MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Edward A. McGlone
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kelly A. Loy
Assistant Section Chief
Criminal Appeals
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Toby W. Lowry,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 13, 2022

Court of Appeals Case No. 21A-CR-2507

Appeal from the Vermillion Circuit Court

The Honorable Jill D. Wesch, Judge

Trial Court Cause No. 83C01-2011-F5-34

Najam, Judge.

Statement of the Case

[1] Toby W. Lowry brings this interlocutory appeal from the trial court's denial of his motion to suppress evidence. Lowry raises the following two issues for our review:

1. Whether officers had reasonable suspicion to search his house.

2. Whether Lowry was subject to a custodial interrogation when he informed officers during the search that they would find contraband.

[2] We affirm.

Facts and Procedural History

[3] In 2020, Lowry was enrolled in the West Central Regional Community Corrections home detention program ("West Central") as part of his sentence for a prior conviction of dealing in methamphetamine. Pursuant to his participation in West Central's program, Lowry executed various waivers, including the following:

> FOURTH AMENDMENT WAIVER: During any period of community corrections and/or probation supervision, I agree to waive my constitutional rights under the Fourth Amendment to the United States Constitution and Article 1, § 11 of the Indiana Constitution. I waive these constitutional rights as to my person, vehicle, residence, cellular telephone(s), computer(s) and/or other electronic storage and communication device(s). I understand and agree that my person, any vehicle I operate, my residence, any cellular telephone(s), computer(s) and/or

> electronic storage or communication device(s) possessed and/or owned by me may be searched at any time, with reasonable suspicion, without probable cause, or without a search warrant. This search may be conducted by a [West Central] Staff member, Probation Officer, or any law enforcement officer. I further understand and agree that any contraband or evidence of other criminal activity derived from the search of the above listed property and/or items may be introduced against me at a probation revocation hearing and/or criminal prosecution.

Ex. Vol. 3 at 11.

[4] In mid-November, Vermillion County Sheriff's Deputy Nicholas Hall received a tip from a confidential informant that Lowry and T.J. Russell "were running together" and "pushing" or "selling large amounts of meth" out of Lowry's residence. Tr. Vol. 2 at 49, 68-69. Deputy Hall knew the confidential informant and knew the informant to be "honest and reliable." *Id.* at 64. Deputy Hall also knew Russell "to be involved in the methamphetamine game." *Id.* at 49. And Deputy Hall knew of Lowry's history with methamphetamine, as Deputy Hall had participated in prior investigations of Lowry "for several years." *Id.* at 47. Earlier in 2020, Deputy Hall had noticed that Lowry "looked healthy and had meat on his bones," unlike when Deputy Hall had previously investigated Lowry. At those times, Lowry "was kind of skinny" and without "much meat on the bones." *Id.* at 48.

[5] After receiving the tip, Deputy Hall started observing Lowry. He observed that Lowry was again "[s]kinny" and "[w]ith not much meat on his bones," which was consistent with Lowry's appearance "when he was on methamphetamine."

Id. at 48-49. He further observed Russell's car at Lowry's residence "on more than one occasion." *Id.* at 49. And Deputy Hall received an anonymous tip through Officer Mahady, "a well known narcotic[s] officer" in Clinton, that that officer had also received a tip that Russell and Lowry were dealing methamphetamine out of Lowry's residence. *Id.* at 70.

[6] Deputy Hall contacted Lowry's case manager at West Central to confirm that Lowry had executed a Fourth-Amendment waiver pursuant to his participation in West Central's program, and Deputy Hall then coordinated a search of Lowry's residence with the Clinton Police Department. Around 6:00 p.m. on November 23, the officers arrived at Lowry's residence for the search. Lowry was on his front porch and "extremely nervous, fidgeting with his hands" and "pulling his shirt up and . . . shoving his hands back in his pockets." *Id.* at 54. Deputy Hall explained that the officers were there to search the residence and that Lowry had executed a waiver of his Fourth Amendment rights. "[A]t that point," Deputy Hall later testified, Lowry "looked like a deer in the headlights." *Id.* at 54.

[7] Lowry requested Deputy Hall and Lowry's West Central case manager to "go inside with him in the kitchen to talk." *Id.* At this point, officers had yet to discover any contraband or other basis to arrest Lowry from the search, and Lowry was not under arrest. In the kitchen, Deputy Hall explained that he had been informed that Lowry had been involved in some "narcotics sales or distribution," which Lowry denied. *Id.* at 55. But Lowry "then informed [Deputy Hall] that [Russell] had indeed been over to his house . . . and from

there he explained that he had messed up and used and that [Russell] had brought it over." *Id.* Lowry added, "[Russell] brought it over and . . . [y]ou're going to find a pipe here." *Id.* Lowry further stated that the officers would find "some other things in the residence" and asked "if he was going to jail." *Id.* Deputy Hall told Lowry that the officers had not found anything yet, but if they did "he probably was going to jail." *Id.* Lowry's case manager then attempted to take a urine sample for a drug screen, but Lowry was unable to provide one.

[8] As a result of the search, officers discovered methamphetamine, pipes, and syringes. The State then charged Lowry with possession of methamphetamine, as a Level 5 felony; possession of a syringe, a Level 6 felony; and possession of paraphernalia, as a Class C misdemeanor. In June 2021, Lowry moved to suppress the State's evidence on the ground that the search had been without reasonable suspicion and his statements during the search were made when he had not been properly Mirandized. After an evidentiary hearing, the trial court denied Lowry's motion to suppress and certified its order for interlocutory appeal, which we accepted.

