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IN THE
COURT OF APPEALS OF INDIANA

James Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 7, 2023

Court of Appeals Case No. 22A-CR-1442

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2010-F3-36

Opinion by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] James Williams appeals his conviction for Level 3 felony promotion of child sexual trafficking following a bench trial. Williams raises one issue for our review, which we restate as whether officers violated his rights under the Fourth Amendment to the United States Constitution or Article 1, Section 11 of the Indiana Constitution when they entered his motel room and seized his cell phones. We affirm.

Facts and Procedural History

[2] In 2018, then-thirty-one-year-old Williams found then-sixteen-year-old K.L. on Facebook and sent her a message. The two lived near each other in Illinois. A few months after they began exchanging online messages, K.L. left her mother's home and moved in with Williams in Decatur, Illinois.

[3] "A few months" later, Williams told K.L. that she "wasn't making any money," that she "needed to make money," and that "he had an option" for her. Tr. Vol. 2, pp. 97-98. He then proposed that she exchange sexual encounters with "Johns" for money. *Id.* at 98. K.L. did not want to do that, but she felt like she "didn't have a[n] option" because she had no place else she could live. *Id.* at 99. And when she later would tell Williams that she did not want to see a particular John or engage with one on a particular day, Williams would "[m]entally, physically[,] and emotionally" abuse her. *Id.* at 99-100.

[4] Williams was the one who would "ma[k]e the plan" with a John. *Id.* at 98. To set up the encounters, Williams used multiple cell phones, a specific internet

site, and a text-messaging app. Williams would have K.L. meet a John at a determined location, where she would engage the John in sexual activity. Williams trafficked K.L. to numerous states for these encounters, including Indiana, and had K.L. seeing "[b]etween five and eight" Johns per day "[p]retty much seven days a week." *Id.* at 103-04. By October 2020, K.L. estimated that Williams had arranged "[b]etween five hundred and [one] thousand" encounters between her and Johns. *Id.* at 103.

[5] On October 13, 2020, Williams arranged for K.L. to meet with Johns at a hotel in Lafayette, Indiana. Williams and K.L. left for the encounters in different cars and at different times. After meeting with the Johns, K.L. went to get some food, and, while she was sitting in her car, Lafayette Police Department Officer Grant Leroux approached her. Officer Leroux is trained to recognize signs of human trafficking, and he knew the hotel at which K.L. had been to be a "higher crime hotel[]" in the area. *Id.* at 152. After approaching K.L., Officer Leroux radioed Lafayette Police Department Officer Daniel Long, who was also trained in human trafficking, to assist at the scene.

[6] Officer Long took over talking to K.L. while Officer Leroux and a third officer, Sergeant Strah,[1] searched K.L.'s hotel room. After initially being hesitant to communicate with Officer Long, K.L. determined that she "was done" and

[1] Sergeant Strah's first name is not in the record on appeal.

"was ready to go home." *Id.* at 133. K.L. then informed Officer Long that she was the victim of sexual trafficking and of Williams's involvement. While she was relaying this information to Officer Long, he observed that a cell phone in the front seat of K.L.'s car was "continuously" ringing and displaying the name "James." *Id.* at 171. Officer Long then learned that Williams was staying at a neighboring motel. Concerned that they could be within visual range of Williams, Officer Long transported K.L. to the Lafayette Police Department. At the police department, K.L. "start[ed] from the beginning of her relationship" with Williams and informed Officer Long of her circumstances. *Id.* at 172. In doing so, she was explicit that Williams used cell phones to advertise K.L. to potential Johns and also used a text messaging app on his cell phones "to arrange meetings with individuals for [her] to have sex with." Appellant's App. Vol. 2, p. 24.

[7] Meanwhile, Officer Leroux and Sergeant Strah seized a large box of condoms, a sex toy, and a debit card in Williams's name from K.L.'s hotel room, which information they relayed to Officer Long. Officer Leroux and Sergeant Strah then went to the neighboring motel where Williams was staying. The officers knocked on Williams's motel room door. When he answered, they falsely told Williams that K.L. had had a "medical emergency" nearby and that she had informed officers that Williams was "her cousin or uncle" and staying at the

motel. Appellant's Br. at 14.[2] Williams asked who the girl was, and one of the officers said "Jessica," which was the name on K.L.'s false identification card, and the other officer said K.L.'s first name. *Id.* at 14-15. The officers then stated that there were two females—K.L. and a friend or roommate named Jessica whom the officers were unable to locate.

