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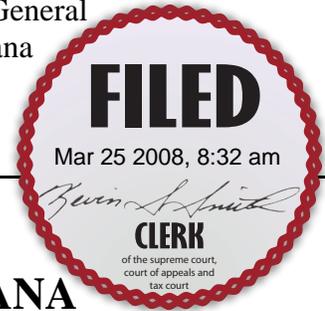
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JACKLYN A. THOMAS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 41A05-0710-CR-577

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APPEAL FROM THE JOHNSON SUPERIOR COURT  
The Honorable Cynthia S. Emkes, Judge  
Cause No. 41D02-0507-FA-8

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**March 25, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

Jacklyn A. Thomas appeals her conviction and sentence for class A felony dealing in methamphetamine. We affirm.

## Issues

We restate the issues as follows:

- I. Whether the trial court abused its discretion in admitting Thomas's confession;
- II. Whether the State established the corpus delicti of the crime; and
- III. Whether Thomas's sentence is inappropriate in light of the nature of the offense and her character.

## Facts and Procedural History

At approximately 2:00 a.m. on July 15, 2005, Franklin Police Department officers, led by narcotics detective Bryan Burton, executed a search warrant of a home rented by April and Gary Wiley. The warrant had been obtained following two days of surveillance, which was prompted by reports of a meth lab and "multiple complaints from the neighbors concerning traffic, heavy flow of traffic, and a lot of noise at late evening hours." Trial Tr. at 14. During the surveillance, police observed "lots of activity inside the garage, movement, things like that." *Id.* at 15. When police executed the warrant, four adults were present in the home: the Wileys, Thomas, and Thomas's boyfriend, Travis Hayes. The police gathered them in the living room and handcuffed them. The Wileys' four children were also in the home.

Thomas asked to speak with Detective Burton, to whom she had given information in three or four other narcotics investigations.<sup>1</sup> Thomas told Detective Burton that she had manufactured methamphetamine and showed him where relevant items were located. She stated that she had “been using narcotics within the last few days,[,]” Supp. Tr. at 16, but Detective Burton did not have trouble communicating with her, and she did not appear to be under the influence of alcohol or drugs. Detective Burton advised Thomas of her *Miranda* rights, and she repeated essentially the same information on audiotape.

Inside the Wileys’ garage, police found methamphetamine precursors and other items indicative of methamphetamine manufacturing, including an empty propane torch, an empty can of Coleman fuel, empty butane lighters, containers of paint thinner, acetone, muriatic acid, and drain cleaner, and a pair of pliers, which are used to strip lithium from batteries. In a burn barrel, police found a metal fitting that had corrosion consistent with exposure to anhydrous ammonia. On the back porch, police found a plastic tub containing coffee filters and a pink substance that tested presumptively positive for pseudoephedrine. Trial Tr. at 7. Police also found spoons, pipes, and needles suitable for ingestion of methamphetamine.

On July 22, 2005, the State charged Thomas with class A felony dealing in methamphetamine.<sup>2</sup> On March 9, 2007, Thomas filed a motion to suppress on the basis that

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<sup>1</sup> At the suppression hearing, Detective Burton explained that Thomas “never was signed up necessarily as a confidential informant. She came in to give me that information, never did any kind of vice or work or anything like that.” Supp. Tr. at 12.

<sup>2</sup> The charging information does not appear in the record before us. Given the testimony elicited regarding the distance of the Wileys’ home from a public park and the fact that no methamphetamine was recovered from the home, we presume that the charge was elevated to a class A felony on the basis of the home’s proximity to the park. See Ind. Code § 35-48-4-1(b)(3)(B)(ii) (manufacturing a narcotic drug within 1000 feet of a public park).

her statements to Detective Burton “were the product of coercion [and] were [induced] by direct or indirect promises and threats[.]” Appellant’s App. I at 13. At a suppression hearing three days later, Detective Burton denied that Thomas’s statements were coerced. On April 4, 2007, the trial court denied Thomas’s motion to suppress.

At the bench trial on May 21, 2007, Thomas objected to the admission of her confession for the reasons stated in her motion to suppress. The trial court incorporated the evidence from the suppression hearing and overruled Thomas’s objection. The trial court found Thomas guilty as charged. On June 18, 2007, the trial court sentenced Thomas to forty years, with thirty years executed, five years in community corrections, and five years on probation. Thomas now appeals.

## **Discussion and Decision**

### ***I. Admissibility of Thomas’s Confession***

Thomas claims that the trial court erred in denying her motion to suppress her confession. Because Thomas appeals following a completed trial, however,

the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. However, we must also consider the uncontested evidence favorable to the defendant.

*Miller v. State*, 846 N.E.2d 1077, 1080 (Ind. Ct. App. 2006) (citations, quotation marks, and ellipsis omitted), *trans. denied*.

Thomas contends that her confession was inadmissible because it was coerced.