Discussion and Decision

Standard of Review

[9] Lowry appeals the trial court's denial of his motion to suppress. When a trial court denies a motion to suppress, we review its decision in a manner similar to other sufficiency issues. *Shuler v. State*, 112 N.E.3d 180, 186 (Ind. 2018). We do not reweigh evidence, and there "must be substantial evidence of probative

value in the record to support the trial court's decision." *Id.* (quotation marks omitted). Within this sufficiency review, we review all issues of law, including alleged constitutional violations, *de novo*. *Id.*

Issue One: Reasonable Suspicion

[10] Lowry first asserts that Deputy Hall lacked the reasonable suspicion required under his waiver to search his residence. "[R]easonable suspicion exists where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur." *State v. Richardson*, 927 N.E.2d 379, 384 (Ind. 2010) (alteration and quotation marks omitted). As the Supreme Court of the United States has made clear:

> The officer, of course, must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification . . . . That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means a fair probability that contraband or evidence of a crime will be found, and the level of suspicion required for [under the reasonable-suspicion standard] is obviously less demanding than that for probable cause.
>
> The concept of reasonable suspicion, like probable cause, is not readily, or even usefully, reduced to a neat set of legal rules. . . . In evaluating the validity of [a reasonable-suspicion determination], we must consider the totality of the circumstances—the whole picture.

United States v. Sokolow, 490 U.S. 1, 7-8 (1989) (citations and quotation marks omitted).

[11] In his argument on appeal, Lowry relies most notably on our opinion in *Hensley v. State*, 962 N.E.2d 1284 (Ind. Ct. App. 2012). In *Hensley*, an officer received an anonymous tip that a probationer was in possession of marijuana. The officer "took no action based on this tip." *Id.* at 1289. Then, three weeks later, the officer received another tip that the probationer had a firearm. The officer obtained no other information from this tipster "and did not know his truthfulness." *Id.* Nonetheless, based on the second tip, the officer searched the probationer's residence and seized contraband. On appeal from the trial court's denial of the probationer's motion to suppress, we held that "these unsubstantiated tips" did not demonstrate reasonable suspicion of criminal activity. *Id.* at 1291.

[12] *Hensley* and the other authorities cited by Lowry on this issue are inapposite. Deputy Hall personally received not an anonymous tip but a confidential one from an informant known to Deputy Hall. While Deputy Hall also received an anonymous tip relayed to him by Officer Mahady, the tip Deputy Hall relied on was from the confidential informant known to Deputy Hall. Deputy Hall knew the confidential informant to be honest and reliable based on past tips. The informant relayed to Deputy Hall that Lowry and Russell were dealing out of Lowry's house. Deputy Hall then observed that Russell, who was known to local law enforcement for drug-related offenses, was present at Lowry's residence on multiple occasions. Deputy Hall further observed that Lowry had

gone from a healthy appearance to an appearance analogous to his appearance when he had previously been engaged in drug-related offenses. Under the totality of the circumstances, the State demonstrated that an ordinarily prudent person would believe that criminal activity was ongoing out of Lowry's residence. Thus, we conclude that there was reasonable suspicion to support Deputy Hall's search of Lowry's residence, and the trial court properly denied Lowry's motion to dismiss on this issue.

Issue Two: Miranda Warnings

[13] Lowry next asserts that his statements to Deputy Hall in Lowry's kitchen were inadmissible under *Miranda v. Arizona*, 384 U.S. 436 (1966). That is, he argues that he was "in custody" at that time such that Deputy Hall should have read him the *Miranda* warnings prior to Lowry's admissions. As the Indiana Supreme Court has made clear:

> "Custody under *Miranda* occurs when two criteria are met. First, the person's freedom of movement is curtailed to the degree associated with formal arrest. And second, the person undergoes the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *[State v.]E.R.*, 123 N.E.3d [675,] 680 [(Ind. 2019)] (quotations and citations omitted).
>
> Custody, therefore, is "a term of art that specifies circumstances that are thought generally to present a *serious* danger of coercion." *Howes v. Fields*, 565 U.S. 499, 508, 132 S. Ct. 1181, 1189, 182 L.Ed.2d 17 (2012) (emphasis added). There is no bright line rule requiring *Miranda* warnings be given prior to an interview simply because a particular defendant is questioned in

a police station. Indeed, the Supreme Court of the United States has advised:

> Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody."

Oregon v. Mathiason, 429 U.S. 492, 495, 97 S. Ct. 711, 714, 50 L.Ed.2d. 714 (1977) (per curiam); *accord California v. Beheler*, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 3520, 77 L.Ed.2d 1275 (1983) (per curiam).

State v. Diego, 169 N.E.3d 113, 117 (Ind. 2021).

[14] Lowry asserts that, because he was on monitored home detention and his case manager and several uniformed officers were actively searching his house, his incriminating statements occurred while he was in custody. We cannot agree. "Under *Miranda*, freedom of movement is curtailed when a reasonable person would not feel free to terminate the interrogation and leave." *Id.* Here, while officers were searching his house, Lowry invited Deputy Hall and the case manager inside to his kitchen to talk. And before any contraband had been discovered, Lowry volunteered that Russell had been in the residence, Lowry

had "messed up," and officers would find pipes and other contraband. Tr. Vol. 2 at 55. The totality of the circumstances make clear that Lowry was under no prohibited coercive pressures when he volunteered his admissions, and he could have, instead, simply not engaged with Deputy Hall during the search. We therefore cannot say that the trial court erred when it denied Lowry's motion to suppress on this issue.

Conclusion

[15] In sum, we affirm the trial court's denial of Lowry's motion to suppress.

[16] Affirmed.

Bradford, C.J., and Bailey, J., concur.