[8] After Williams acknowledged knowing K.L., one of the officers stated:

> She said hey, I'm not feeling good, can you call an ambulance, so we came and arrived cause we weren't sure what it was, but she was fine, she said sit down, I don't know if it was maybe she was dehydrated or something like that. Gave her some water, she said that she had a friend here named Jessica, we can't find Jessica but she said also that, uh, you were here and she said that you were her cousin, she was like, hey, if you reach out to him, just make sure that he's okay[.]

Id. at 15. Williams followed up by asking how K.L. got dehydrated, and the officers responded that they were "not sure" because they "were just talking" with K.L. *Id.* at 15-16. Williams then expressed confusion over K.L. having a roommate, but he added that he "thought something might have happened" because he had not heard from K.L. for a few hours. *Id.* at 16. Sergeant Strah then asked Williams, "Do you mind if [we] step inside and talk to you more

[2] We thank Williams's counsel for his unofficial transcription of the relevant portions of Exhibit A in his brief on appeal, the accuracy of which the State does not dispute. *See* Appellant's Br. at 14-22.

about this?" *Id.* at 16 (emphasis removed). Williams permitted the officers to enter into his motel room.

[9] Inside the motel room, officers observed two cell phones lying out in the open. Officer Long then radioed Officer Leroux and Sergeant Strah and informed them that, based on K.L.'s statements at the police station, he believed they had probable cause to arrest Williams. Officer Leroux and Sergeant Strah placed Williams under arrest. The officers also seized his cell phones pending approval of a search-warrant request for the phones, placing them on airplane mode in the interim to avoid a possible remote wiping. A judicial officer approved that search warrant a few hours later, and officers then searched Williams's cell phones. In the course of that search, officers discovered Williams's advertisements of K.L. and extensive conversations with Johns regarding exchanging money for sex with K.L.

[10] The State charged Williams with Level 3 felony promotion of child sexual trafficking. At his ensuing bench trial, Williams objected to the admission of the evidence obtained from his cell phones, arguing that the officers' entry into the motel room and their seizure of the cell phones from that room violated his rights under the Fourth Amendment and Article 1, Section 11of the Constitution of Indiana. The trial court overruled Williams's objection and found him guilty of the Level 3 felony. The court then sentenced him to serve twelve years in the Department of Correction, with three of those years suspended to supervised probation. This appeal ensued.

Standard of Review

[11] Williams appeals the admission of evidence at his trial. As our Supreme Court has made clear:

> On appeal, an abuse-of-discretion standard applies to a trial court's decision on the admissibility of evidence, with reversal warranted only if the trial court's ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). But when, like here, the trial court's determination involves the constitutionality of a search or seizure, that determination is a question of law to which a de novo standard of review applies. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008).

McCoy v. State, 193 N.E.3d 387, 390 (Ind. 2022).

[12] Williams's arguments on appeal are based on the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. As we have explained:

> Both the Fourth Amendment to the United States Constitution and Article [1], Section 11 of the Indiana Constitution protect "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures[.]" U.S. Const. Amend. IV; Ind. Const., art. [1,] § 11. These protections against unreasonable governmental searches and seizures are a principal mode of discouraging lawless police conduct. *Friend v. State*, 858 N.E.2d 646, 650 (Ind. Ct. App. 2006) (citing *Jones v. State*, 655 N.E.2d 49, 54 (Ind. 1995); *Terry v. Ohio*, 392 U.S. 1, 12, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). When

> the police conduct a warrantless search, the State bears the burden of establishing that an exception to the warrant requirement is applicable. *Id.*

Bulthuis v. State, 17 N.E.3d 378, 383 (Ind. Ct. App. 2014), *trans. denied*.