The Fourteenth Amendment of the United States Constitution incorporates the Fifth Amendment's privilege against self-incrimination. Therefore, to be admissible consistent with those provisions, a suspect's confession must be voluntarily given. The admissibility of a confession is to be determined by the trial court based on an evaluation of the totality of the circumstances. When making this determination, the trial court determines whether the confession was voluntarily made, and not provided through inducement, violence, threats, or other improper influences. We review the trial court's ruling in that regard without reweighing the evidence, and determine if there was substantial evidence of probative value to support it. When a challenge to the admissibility of a confession is made, the State must prove beyond a reasonable doubt that the confession was voluntary.

*Garmon v. State*, 775 N.E.2d 1217, 1219-20 (Ind. Ct. App. 2002) (citations omitted).

“Standard indicators for voluntariness include whether the confession was freely self-determined, the product of a rational intellect and free will, without compulsion or inducement of any sort, and whether the accused's will was overborne.” *Griffith v. State*, 788 N.E.2d 835, 841 (Ind. 2003).

Most of Thomas's arguments are merely requests to consider conflicting evidence in her favor, which we may not do. For example, she contends that Detective Burton

improperly interrogated her before he Mirandized her;<sup>3</sup> that Detective Burton promised to get her treatment for her substance abuse problem in exchange for her cooperation; that Detective Burton led her to believe that, as in past instances, she would not be punished for giving him information about narcotics;<sup>4</sup> and that her mental condition was “poor” because “she had been up for twenty[-]eight days due to methamphetamine use.” Appellant’s Br. at 8. Thomas and Detective Burton offered conflicting testimony on these matters, and we must resolve any conflicts in favor of the State.

Thomas also contends that Detective Burton coerced her into confessing by telling her that the Wileys’ children would be removed from the home. As Detective Burton himself observed, however, he was required by law to notify the department of child services upon discovering children under eighteen “at a site used for the illegal manufacture of a controlled substance[.]” Ind. Code § 5-2-15-4. Given the totality of the circumstances, we conclude that the State established beyond a reasonable doubt that Thomas’s confession was voluntary.

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<sup>3</sup> See *Collins v. State*, 873 N.E.2d 149, 155 (Ind. Ct. App. 2007) (“The *Miranda* warnings apply only to custodial interrogation because they are meant to overcome the inherently coercive and police dominated atmosphere of custodial interrogation. When a subject is in custody, *Miranda* requires that he be informed of the right to the presence and advice of counsel during custodial interrogation by the police, of the right to remain silent, and that any statement he makes may be used as evidence against him.”) (citation omitted), *trans. denied*; *Missouri v. Seibert*, 542 U.S. 600, 604 (2004) (“This case tests a police protocol for custodial interrogation that calls for giving no warnings of the rights to silence and counsel until interrogation has produced a confession. Although such a statement is generally inadmissible, since taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), the interrogating officer follows it with *Miranda* warnings and then leads the suspect to cover the same ground a second time. The question here is the admissibility of the repeated statement. Because this midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with *Miranda*’s constitutional requirement, we hold that a statement repeated after a warning in such circumstances is inadmissible.”) (parallel citations omitted). There is no question that Thomas was in custody for *Miranda* purposes when she spoke with Detective Burton. Detective Burton testified that Thomas volunteered information prior to being Mirandized, whereas Thomas claimed that he interrogated her. Our standard of review requires that we resolve this conflict in favor of the State.

<sup>4</sup> Thomas does not specifically assert, and the record does not reflect, that the information she gave Detective Burton in prior investigations was self-incriminating, as it was in this case.

## *II. Corpus Delicti*

Next, Thomas contends that the State failed to present sufficient evidence independent of her confession to establish the corpus delicti of class A felony dealing in methamphetamine.

The *corpus delicti* requirement seeks to prevent the admission into evidence of a defendant's confession to a crime that never occurred. Thus, in Indiana a crime may not be proven based solely upon a confession; instead, independent evidence of the crime is required. This evidence need not prove that a crime was committed beyond a reasonable doubt; rather, the evidence must merely provide an inference that a crime was committed. This inference may be established by circumstantial evidence.

*LeFlore v. State*, 823 N.E.2d 1205, 1213 (Ind. Ct. App. 2005) (citations omitted), *trans. denied*.<sup>5</sup> We note that Thomas did not object to the admission of her confession on corpus delicti grounds at trial and therefore could be said to have procedurally defaulted this issue for appeal. As did our colleagues in *Clark v. State*, 512 N.E.2d 223, 227 (Ind. Ct. App. 1987), however, we address this issue on the merits.

Thomas's failure to include a copy of the charging information in the record before us has hampered our review, in that we are unable to determine the specific allegations of the charge. The chronological case summary indicates that the State charged Thomas pursuant to Indiana Code Section 35-48-4-1(a)(1)(A), which defines "dealing in a narcotic drug" as the knowing or intentional manufacture of a drug. "Manufacture" is defined as

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<sup>5</sup> Thomas asserts that "an extrajudicial confession will not be admitted into evidence ... until and unless the *corpus delicti* has been established by clear proof independent of the confession." Appellant's Br. at 9-10 (citing *Simmons v. State*, 234 Ind. 489, 129 N.E.2d 121 (1955)). In *Beal v. State*, our supreme court recognized the abrogation of the "stringent rules of order of proof" in the corpus delicti context. 453 N.E.2d 190, 195 (Ind. 1983).

the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

Ind. Code § 35-48-1-18(1). In *Bush v. State*, we noted that this statute does not state that the manufacturing “process must be completed or that there must actually be a final product before it applies.” 772 N.E.2d 1020, 1023 (Ind. Ct. App. 2002), *trans. denied*.

