MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James E. McCoy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2022

Court of Appeals Case No. 21A-CR-2000

Appeal from the Cass Superior Court

The Honorable James K. Muehlhausen, Judge

Trial Court Cause No. 09D01-2008-F6-290

Brown, Judge.

[1] James E. McCoy appeals his convictions for possession of methamphetamine as a level 6 felony and possession of paraphernalia as a class C misdemeanor. McCoy raises one issue which we revise and restate as whether the trial court abused its discretion by admitting certain evidence. We affirm.

Facts and Procedural History

[2] On August 30, 2020, Logansport Patrolman Cody Scott was monitoring the flow of traffic. Arthur Haviland approached Patrolman Scott on a bicycle and reported an ongoing robbery at an address on 12th Street and identified the robber as a white male in a pink hooded sweatshirt driving a red truck. He also reported that McCoy could be found at the residence and there was an active warrant for McCoy's arrest.

[3] Patrolman Scott went to the residence on 12th Street, observed a red pickup truck pulling away from the residence, and asked other officers who were in route to the location to attempt to stop the vehicle. Patrolman Scott observed McCoy outside of the residence carrying a box with household items. McCoy gave Patrolman Scott his name and date of birth. Patrolman Scott confirmed that there was an active warrant for McCoy's arrest and placed him in handcuffs. McCoy told him that the male who left in the truck had attempted to steal items from his house, he was able to retrieve some of the items, and he was "unsure if he got all of the items out of the truck." Transcript Volume II at 61.

[4] The truck returned about five minutes later. Patrolman Scott offered McCoy an opportunity to look in the truck for possible stolen items. He also asked McCoy if he would like to escort him through the house to see if any other items were missing from the residence. McCoy "allowed [Patrolman Scott] to enter his house escorted by him." *Id.* at 63. While they were making their way up to the second story, Patrolman Scott smelled an odor of burnt Spice or synthetic marijuana coming from the upstairs portion of the house. Once they were upstairs, McCoy escorted Patrolman Scott through the house, took him in his bedroom, and looked to see if there were any other items missing. Patrolman Scott observed multiple plastic baggies throughout the room. McCoy identified the bedrooms of the other residents including Haviland and Jerry McCoy. Patrolman Scott did not enter these rooms because he did not have permission.

[5] Patrolman Scott exited the house, spoke with his supervisor, and obtained a warrant to search the residence and the red truck. During a search of the residence, Patrolman Scott found a glass pipe with burnt residue, a rubber smoking pipe, a blue bag with white residue that tested positive for methamphetamine, a vape pen with a cartridge, and two clear plastic containers in McCoy's bedroom. After the search, Patrolman Scott read McCoy a *Miranda* warning, asked McCoy if he would like to speak with him, and showed him all the items that were located in his bedroom. McCoy claimed all of the items belonged to him and that the glass pipe was used to ingest crack cocaine.

[6] On August 31, 2020, the State charged McCoy with: Count I, possession of methamphetamine as a level 6 felony; Count II, possession of a narcotic drug as

a level 6 felony; and Count III, unlawful possession of a syringe as a level 6 felony. On June 21, 2021, the State filed an amended information charging McCoy with: Count I, possession of methamphetamine as a level 6 felony; Count II, unlawful possession of a syringe as a level 6 felony; Count III, possession of marijuana as a class A misdemeanor; and Count IV, possession of paraphernalia as a class C misdemeanor.

[7] On June 29, 2021, the court held a jury trial. During Patrolman Scott's testimony, the prosecutor moved to admit State's Exhibit 1, a photograph of the glass smoking device with burnt residue, and McCoy's counsel asked some preliminary questions. McCoy's counsel stated: "You were talking earlier about detained or under arrest, he had a Warrant for some unpaid fines and court costs, is that right?" *Id.* at 70. Patrolman Scott replied: "I don't know what the Warrant was for." *Id.*

[8] McCoy's counsel objected and moved to suppress evidence based on the lack of McCoy's consent as well as the lack of a *Miranda* advisement or *Pirtle* warning. After some discussion, the court stated:

> [McCoy] was in custody but on a Warrant unrelated to the charges that [are] subject to this case. I don't see this as a search. I see it as an attempt to identify stolen property from the underlying crime that's been alleged, a burglary. Mr. McCoy's a victim, apparent victim of what appeared to be an apparent robbery. It's natural to ask him if he wants to identify any other stolen property. There's no evidence to indicate at that point Officer Scott was looking for evidence other than the stolen property. While in the house he noticed the aroma of what appeared to be Spice. At that point it stopped, and he left the

> premises and obtained a Search Warrant. That's when the search began. Motion denied.

Id. at 73.

[9] After the State rested, McCoy's counsel moved for a directed verdict. The court granted the motion for a directed verdict with respect to Count III, possession of marijuana as a class A misdemeanor, and denied the motion with respect to the remaining counts. The jury found McCoy not guilty of Count II, unlawful possession of a syringe as a level 6 felony, and guilty of Count I, possession of methamphetamine as a level 6 felony, and Count III, possession of paraphernalia as a class C misdemeanor. The court sentenced McCoy to an aggregate term of 910 days.

Discussion

[10] McCoy cites Sections 11 and 13 of Article 1 of the Indiana Constitution. He asserts that he was in custody when the police secured his consent to search his house and bedroom and that the facts of this case implicate the fundamental wrongs that *Pirtle v. State*, 263 Ind. 16, 323 N.E.2d 634 (1975), was intended to prevent. He also argues that he had a right to counsel when Patrolman Scott confirmed that there was an active warrant for his arrest and handcuffed him while he continued to investigate the ongoing property dispute.