1. The officers' "medical emergency" ruse did not render Williams's consent to their entry into his room involuntary.

[13] We first address Williams's argument that the officers unlawfully entered into his motel room. As relevant to the officers' entry into that room, "[t]he Fourth Amendment recognizes a valid warrantless entry . . . when police obtain the voluntary consent of an occupant . . . ." *R.B. v. State*, 43 N.E.3d 648, 650 (Ind. 2015) (quoting *Georgia v. Randolph*, 547 U.S. 103, 106 (2006)). Likewise, consent is a well-recognized exception to the warrant requirement of Article 1, Section 11. *See Bulthuis*, 17 N.E.3d at 383. And our analysis of consent under both provisions is the same:

> The voluntariness of the consent to search is to be determined by considering the totality of the circumstances. [*Friend*, 858 N.E.2d at 651]. A consent to search is valid except where it is procured by fraud, duress, fear, intimidation, or where it is merely a submission to the supremacy of the law. *Crocker v. State*, 989 N.E.2d 812, 820 (Ind. Ct. App. 2013), *trans. denied*.
>
> > The "totality of the circumstances" from which the voluntariness of a [defendant]'s consent is to be determined includes, but is not limited to, the following considerations: (1) whether the defendant was advised of his *Miranda* rights prior to the request to search; (2) the

> defendant's degree of education and intelligence; (3) whether the defendant was advised of his right not to consent; (4) whether the detainee has previous encounters with law enforcement; (5) whether the officer made any express or implied claims of authority to search without consent; (6) whether the officer was engaged in any illegal action prior to the request; (7) whether the defendant was cooperative previously; and (8) whether the officer was deceptive as to his true identity or the purpose of the search.
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> *Id.* at 820-21 (citing *State v. Scheibelhut*, 673 N.E.2d 821, 824-25 (Ind. Ct. App. 1996)). The determination of whether consent in this context was voluntary is a question of fact, and a reviewing court is ill-equipped to make factual determinations, especially where the evidence is conflicting. *Scheibelhut*, 673 N.E.2d at 824-25.

Id. In other words, "the case law demonstrates that a deceptive law enforcement tactic . . . does not itself require or preclude a finding that an authorized person voluntarily consented . . . . Rather, 'the totality of the circumstances'—including, naturally, the nature of the deception used—must be considered . . . ." *United States v. Montes-Reyes*, 547 F. Supp. 2d 281, 290 (S.D.N.Y. 2008) (citation omitted).

[14] On appeal, Williams asserts that the officers' false pretext of K.L. having a medical emergency rendered his consent to their entry into his motel room

involuntary.[3] In support of his position, Williams substantially relies on *Montes-Reyes*. In that case, the United States District Court for the Southern District of New York summarized federal case law on the relationship of deceptive police tactics and the voluntariness of consent under the Fourth Amendment as follows:

> Cases in which consent to search was provided following a police ruse or misrepresentation may be usefully viewed as falling into three categories. In the first category are cases in which the person whose consent is sought is left with the impression that his consent cannot be lawfully withheld. . . . Examples include cases in which law enforcement agents falsely claim that they already possess a warrant to search the premises or falsely claim to be pursuing some otherwise permissible regulatory purpose. *Bumper[v. North Carolina*, 391 U.S. 543 (1968),] is the foundational case on this point. In that case, an elderly woman was told by police officers that they had a warrant to search her home, and she agreed to let them in. . . . [T]he Court held that the search violated the Fourth Amendment. The Court reasoned that "[w]hen a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. . . . Where there is coercion there cannot be consent." *Id.* at 550, 88 S. Ct. 1788.
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> In the second category are cases in which the agents—acting undercover or in uniform—inform the person from whom consent is sought of certain dire or otherwise exigent

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[3] Williams also appears to argue that he was not given *Pirtle* advisements at this time, but *Pirtle* advisements only apply when a person is in police custody. *Pirtle v. State*, 263 Ind. 16, 29, 323 N.E.2d 634, 640 (1975). Williams was not in police custody at the time he permitted the officers entry into his motel room.

