MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bryon Edward Kohnke,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

May 19, 2022

Court of Appeals Case No. 21A-CR-1496

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-1912-F2-404

Pyle, Judge.

Statement of the Case

[1] Bryon Edward Kohnke ("Kohnke") appeals, following a jury trial, his convictions for Level 2 felony dealing in methamphetamine,[1] Level 6 felony dealing in marijuana,[2] Level 6 felony unlawful possession of a hypodermic syringe,[3] Level 6 felony maintaining a common nuisance,[4] Class A misdemeanor dealing in paraphernalia,[5] Class C misdemeanor possession of paraphernalia,[6] and his habitual offender adjudication.[7] Kohnke argues that the trial court abused its discretion when it admitted into evidence: (1) drugs and other items seized from Kohnke's house pursuant to the execution of a search warrant; and (2) Kohnke's statements made to police during a post-arrest interview. Concluding that the trial court did not abuse its discretion when it admitted the challenged evidence, we affirm the trial court's judgment.

[2] We affirm.

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[1] IND. CODE § 35-48-4-1.1.

[2] I.C. § 35-48-4-10.

[3] IND. CODE § 16-42-19-18.

[4] I.C. § 35-45-1-5.

[5] I.C. § 35-48-4-8.5.

[6] I.C. § 35-48-4-8.3.

[7] I.C. § 35-50-2-8.

Issue

Whether the trial court abused its discretion in its admission of evidence.

Facts

[3] On the night of December 14, 2019, Kimberly Blackburn ("Blackburn") left Kohnke's house along with Kohnke's son, Nathan Kohnke ("Nathan"). Blackburn, through text messages, had found a buyer for 3.5 grams of Kohnke's methamphetamine ("the eight-ball"). Blackburn had planned to meet the buyer, sell the eight-ball, collect the money, and return it to Kohnke. When Blackburn was driving to meet her buyer, Huntington Police Officer Jordan Corral ("Officer Corral") initiated a traffic stop on Blackburn's car because her license plate light was non-functional. Blackburn, who had a bag of marijuana in her car, tossed the marijuana out of the passenger side window. Blackburn then pulled into an alley and turned off her engine and lights in an attempt to evade Officer Corral.

[4] Officer Corral followed Blackburn's car into the alley and initiated the traffic stop. Blackburn was very nervous, had trouble making eye contact with Officer Corral, and was stumbling over her words. Blackburn revealed to Officer Corral that she had an active arrest warrant. While Blackburn was collecting her license and registration, Officer Corral smelled marijuana in the car. Blackburn then explained that she had thrown a bag of marijuana out of the passenger side window when she had turned into the alley. Officer Corral then arrested Blackburn and placed her in his patrol car.

[5] Other officers arrived on the scene to assist Officer Corral. The officers searched the area near the car and found the bag of marijuana that Blackburn had tossed from her car. Additionally, when searching the car, officers located the eight-ball in the cup holder of Blackburn's car as well as Blackburn's cell phone. Officer Corral returned to his patrol car to talk to Blackburn. Officer Corral read Blackburn her *Miranda* rights, and Blackburn agreed to give a statement. Blackburn admitted that she had thrown the marijuana out of her car window, and that the methamphetamine found in her car and the marijuana found in the alley belonged to her. Officer Corral then transported Blackburn to the Huntington Police Annex for questioning.

[6] After Officer Corral had read Blackburn her *Miranda* rights for the second time, she agreed to waive those rights and speak with Officer Corral. Blackburn explained that, for the past several months, she had purchased methamphetamine from Kohnke a couple of times a week. She further explained that she had just left Kohnke's house fifteen minutes before Officer Corral had pulled her over. Furthermore, Blackburn gave Officer Corral access to her cellphone text messages. These messages revealed Blackburn's conversations with multiple parties, discussing the sale and delivery of methamphetamine. Importantly, one of those text messages asked if Kohnke had an eight-ball to sell, and Blackburn replied in the affirmative with the price of $120.