[11] The issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence. *See Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). Because the trial court is best able to weigh the evidence and assess witness

credibility, we review its rulings on admissibility for abuse of discretion and reverse only if a 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). The ultimate determination of the constitutionality of a search or seizure is a question of law that we consider de novo. *Id.*

[12] Article 1, Section 11 of the Indiana Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

[13] Article 1, Section 13 of the Indiana Constitution provides in part:

> In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

[14] In *Pirtle*, Robert Pirtle was arrested at 2:48 a.m. on December 24, 1972, for possession of a stolen car. 263 Ind. at 21-22, 323 N.E.2d at 636-637. An officer read Pirtle his constitutional rights as required by *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), after Pirtle was seated in the squad car. 263 Ind. at

22, 323 N.E.2d at 637. Pirtle "made no waiver in response thereto." *Id.* An officer entered the car to look for the owner's registration and saw the handle of a gun, and another officer removed the gun from the car. *Id.* at 21, 323 N.E.2d at 636.

[15] When Pirtle arrived at the police station, another officer read his rights to Pirtle as required by *Miranda* between 3:00 and 4:00 a.m. 263 Ind. at 22, 323 N.E.2d at 637. Pirtle did not waive his rights and said he would like to talk to his attorney. *Id.* The officer sat and talked to Pirtle for "quite a while," but the officer testified that nothing which Pirtle said led to any information on the murder case. *Id.* At about 3:00 p.m. and after Pirtle had been mentioned as a possible suspect in a robbery and homicide, an officer talked with Pirtle. *Id.* Pirtle was advised of his rights again, and no waiver was given. *Id.* A detective asked Pirtle if he would authorize a search of his apartment, and Pirtle agreed and signed a search waiver. *Id.* During the search, officers found the wallet of the victim of a December 16, 1972 homicide and met two men who confessed their part in the homicide and implicated Pirtle. *Id.* at 21, 323 N.E.2d at 636. The State charged Pirtle with First Degree Murder. *Id.*

[16] The Indiana Supreme Court held that "[t]he Sixth Amendment of the Constitution of the United States and Art. I, s 13, of the Indiana Constitution guarantee a defendant the assistance of counsel for his defense" and "[t]he right to counsel applies 'at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial.'" 263 Ind. at 26, 323 N.E.2d at 639 (quoting *United States v. Wade*, 388

U.S. 218, 226, 87 S. Ct. 1926, 1932 (1967)). It stated that "[w]e have no doubt that the decision to consent to an unlimited search is a vital stage in the prosecutorial process." *Id.* The court held that "[w]hen a defendant is in custody at the police station there is no 'practical' reason for depriving him of the assistance of counsel in making the decision whether to consent to a search." 263 Ind. at 28, 323 N.E.2d at 640. It stated that "a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent" and that "[t]his right, of course, may be waived, but the burden will be upon the State to show that such waiver was explicit . . . ." *Id.* at 29, 323 N.E.2d at 640.

[17] The Court also held:

> In suppressing evidence which is material and relevant, but which is obtained by the exploitation of constitutionally prohibited police conduct, the courts are attempting to deter the proscribed conduct by making it unprofitable. In regard to the Fourth Amendment, the illegal conduct is the initial invasion of the privacy of a person or his property. No subsequent exclusion of evidence will restore that privacy. However, the courts have determined that, at the least, the Government should not have the advantage of its wrong in a case against the person whose privacy was invaded. *Weeks v. United States* (1914), 232 U.S. 383, 34 S. Ct. 341, 58 L.Ed. 652. In determining whether the proferred evidence is clearly linked to the unconstitutional conduct, the trial court should consider the Court's statement in *Nardone v. United States* (1939), 308 U.S. 338, 60 S. Ct. 266, 84 L.Ed. 307:

> []To forbid the direct use of methods thus characterized but to put no curb on their full indirect use would only invite the very methods deemed 'inconsistent with ethical standards and destructive of personal liberty.['] 308 U.S. at 340, 60 S. Ct. at 267.

Id. at 31-32, 323 N.E.2d at 642.

[18] With respect to the admission of the gun and subsequent tests on the gun, the Court found that the circumstances of the arrest gave probable cause for a limited search for identification of the car without a warrant, noted that Pirtle had already been arrested on the stolen vehicle charge, and stated that "[t]herefore, this search was not exploratory, seeking evidence of crime without reasonable cause, but was intended to provide further verification that the car was stolen by examination of the registration certificate, which is required by law to be kept in automobiles for identification purposes." *Id.* at 33, 323 N.E.2d at 643. The Court held that the trial court correctly determined that the gun and subsequent tests of the gun were not the product of an unlawful search of the car and affirmed the denial of appellant's motion to suppress the gun and tests. *Id.* at 33-34, 323 N.E.2d at 643.

[19] "The intrusiveness of a search does not inform the need for a *Pirtle* advisement." *Dycus v. State*, 108 N.E.3d 301, 306 (Ind. 2018). "However, . . . examining the scope and breadth of the searches helps us distinguish between the searches that require a *Pirtle* advisement and those that do not." *Id.*

[20] Although McCoy was in custody, he was in custody on an unrelated crime.[1] Further, while Patrolman Scott entered McCoy's residence, we cannot say that the act of walking through the residence with McCoy's permission and while escorted by McCoy in order to determine if any other items were missing from the residence constituted an unlimited search, an unlawful search, or constitutionally prohibited police conduct as contemplated by *Pirtle*. McCoy has not demonstrated a violation of his rights.

[21] For the foregoing reasons, we affirm McCoy's convictions.

[22] Affirmed.

May, J., and Pyle, J., concur.

[1] We note that McCoy's counsel, in a question to Patrolman Scott, referenced that the arrest warrant related to unpaid fines and court costs.