventoried all the contents of the car—not just the heroin or cellphone—pursuant to VCSD policy.

[27] Although Stiff contends the deputies exceeded the scope of the permissible inventory search when they lifted up the ashtray and discovered heroin in the

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[4] Stiff's claim that the policy was not admitted into evidence is incorrect. The policy was admitted as State's Exhibit 2 at Tyrell's suppression hearing, which was incorporated into Stiff's record per his own request.

compartment below, the VCSD policy—by its plain terms—does not prohibit such a search. Rather, the policy required the deputies to search all "areas of the vehicle," including containers and compartments. *Id*. And Dep. Patterson testified that small items of value are commonly stored in compartments in a vehicle, such as the compartment under an ashtray. Thus, the inventory search was conducted pursuant to police policy[5] and was reasonable. *See Ector*, 111 N.E.3d at 1060 (holding search that included lifting up the back seat of the car to reveal a key was reasonable where the police policy's language did not prohibit such a search and the searching officer testified that it was common police practice to search the entire vehicle, including underneath the rear seats).

[28] Stiff maintains that the inventory search was invalid under the state constitution because it does not meet the balancing test required by *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005). Under *Litchfield*, the reasonableness of a search turns on a balancing of 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." *Id*. at 361.

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[5] Stiff alleges that Dep. Patterson testified that the decision to search the vehicle was a "pretext." Stiff Br. at 33. That is not correct. Dep. Patterson testified that the decision to "stop" the vehicle was a "pretext" in that the police believed they would find evidence of drug activity if they stopped Stiff. Tr. Vol. II at 28. However, as Dep. Patterson also testified, the officers had independent justification for stopping Stiff, as he was driving with a suspended driver's license and violated the speed limit. Moreover, Stiff does not challenge the constitutionality of the stop.

[29] It is questionable whether the *Litchfield* balancing test applies to an inventory search, as the very first factor—degree of suspicion—is not relevant to an inventory search. While an initial stop requires some degree of suspicion, an inventory search does not; rather an inventory search is conducted for the purposes of "(1) protection of private property in police custody; (2) protection of police against claims of lost or stolen property; and (3) protection of police from possible danger." *Ector*, 111 N.E.3d at 1058. Thus, as the State points out, our Supreme Court has decided inventory search cases in the past without reference to the *Litchfield* factors. *See, e.g.*, *Taylor*, 842 N.E.2d at 334 (holding unreasonableness of inventory search under Fourth Amendment analysis supported conclusion that the requirements of Article 1, Section 11, were also violated); *cf. Smith v. State*, 116 N.E.3d 1107, 1114 (Ind. Ct. App. 2018) (applying the *Litchfield* factors to an inventory search), *trans. denied*.

[30] Regardless, the inventory search at issue in this case was reasonable under the *Litchfield* analysis. That is, the officers had a high degree of suspicion to stop Stiff in that he was driving a vehicle without a valid driver's license and exceeding the speed limit. And, as noted above, the degree of intrusion was no more than was necessary to inventory the vehicle per the VCSD policy. Finally, given the location of the vehicle, Stiff's arrest, and the absence of the owner of the vehicle, law enforcement had a significant need to secure the vehicle and its contents.

[31] The inventory search of the vehicle driven by Stiff was reasonable under the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution.

Admission of Text Messages

[32] Stiff also challenges the admission of the pictures of text messages found on the Alcatel cellular flip phone,[6] contending the messages were evidence of prior bad acts that the State introduced only to prove Stiff's propensity to commit drug dealing, as charged, which violated Rule of Evidence 404(b)(1). The State, on the other hand, contends that the evidence was admitted to prove Stiff's knowledge[7] of the presence of the drugs in the vehicle, as permitted by Rule 404(b)(2).

[33] We review decisions concerning the admission of evidence as to a defendant's prior conduct for an abuse of discretion, which occurs when a decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Stettler v. State*, 70 N.E.3d 874, 879 (Ind. Ct. App. 2017), *trans. denied*. The trial court has wide latitude in ruling on the relevancy of such evidence, *Vanryn v. State*, 155 N.E.3d 1254, 1265 (Ind. Ct. App. 2020), and in weighing the

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[6] Specifically, Stiff challenges the admission of State's Exhibits 16-17, which contain pictures of text messages sent and received on September 26, 2019, and State's Exhibits 19-65, which contain pictures of text messages sent and received during the period of August 27, 2019, through September 25, 2019.

[7] Because we decide the Rule 404(b) issue on the basis of the permitted use of a prior bad act to prove knowledge, we do not address the State's contentions that the evidence was also used to prove plan and identity. Evid. R. 404(b)(2).

probative value of the evidence against the possible prejudice of its admission, *Luke v. State*, 51 N.E.3d 401, 416 (Ind. Ct. App. 2016), *trans. denied*.

[34] State's Exhibits 16-17 and 19-65 consist of text messages indicating drug dealing activity[8] that were sent to and received by Stiff during the month prior to and including the day of his arrest; thus, those exhibits relate to prior uncharged bad conduct. In determining whether to admit such evidence under Evidence Rule 404(b), the trial court must: (1) determine whether the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; (2) determine that the proponent has sufficient proof that the person who allegedly committed the prior bad act did, in fact, commit the act;[9] and (3) balance the probative value of the evidence against its prejudicial effect. *Reese v. State*, 939 N.E.2d 695, 700 (Ind. Ct. App. 2011), *trans. denied*; Evid. R. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of … unfair prejudice.…").