> circumstances and request permission to enter or search the premises purportedly for the purpose of investigating or addressing those circumstances. As noted in a leading treatise, in such cases, where "the police misrepresentation of purpose is so extreme," a person is "deprive[d] . . . of the ability to make a fair assessment of the need to surrender his privacy," and therefore the resulting "consent should not be considered valid." Wayne R. LaFave et al., Criminal Procedure § 3.10(c) (3d ed.2007). The leading example is provided by *United States v. Giraldo*, 743 F. Supp. 152 (E.D.N.Y. 1990), in which agents disguised as gas company workers asked permission to enter to check for a gas leak. *Id.* at 153. The resulting consent was considered involuntary under these circumstances because the "defendant was led to believe there was a life-threatening emergency," and that his consent to search was required to prevent a[n] impending calamity. *Id.* at 154. "Defendant's only 'free choice'" given the scenario presented to him "was to have refused entry to the 'gas company' and risk blowing up himself and his neighbors." *Id.*
>
> In the final category are cases in which consent was found to be voluntary despite some form of deception by law enforcement. This category, however, is almost exclusively populated by cases in which the deception in question was the use of an undercover agent who obtained otherwise voluntary consent through the use of his adopted identity. . . .

Id. at 287-88 (some alterations and omissions in original; footnotes and some citations omitted).

[15] In *Montes-Reyes*, federal DEA agents suspected the defendant of dealing narcotics out of a hotel room. Two agents knocked on the door of the hotel room, and, when the defendant answered, they identified themselves as state

police officers "looking for a missing girl." *Id.* at 283. The officers showed the defendant a picture of a girl who was about four years old on a "flier from the National Center for Missing and Exploited Children," which read "Endangered Missing" in "large, bold letters" across the top of the page. *Id.* The officers asked to search the hotel room "for the missing girl," and the defendant consented. *Id.* Three more agents then entered the room, and inside they discovered evidence of narcotics.

[16] The defendant moved to suppress the evidence on the theory that his consent had been unlawfully coerced through the officers' deceptive tactics. The district court agreed, analogizing the "missing girl ruse" to the "gas leak scenario" described in *Giraldo*. *Id.* at 291 (quotation marks omitted). In particular, the district court found that the agents' deception misrepresented that "a four-year-old girl" was "lost and, necessarily, in serious danger." *Id.* The court further found that the defendant "ha[d] every reason to believe that his failure to consent . . . would hinder or delay the efforts to resolve safely (what appeared to be) a grave emergency . . . ." *Id.* The court concluded that the "false claim of a missing child is precisely the kind of extreme misrepresentation . . . by which a person is deprived of the ability to make a fair assessment of the need to surrender his privacy," and the court ordered the evidence seized as a result of that deception to be suppressed under the Fourth Amendment. *Id.* (cleaned up).

[17] We conclude that the officers' encounter with Williams at his motel room door is readily distinguishable from the "missing girl ruse" at issue in *Montes-Reyes*.

First, the officers here did not misrepresent, either verbally or visually, their authority—they presented themselves as Lafayette Police Department officers, as they in fact were. Second, at no point prior to obtaining Williams's consent to enter the motel room did the officers use or imply the use of physical force against Williams. Third, there is no evidence or suggestion that Williams is not a man of ordinary intelligence.

[18] As for the officers' ruse, while they initially described the false scenario as a "medical emergency," they quickly added that K.L. was "fine" and that she had simply been "dehydrated" but had had "some water." Appellant's Br. at 15. Further, the scenario as a whole made clear that K.L. was not in an emergent scenario, as she was described as being in the care of medical providers, lucid, and communicative. Indeed, much of the conversation between the officers and Williams in the threshold of his motel room door was on the purported existence of "Jessica," whom Williams disclaimed knowing. *See id.* at 14-22.

[19] Thus, when the officers asked if they could enter Williams's motel room to continue their discussion of "this," i.e., K.L.'s purported medical circumstances, there was no mention or suggestion of a life-threatening or dire scenario at all, let alone one that would have necessitated the officers' entry into Williams's motel room to potentially resolve or mitigate. We therefore agree with the trial court that, under the totality of the circumstances, the officers' ruse did not deprive Williams of the ability to make a fair assessment as to

whether he could deny the officers entry into his motel room. Thus, Williams's consent to the officers' entry into his motel room was voluntarily given, and he cannot assert a violation of his Fourth Amendment or Article 1, Section 11 rights on this issue.