[7] After interviewing Blackburn, the police obtained a search warrant for Kohnke's house. The search warrant authorized police to search for and seize

from Kohnke's house any "controlled substances, drug paraphernalia, and instrumentalities used to manufacture, weigh, and measure or package controlled substances." (App. Vol. 2 at 130). The police arrived at Kohnke's house around 4:30 a.m. The police announced themselves, knocked, and declared that they possessed a warrant multiple times. After receiving no response, officers kicked in Kohnke's door, and, after entering, Officer Corral found Kohnke asleep on his couch. Kohnke woke up after Officer Corral shouted at Kohnke to show his hands. Officer Corral conducted a pat down of Kohnke and located a large amount of methamphetamine in Kohnke's front left pocket. Additionally, near Kohnke's couch, Officer Corral located a purple bag containing a large amount of marijuana. Officers also located a large plastic container containing additional methamphetamine. Also, officers found hypodermic syringes, caps to syringes, pipes with burnt residue, scales with residue, and a drawer full of paraphernalia covered with residue. In total, police recovered over 100 grams of methamphetamine and over 150 grams of marijuana from Kohnke's house. The search took over an hour to conduct. During the search, Kohnke was "surprisingly calm[,]" "defeated looking," and "tired." (Tr. Vol. 3 at 57).

[8] Officer Corral arrested Kohnke and transported him to the Huntington Police Annex for questioning. Officer Corral began his interview with Kohnke by reading Kohnke his *Miranda* rights. Kohnke stated that he understood those rights. Kohnke also signed a *Miranda* warning and waiver form. Officer Corral asked Kohnke if Kohnke wanted to talk to him. Kohnke responded, "might as

well." (State's Ex. 34). Kohnke provided his name and date of birth to Officer Corral. Then, Kohnke admitted to dealing methamphetamine and marijuana. He explained that he had been dealing for a couple of months. Additionally, Kohnke admitted to selling pipes and hypodermic syringes. Kohnke detailed the prices and procedures he used to sell the methamphetamine, marijuana, pipes, and syringes. This detailed information included how Kohnke would sell an eight-ball for $120. During the interview, Officer Corral asked Kohnke if he was alright, and Kohnke responded that he was "just tired." (State's Ex. 34). Kohnke denied being high during this interview. Kohnke also declined to disclose where he had purchased his drugs.

[9] The State ultimately charged Kohnke with Level 2 felony dealing in methamphetamine, Level 6 felony dealing in marijuana, Level 6 felony unlawful possession of a hypodermic syringe, Level 6 felony maintaining a common nuisance, Class A misdemeanor dealing in paraphernalia, and Class C misdemeanor possession of paraphernalia. The State also alleged that Kohnke was an habitual offender.

[10] In September 2020, Kohnke filed a motion to suppress his statements made to police during his post-arrest interview. Also, Kohnke moved to suppress the evidence seized from his house by police. Specifically, Kohnke argued that his statements made to police were involuntary because "[a]t the time of the statement, the Defendant was intoxicated and, therefore, his statements were not given knowingly, intelligently, and voluntarily." (App. Vol. 2 at 124). Additionally, Kohnke argued that the search warrant issued for his house was

unconstitutional because: (a) the search warrant did not specifically list items to be searched for and seized, making it overly broad in violation of the Fourth Amendment of the United States Constitution; (b) the State's probable cause affidavit was in violation of INDIANA CODE § 35-33-5-2 because it was based on hearsay, failed to contain reliable information establishing the credibility of the hearsay source, or contained information that established that the totality of the circumstances corroborated the hearsay; (c) the probable cause affidavit failed to establish probable cause that a crime had been committed and evidence of the crime would be found in Kohnke's house; and (d) under the totality of the circumstances, the search of Kohnke's house was unreasonable and violated Article 1, Section 11 of the Indiana Constitution. During the October 2020 suppression hearing, Kohnke testified that he did not remember the interview with Officer Corral at all. At the conclusion of the hearing, the trial court denied Kohnke's motion to suppress his post-arrest statements made to police. Additionally, the trial court denied Kohnke's motion to suppress the evidence seized from his house.

[11] In June 2021, the trial court held a jury trial. The jury heard the facts as set forth above. Additionally, Blackburn testified that she had known Kohnke for at least six months and had been to his house multiple times. Blackburn also testified that she had been instructed by Kohnke to sell the eight-ball for $120 and to return the money to Kohnke. In exchange for selling Kohnke's methamphetamine, Blackburn testified that she would "just get high." (Tr. Vol. 2 at 220). The jury found Kohnke guilty as charged and also found Kohnke to

be an habitual offender. The trial court sentenced Kohnke to an aggregate sentence of thirty-nine (39) years to be served in the Indiana Department of Correction.

[12] Kohnke now appeals.

Decision

[13] Kohnke argues that the trial court abused its discretion when it admitted into evidence: (1) drugs and other items seized from Kohnke's house pursuant to the execution of a search warrant; and (2) statements Kohnke made to police during his post-arrest interview. We address each argument in turn.