[35] Regarding the first factor, the State contends that Exhibits 16-17 and 19-65 were offered not to prove Stiff's propensity to engage in drug dealing, but as evidence

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[8] The texts contain conversations "debating prices and amounts of illegal controlled substances." Tr. Vol. III at 13.

[9] State's Exhibits 10-15 established that the text messages were to and from Stiff. That is, they contained text messages to "Kenyon," "Key," or "Ke," and Dep. Patterson testified without objection that he knew that "Key" and "Ke" were Stiff's aliases or nicknames. Stiff does not challenge the admissibility of State's Exhibits 10-15. Thus, the second factor we discussed in *Reese* is not at issue in this case.

of his knowledge that the heroin was in the car he drove. As the heroin was not found on Stiff's person, the State was required to prove that he "constructively" possessed the heroin. *See, e.g.*, *Shorter v. State*, 151 N.E.3d 296, 305 (Ind. Ct. App. 2020), *trans. denied*. And, because Stiff did not have exclusive possession of the vehicle in which the heroin was found, the State was required to prove Stiff had knowledge of the presence of the heroin in order to satisfy the intent element of constructive possession. *Id*. at 306. Such knowledge may be proven by "additional circumstances," including incriminating statements made by the defendant. *Id*.

[36] The text messages in Exhibits 16 and 17 related to a drug deal[10] that was to take place between Stiff and "Dane" on September 26, 2019, i.e., the same morning when Stiff was stopped and arrested. Thus, those texts are incriminating statements that are relevant to Stiff's knowledge that there was heroin in the vehicle he was driving that day.

[37] The text messages contained in State's Exhibits 19-65 also contain incriminating statements made by Stiff; for example, Stiff's text exchanges with "Ross" on August 28, 2019, were as follows:

> From: Ross
> what this stuff hitting at? same as before?

[10] The text string began with Dane stating: "Hit me up I got $45 for 2 if that's cool[.]" Ex. at 43.

To: Ross
25 a pop

From: Ross
100 hg?

To: Ross
125

From: Ross
grey or brown?

To: Ross
brown

From: Ross
okay man ill [sic] let you know..you able to come west or nah?

To: Ross
yea
im [sic] mobile

From: Ross
this shit good bro..not grey good but definitely a close second.

To: Ross
ok got it for the low for u

From: Ross
bro how you gona [sic] offer my ppl 15 a tenth…and me 25?
i need a hg or g tho…you got me for that? i can come to you.

Ex. at 95, 97, 99. Thus, the text messages in State's Exhibits 19-65 were incriminating statements regarding Stiff meeting various individuals to deal them drugs in the month prior to his arrest. Those incriminating statements also were relevant to Stiff's knowledge of the presence of the heroin in the car he drove when he was arrested on September 26, 2019.

[38] As Stiff notes, evidence of a defendant's prior bad acts is admissible under Rule 404(b)(2) to show his knowledge of the crime with which he is charged only when the defendant "puts his knowledge in issue." *Baker v. State*, 997 N.E.2d 67, 71 (Ind. Ct. App. 2013). However, Stiff incorrectly contends that he did not put his knowledge in issue. When asked, "Did you know that the [h]eroin was in the car?[,]" Stiff answered, "No, I did not." Tr. Vol. III at 109. And when he was later asked, "Did you even know [the heroin] was in the car?[,]" he again answered, "No." *Id*. at 112. Thus, Stiff put at issue his knowledge of the presence of the heroin in the car, and the text messages in State's Exhibits 19-65 were relevant to that knowledge.

[39] As to the final factor, the trial court was required to determine if the probative value of the text messages was substantially outweighed by any prejudicial effect of their admission. *Reese*, 939 N.E.2d at 700; Evid. R. 403. Here, the text messages were highly probative to challenge Stiff's assertion that he did not have knowledge of the heroin found in the car he was driving. And we cannot say the trial court abused its wide discretion when it determined that the high probative value of the evidence was not substantially outweighed by a danger of prejudice to Stiff. *Cf. Samaniego-Hernandez v. State*, 839 N.E.2d 798, 804 (Ind.

Ct. App. 2005) (holding the probative value of evidence of defendant's prior involvement in a controlled drug buy at his house—which was highly probative of defendant's knowledge of the drugs found in his house for the crime charged—was not substantially outweighed by potential prejudice to the defendant), *abrogated on other grounds by Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007).

[40] The trial court did not abuse its discretion when it admitted into evidence State's Exhibits 16-17 and 19-65.

Conclusion

[41] The impoundment and inventory search of the vehicle Stiff drove the date of his arrest was not in violation of either the Fourth Amendment to the United States Constitution or Article 1, Section 11, of the Indiana Constitution; therefore, evidence found pursuant to that search was properly admitted. In addition, the trial court did not abuse its wide discretion when it admitted into evidence copies of text messages contained on Stiff's cellular telephone; that evidence was admissible under Evidence Rules 403 and 404(b) because their high probative value regarding Stiff's knowledge of the presence of heroin in the vehicle was not substantially outweighed by prejudice to Stiff.

[42] Affirmed.

May, J., and Robb, J., concur.