2. The officers' seizure of the cell phones from the motel room did not violate Williams's Fourth Amendment rights.

[20] Williams also asserts that the officers violated his Fourth Amendment rights when they seized the cell phones from the motel room pending the search-warrant request for those phones. We agree with the State that established precedent makes clear that the officers did not violate Williams's Fourth Amendment rights when they seized his cell phones and placed them on airplane mode while they awaited a search warrant for those phones.

[21] The Supreme Court of the United States has made clear that such measures do not run afoul of the Fourth Amendment. Specifically, in *Riley v. California*, the Court stated:

> Both [of the defendants] concede that officers could have seized and secured their cell phones to prevent destruction of evidence while seeking a warrant. That is a sensible concession. And once law enforcement officers have secured a cell phone, there is no longer any risk that the arrestee himself will be able to delete incriminating data from the phone.

* * *

> [A]s to [concerns of destruction of the evidence via] remote wiping, law enforcement is not without specific means to address the threat. *Remote wiping can be fully prevented by disconnecting a phone from the network*. There are at least two simple ways to do this: First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. Such devices are commonly called "Faraday bags," after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil: cheap, lightweight, and easy to use. They may not be a complete answer to the problem, *but at least for now they provide a reasonable response*. . . .

573 U.S. 373, 388, 390 (2014) (emphases added; citations omitted).

[22] That is what officers here did. They seized the cell phones and secured them by placing them on airplane mode, which disconnected the phones from any networks. The officers' temporary seizure pending the approval of a search warrant by a judicial officer was "a reasonable response" to the situation. *Id.* at 390. Thus, the officers did not violate Williams's Fourth Amendment rights when they seized his cell phones pending approval of their search-warrant request.

3. The officers' seizure of Williams's cell phones did not violate his rights under Article 1, Section 11.

[23] Last, Williams's asserts that the seizure of his cell phones violated his rights under Article 1, Section 11. As our Supreme Court has explained:

> Our analysis of claims under Section 11 does not demand that we look to the same requirements as those examined under the United States Constitution; rather, our investigation under Section 11 places the burden on the State to demonstrate that each relevant intrusion was reasonable in light of the totality of the circumstances. As we consider reasonableness based upon the particular facts of each case, the Court also gives Art. 1, § 11, a liberal construction to angle in favor of protection for individuals from unreasonable intrusions on privacy. At the same time, Indiana citizens have been concerned not only with personal privacy but also with safety, security, and protection from crime. It is because of concerns among citizens about safety, security, and protection that some intrusions upon privacy are tolerated, so long as they are reasonably aimed toward those concerns. Thus, we have observed "that the totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind. 2005). Our determination of the reasonableness of a search or seizure under Section 11 often "turn[s] on a balance of: 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.

Holder v. State, 847 N.E.2d 930, 940 (Ind. 2006) (some citations and quotation marks omitted).

[24] We agree with the trial court that the officers' seizure of Williams's cell phones pending the approval of a search warrant was reasonable under the totality of the circumstances. Based on K.L.'s descriptive statements of her circumstances,

the evidence seized from her hotel room, her relationship to Williams, the observation of her cell phone receiving repeated phone calls from a man named James during her initial encounter with officers, and her express representations that Williams used cell phones in the commission of sexual trafficking of K.L., the officers had a very high degree of suspicion that Williams's cell phones contained evidence of a crime. Further, the seizure of the cell phones and placing them on airplane mode while awaiting the approval of a search warrant imposed a low degree of intrusion on Williams, who was also under arrest at that time. Finally, law enforcement's need for the evidence on the cell phones—assuming the approval of the requested search warrant—and their concomitant need to maintain chain of custody over those phones pending the approval of that warrant was very high. Considering the totality of the circumstances, we therefore conclude that the officers did not violate Williams's rights under Article 1, Section 11 when they seized his cell phones.

Conclusion

[25] For all of the above-stated reasons, we affirm the trial court's admission of the evidence and Williams's conviction for Level 3 felony promotion of child sexual trafficking.

[26] Affirmed.

May, J., and Bradford, J., concur.