A. Search Warrant

[14] Kohnke first argues that the trial court abused its discretion by admitting the evidence seized from his house. Specifically, he contends that the search and seizure was the product of an unlawful search warrant under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

[15] We typically review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Cartwright v. State*, 26 N.E.3d 663, 667 (Ind. Ct. App. 2015), *trans. denied*. "When we review a trial court's ruling on the admissibility of evidence resulting from an allegedly illegal search, we do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling." *Id.* We review de novo the trial court's determination

regarding the existence of probable cause to support a search warrant. *Smith v. State*, 982 N.E.2d 393, 405 (Ind. Ct. App. 2013), *trans. denied*.

[16] The Fourth Amendment to the United States Constitution requires search warrants to be based on probable cause. *Heuring v. State*, 140 N.E.3d 270, 274 (Ind. 2020). "Our General Assembly has codified this constitutional requirement in Indiana Code section 35-33-5-2, which specifies the information that must be included in an affidavit supporting a search warrant." *Id.* (citing I.C. § 35-33-5-2). "Probable cause is a 'fluid concept incapable of precise definition . . . [and] is to be decided based on the facts of each case.'" *Carter v. State*, 105 N.E.3d 1121, 1127 (Ind. Ct. App. 2018) (quoting *Figert v. State*, 686 N.E.2d 827, 830 (Ind. 1997)), *trans. denied*. "Probable cause is not a high bar, and [it] is cleared when the totality of the circumstances establishes a fair probability–not proof or a prima facie showing–of criminal activity, contraband, or evidence of a crime." *Hodges v. State*, 125 N.E.3d 578, 581-82 (Ind. 2019) (internal quotation marks and citations omitted). "Significantly, probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Eaton v. State*, 889 N.E.2d 297, 299 (Ind. 2008) (internal quotation marks and citation omitted), *reh'g denied*, *cert. denied*.

[17] "In deciding whether to issue a search warrant, '[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *State v.*

Spillers, 847 N.E.2d 949, 952-53 (Ind. 2006) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). "Put differently, the central question in a probable cause determination is whether the affidavit presents facts, together with reasonable inferences, demonstrating a sufficient nexus between the suspected criminal activity and the specific place to be searched." *Carter*, 105 N.E.3d at 1128. "When a magistrate concludes that an affidavit establishes probable cause, we accord that determination great deference." *Id.*

[18] Kohnke challenges the probable cause affidavit by first arguing that the warrant was based upon hearsay and did not comply with INDIANA CODE § 35-33-5-2(b). An affidavit based on hearsay must contain reliable information establishing the informant's credibility and a factual basis for the hearsay statements or information that, in the totality of the circumstances, corroborates the hearsay. I.C. § 35-33-5-2(b). Uncorroborated hearsay from a source whose credibility is itself unknown, standing alone, cannot support a finding of probable cause to issue a search warrant. *Jaggers v. State*, 687 N.E. 2d 180, 182 (Ind. 1997) (citing *Gates*, 462 U.S. at 227).

[19] The trustworthiness of hearsay for purposes of proving probable cause can be established in a number of ways, including demonstrating: (1) the informant has given correct information in the past; (2) independent police investigation corroborates the informant's statements; (3) some basis for the informant's knowledge is shown; or (4) the informant predicts conduct or activities by the suspect that are not ordinarily easily predicted. *Methene v. State*, 720 N.E.2d 384, 388 (Ind. Ct. App. 1999). These examples however are not exclusive.

"Depending on the facts, other considerations may come into play in establishing the reliability of the informant or the hearsay." *Jaggers*, 687 N.E.2d at 182. One such additional consideration is whether the informant has made "[d]eclarations against penal interest." *Houser v. State*, 678 N.E.2d 95, 100 (Ind. 1997). "People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions." *United States v. Harris*, 403 U.S. 573, 583 (1971). Our supreme court explained that, "[w]e believe that it is in this context that '[a]dmissions of crime . . . carry their own indicia of credibility–sufficient at least to support a finding of probable cause to search.'" *Spillers*, 847 N.E.2d at 956 (quoting *Harris*, 403 U.S. at 583)). Our supreme court determined that the underlying thread that bound cases of statements against penal interest together was that "an informant, after arrest or confrontation by police, admitted criminal offenses under circumstances in which the crimes otherwise would have likely gone undetected." *Spillers*, 847 N.E.2d at 956.