Here, the State established that police conducted surveillance of the Wileys’ home in response to reports of a meth lab and neighbors’ complaints regarding excessive late-night traffic and noise. During the surveillance, police observed “lots of activity inside the garage[.]” Trial Tr. at 15. Police then obtained a search warrant, which Thomas has never challenged for lack of probable cause. Thomas was inside the home when police executed the warrant. Inside the garage, police found numerous containers of methamphetamine precursors. Several of the containers were empty, which suggests that their contents had been consumed during the methamphetamine manufacturing process. Police also found paraphernalia suitable for ingesting methamphetamine, which may explain why police found no methamphetamine on the premises.

Thomas claims that police did not find any anhydrous ammonia, lithium, ephedrine, or pseudoephedrine, all of which are “key ingredients to manufacturing methamphetamine[.]” Appellant’s Br. at 10. We note, however, that the State presented evidence that a metal fitting found in a burn barrel had corrosion that was consistent with exposure to anhydrous ammonia; that a pair of pliers found in the garage could have been used to strip lithium from

batteries; and that a plastic tub on the back porch contained coffee filters and a pink substance that tested presumptively positive for pseudoephedrine. *Id.* at 7. Taken together, the circumstantial evidence is sufficient to provide an inference that Thomas manufactured methamphetamine.<sup>6</sup> As such, the admission of Thomas’s confession did not violate the corpus delicti rule.

### *III. Appropriateness of Sentence*

Finally, Thomas challenges the propriety of her forty-year sentence. Indiana Appellate Rule 7(B) states, “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” A defendant must persuade this Court that her sentence has met the inappropriateness standard of review. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218.

“[R]egarding the nature of the offense, the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Id.*<sup>7</sup> The sentencing range for a class A felony is twenty to fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4. Thomas does not even address the nature of her

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<sup>6</sup> Thomas argues that the State was required to prove “when the alleged manufacturing of methamphetamine occurred.” Appellant’s Br. at 11. We observe that where, as here, “time is not an element or of the essence of the offense, the State need not prove the precise date alleged in the indictment or information but may prove that the crime occurred at any time within the statutory period of limitations.” *Sangslund v. State*, 715 N.E.2d 875, 878 (Ind. Ct. App. 1999) (citation and quotation marks omitted), *trans. denied*. Based on the circumstantial evidence, one may reasonably infer that Thomas had recently manufactured methamphetamine. We note that Thomas does not challenge the sufficiency of the evidence regarding the proximity of the Wileys’ home to the public park.

offense, which involved the use of volatile and hazardous chemicals in a home in which four children resided. Clearly, this disturbing fact militates in favor of a sentence greater than the advisory thirty-year term.

Our consideration of Thomas's character has been needlessly frustrated by her failure to include a confidential copy of her presentence investigation report in the record before us, which would have provided a detailed recitation of her twenty-five-year criminal history and substantiated her own arguments in this regard. From the transcript of her sentencing hearing, we gather that Thomas was on probation for a felony offense in Brown County when she committed the instant crime. The State elicited testimony from Thomas that she had been convicted of conversion, multiple thefts, and check deception, and had been written up in jail for trafficking mail with another inmate. Thomas's counsel summarized her client's criminal history as follows:

[L]ooks like Ms. Thomas has pled guilty to five different crimes, they were all crimes of dishonesty, except for the possession of marijuana. However, I'd just like to note that the two conversions in possession of marijuana, all of them occurred prior to 1991. Even her only felony in her, in her life, Your Honor, occurred in 1995, approximately ten years before this incident occurred.

Sent. Tr. at 17. Nevertheless, we agree with the State that Thomas's criminal history "demonstrate[s] that the police power of the State has had no deterrent effect upon [her]." Appellee's Br. at 12.

Thomas emphasizes that she enrolled in a twelve-step program and Bible studies while awaiting sentencing in this case and that she expressed remorse for her actions. She

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<sup>7</sup> Because Thomas committed her offense after Indiana's advisory sentencing scheme became

also states that she “suffered a fairly bad childhood, which led her to start using drugs at the age of twelve[.]” Appellant’s Br. at 12. At sentencing, however, she admitted that she “actively hid” her addictions from her prison drug counselor. Sent. Tr. at 14. In sum, Thomas has failed to persuade us that her forty-year sentence is inappropriate in light of the nature of the offense and her character.

Affirmed.

BAILEY, J., and NAJAM, J., concur.

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effective in April 2005, we review her sentence accordingly.