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IN THE
COURT OF APPEALS OF INDIANA

Danzig James Weed,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

July 29, 2022

Court of Appeals Case No.
22A-CR-424

Appeal from the St. Joseph
Superior Court

The Honorable John M.
Marnocha, Judge

Trial Court Cause Nos.
71D02-1906-F5-128
71D02-1707-F5-141
71D02-1509-F5-212
71D02-1504-F5-53

Pyle, Judge.

Statement of the Case

- [1] Danzig James Weed (“Weed”) appeals his conviction for burglary as a level 5 felony.¹ Weed argues that the trial court’s decision admitting evidence seized from his backpack at the Cass County Jail in Michigan was erroneous. Specifically, Weed argues that application of INDIANA RULE OF EVIDENCE 617 required the suppression of evidence and the reversal of his conviction. However, we conclude that IND. R. EVID. 617 permitted the trial court to admit the evidence.
- [2] We affirm.

Issue

Whether the trial court erroneously admitted evidence.

Facts

- [3] During the afternoon of March 10, 2019, Martin Miller (“Miller”), the owner of Martin’s Auto Clinic, was notified by his alarm company of a disturbance on the property. Two police officers were subsequently dispatched, but they could not enter the property because it was surrounded by a fence with a locked gate. Unable to observe anything wrong, the officers left.
- [4] When Miller arrived, the officers were asked to return. When they arrived, Miller allowed them to enter the property. Miller noticed that a window to the

¹ INDIANA CODE § 35-43-2-1.

building had been pushed open. Inside, papers were strewn about, a cash register was missing change, and its drawer was on the floor. In the garage, it appeared that someone had entered a vehicle and tore the stereo system from its mount. Police then collected fingerprints from the cash register drawer and car stereo.

[5] At some point, police also accessed the video surveillance system and downloaded a video showing someone climbing over the fence. Detective Scott Robinson (“Det. Robinson”) of the Mishawaka Police Department took two screenshots from the video and created a Criminal Information Bulletin. It was circulated to other law enforcement agencies and posted on the Mishawaka Police Department’s Facebook page to see if anyone could identify the person in the screenshots. Soon thereafter, a St. Joseph County employee identified the person as Weed, and subsequent analysis of the latent fingerprints taken from the scene were determined to belong to Weed. The police began to search for Weed.

[6] Meanwhile, on March 17, 2019, Weed was arrested in Cass County, Michigan on unrelated charges. During that arrest, Weed was found to be in the possession of a backpack. During a search incident to his arrest, the backpack was searched and found to contain clothing. When Det. Robinson became aware of Weed’s location, he contacted Detective Tim Schuur (“Det. Schuur”) of the Cass County Sheriff’s Department and asked for his assistance in identifying Weed. Det. Robinson sent copies of the screenshots to Det. Schuur. When Det. Schuur went to speak to Weed, he advised Weed of his Miranda

rights, and Weed agreed to speak with him. At some point, Det. Schuur asked Weed for permission to search his backpack. Weed consented and was present during the search. The search revealed clothing matching the clothes Weed had been seen wearing in the screenshots.

[7] During this interview, Det. Schuur activated the electronic recording system. However, at some point after the interview had been completed, the recording system malfunctioned. Consequently, the entire system was replaced, and the recording was lost.

[8] The State charged Weed with burglary as a level 5 felony. Prior to trial, Weed filed a motion seeking to suppress the evidence in the backpack. However, the motion was denied, and the trial court held a jury trial on October 26, 2021. Weed was found guilty as charged.

[9] Weed now appeals.

Decision

[10] Weed makes several arguments, without analysis, that are tangentially related to the Fourth Amendment of our Federal Constitution and Article I, § 11 of our Indiana Constitution. We note that Indiana Appellate Rule 46(A)(8)(a) requires that issues argued to this court must be supported by cogent reasoning, and that failure to do so may result in waiver of those issues. *See also Mack v. State*, 23 N.E.3d 742, 750 n.3 (Ind. Ct. App. 2014) (A defendant also waives appellate review of any argument that the trial court abused its discretion in admitting evidence under the Indiana Constitution when that claim is not

separately analyzed), *trans. denied*. Because the Fourth Amendment issue lacks cogent reasoning and the issue raised under Article I, § 11 is not separately analyzed, we find them waived.

[11] Waiver notwithstanding, the crux of Weed’s argument focuses on INDIANA RULE OF EVIDENCE 617. Specifically, Weed argues that because he claims he did not consent to Det. Schuur’s search of the backpack, the only conclusive proof of his consent is the electronic recording of the interview. Because the interview was not recorded, Weed believes the trial court should have excluded the evidence produced from the search and that this court should reverse his conviction.

[12] Typically, the admission and exclusion of evidence falls within the sound discretion of the trial court, and we review the admission of evidence only for an abuse of discretion. *Warren v. State*, 182 N.E.3d 925, 932 (Ind. Ct. App. 2022). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* However, a ruling is reviewed *de novo* when it turns on the interpretation of a rule of evidence. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018).

[13] The relevant portions of IND. R. EVID 617(a) provide as follows:

In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of any one of the following:

* * *

- (3) The law enforcement officers conducting the Custodial Interrogation in good faith failed to make an Electronic Recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of said officers the recording equipment malfunctioned or stopped operating; or
- (4) The statement was made during a Custodial Interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana;

* * *

“Subsection (b) further defines several terms found in subsection (a). For example, an ‘electronic recording’ is defined as ‘an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers.’ A ‘custodial interrogation’ is defined as ‘an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody.’” *Fansler*, 100 N.E.3d at 253-54 (quoting Ind. R. Evid 617(b)). Finally, clear and convincing evidence requires proof that the existence of a fact is “highly probable.” *In re Commitment of D.S.*, 109 N.E.3d 1056, 1059 (Ind. Ct. App. 2018).

[14] In this case, there are two unambiguous exceptions to the rule requiring the electronic recording of custodial interrogations. The first covers malfunctioning equipment due to a law enforcement officer’s unintentional failure to properly operate the recording equipment or a malfunction unknown to the law

enforcement officers. The second occurs when the custodial interrogation is conducted by law enforcement officers from or in a place outside of Indiana.

[15] Here, the record reveals that the recording system in the Cass County Jail, unbeknownst to Det. Schuur, malfunctioned to such a degree that it was replaced and that, as a result, the recording was lost. Further, the custodial interrogation occurred in Michigan. The absence of any evidence indicating that the electronic recording system's malfunction was intentional, known to Det. Schuur at the time of the custodial interrogation, or took place in Indiana makes the existence of these facts highly probable. In addition, each exception, standing alone, allows the trial court to admit the evidence in question. As a result, we affirm the trial court's decision.

[16] Affirmed.

[17] Robb, J., and Weissmann, J., concur.