[20] Here, our review of the record reveals that Blackburn had made a statement against penal interest. Specifically, Officer Corral arrested Blackburn after discovering the eight-ball in her vehicle and a bag of marijuana that she had thrown from her vehicle. Thus, she was arrested based upon her possession of these drugs. Blackburn, then agreed to talk with Officer Corral. Blackburn admitted to possessing the methamphetamine and marijuana, which is not a statement against penal interest because she had been caught red-handed. *See Spillers*, 847 N.E.2d at 956-57. However, Blackburn's statements implicating

herself as a dealer of the methamphetamine on behalf of Kohnke and the offering of her text messages–a critical piece of evidence–to Officer Corral is a statement against penal interest. If Blackburn had not willingly admitted that she had been dealing methamphetamine along with text messages corroborating that claim to Officer Corral, Blackburn's additional crime of dealing methamphetamine would have likely gone undetected. *Id.* at 956. As a result, we conclude that Blackburn's statements were sufficiently reliable to support the issuance of the search warrant for Kohnke's residence. Therefore, we find no violation of the Fourth Amendment.[8]

[21] The State argues that even if the warrant lacked probable cause, the good faith exception applies. The exclusionary rule does not require the suppression of evidence obtained in reliance on a defective search warrant if the police relied on the warrant in objective good faith. *United States v. Leon*, 468 U.S. 897, 913 (1984). The good faith exception is not available in situations where: (1) the magistrate is "misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth[;]" or (2) the warrant was based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."

[8] Kohnke also challenges the particularity of the warrant. Specifically, Kohnke contends that the term "controlled substances" is "very vague and does not limit what officers can seize from the search[.]" (Kohnke's Br. 23). However, Kohnke provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8).

Id. at 923. The good faith exception to the warrant requirement has been codified by INDIANA CODE § 35-37-4-5.

[22] Here, there is no allegation that the first exception applies. Nothing in the record suggests that Officer Corral lied in the probable cause affidavit that he submitted to the magistrate. In determining whether the second exception is available, our Court has explained:

> The exclusionary rule is designed to deter police misconduct, and in many cases there is no police illegality to deter. Although the magistrate or judge is responsible for determining whether an officer's allegations establish probable cause, an officer's reliance on the magistrate's probable-cause determination must be objectively reasonable. The *Leon* Court emphasized that the objective standard we adopt, moreover, requires officers to have a reasonable knowledge of what the law prohibits. In some circumstances an officer will have no reasonable grounds for believing that the warrant was properly issued. Depending on the circumstances of the particular case, a warrant may be so facially deficient that the executing officers cannot reasonably presume it to be valid.

Hensley v. State, 778 N.E.2d 484, 489 (Ind. Ct. App. 2002) (cleaned up).

[23] Here, the warrant was not so facially deficient that officers could have reasonably presumed it to be invalid. Officer Corral had submitted an extensive affidavit of probable cause including his interview and traffic stop with Blackburn. This affidavit included admissions from Blackburn about the frequency in which she bought and sold methamphetamine on behalf of Kohnke. This affidavit also included text messages from Blackburn's phone

supporting her statements about her involvement with Kohnke and the drugs she helped him sell. Therefore, after receiving the warrant from the magistrate, officers relied on the warrant in objective good faith.

[24] Kohnke also argues that the search warrant is invalid under Article 1, Section 11 of the Indiana Constitution. Although Article 1, Section 11 of the Indiana Constitution contains language nearly identical to the Fourth Amendment of the United States Constitution, we interpret Article 1, Section 11 independently. *See Shotts v. State*, 925 N.E.2d 719, 726 (Ind. 2010). "[W]e focus on the actions of the police officer, and employ a totality-of-the-circumstances test to evaluate the reasonableness of the officer's actions." *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013) (internal quotation and citation omitted). The reasonableness of a law enforcement officer's search or seizure requires balancing 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. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[25] Kohnke argues that police suspicion was low because Officer Corral's suspicion that Kohnke possessed drugs "was only supported by irrational inference, hearsay[,] and an unreliable witness." (Kohnke's Br. 24). However, a valid warrant means that police had probable cause to believe that Kohnke's house contained evidence of a crime. *See Duran v. State*, 930 N.E.2d 10, 18 (Ind. 2010). The degree of intrusion swings in Kohnke's favor because the search

warrant was served on Kohnke's house around 4:30 a.m. by knocking, announcing the possession of a warrant, and kicking in his front door when he did not answer. Finally, the extent of law enforcement needs factor leans in favor of the search. Our supreme court has "recognized that law-enforcement needs in combating drug trafficking-'from individual operators to large-scale corporate-like organizations'-are great." *Hardin v.* State, 148 N.E.3d 932, 947 (Ind. 2020) (quoting *Austin*, 997 N.E.2d at 1036)), *cert. denied*. With the officer's general need to combat drug trafficking and a valid warrant to search Kohnke's house, the police had at least a moderate need to conduct the search. Based on the totality of the circumstances, we conclude that this search was reasonable.

B. Post-Arrest Interview

[26] Kohnke also argues that the trial court abused its discretion when it admitted into evidence statements Kohnke had made to police during his post-arrest interview. Specifically, Kohnke argues that his statements were inadmissible because they were involuntary under the federal and state constitutions because he was "either under the influence of some substance, seriously sleep deprived, or a combination of both[.]" (Kohnke's Br. 18).

[27] The Fifth Amendment's privilege against self-incrimination applies to the states through the Fourteenth Amendment. *Withrow v. Williams*, 507 U.S. 680, 689 (1993), *reh'g denied*. When a defendant challenges the voluntariness of a statement under the United States Constitution, the State must prove by a preponderance of the evidence that the statement was voluntarily given. *Pruitt*

v. State, 834 N.E.2d 90, 114 (Ind. 2005), *reh'g denied*, *cert. denied*. In addition, Article 1, Section 14 of our Indiana Constitution provides that "[n]o person, in any criminal prosecution, shall be compelled to testify against himself." The Indiana Constitution requires the State to prove beyond a reasonable doubt that the defendant voluntarily waived his rights and that he voluntarily gave his statement. *Pruitt*, 834 N.E.2d at 114-15.

[28] When reviewing a challenge to the trial court's decision to admit the defendant's statements or confessions, we do not reweigh the evidence. *Moore v. State*, 143 N.E.3d 334, 340 (Ind. Ct. App. 2020), *trans. denied*. Rather, we examine the record for substantial probative evidence of voluntariness. *Id.* We examine the evidence most favorable to the State, together with the reasonable inferences that can be drawn therefrom. *Malloch v. State*, 980 N.E.2d 887, 901 (Ind. Ct. App. 2012), *trans. denied*. If there is substantial evidence to support the trial court's conclusion, we will not set it aside. *Id.*

[29] The voluntariness of a defendant's statement is determined by examining the totality of the circumstances. *Luckhart v. State*, 736 N.E.2d 227, 229 (Ind. 2000). Factors to be considered are "'any element of police coercion; the length, location, and continuity of the interrogation; and the maturity, education, physical condition, and mental health of the defendant.'" *Weisheit v. State*, 26 N.E.3d 3, 18 (Ind. 2015) (quoting *Wilkes v. State*, 917 N.E.2d 675, 680 (Ind. 2009), *reh'g denied*, *cert. denied*), *reh'g denied*, *cert. denied*. "The critical inquiry is whether the defendant's statements were induced by violence, threats, promises

or other improper influence." *Ringo v. State*, 736 N.E.2d 1209, 1212-13 (Ind. 2000).

[30] Here, Officer Corral read Kohnke his *Miranda* rights. Kohnke indicated that he understood those rights. Additionally, Kohnke signed a *Miranda* warning and waiver form. Officer Corral asked Kohnke if Kohnke wanted to talk to him. Kohnke responded, "might as well." (State's Ex. 34). Our review of the record reveals that none of Kohnke's statements were induced by violence, threats, promises, or other improper influences.

[31] We further note that, to the extent that Kohnke argues he was intoxicated, a statement may be given voluntarily notwithstanding voluntary intoxication. *Luckhart*, 736 N.E.2d at 231. We will deem a defendant's statement incompetent only when he is so intoxicated that it renders him not conscious of what he is doing or produces a state of mania. *Id.* Intoxication to a lesser degree only goes to the weight to be given to the statement, not its admissibility. *Id.*

[32] Our review of the record reveals that Kohnke stated during the interview that he was not high and that he was "just tired." (State's Ex. 34). Officer Corral testified that Kohnke did not exhibit the behavior of a person on crystal methamphetamine. Although Kohnke testified that he did not remember anything he said during his post-arrest interview with Officer Corral, Kohnke has provided no basis other than this statement to demonstrate his level of intoxication. Indeed, the only other statement made towards the specifics of

Kohnke's intoxication is the argument that "[c]onsidering the amount of alleged drugs and alleged paraphernalia found in Kohnke's residence, it is not a far stretch to believe that Kohnke had ingested copious amounts of marijuana, or other illegal substances, that would have produced the physiological response that Kohnke demonstrated during the interrogation." (Kohnke's Br. 18-19). Because the State proved beyond a reasonable doubt that the statement was voluntarily given, we conclude that the trial court did not abuse its discretion when it admitted the post-arrest statements Kohnke made during his police interview.

[33] Affirmed.

May, J., and Brown, J., concur.