

Appellant-defendant Raymond G. Crouch appeals his convictions for Dealing in Methamphetamine,¹ a class A felony, and Possession of Methamphetamine,² a class C felony. Crouch argues that his convictions must be set aside because drugs that the police officers seized from his vehicle and his pants pockets were improperly admitted into evidence at trial, that the evidence was insufficient to support the convictions, and that his sentence must be set aside because it “lacked proportionality to the gravity of the offense.” Appellant’s Br. p. 25. Finding no error, we affirm the judgment of the trial court.

FACTS

On February 22, 2007, Indiana State Police Trooper William Etter arrested Eddie Blaschke for several offenses, including possession of methamphetamine. Trooper Etter told Blaschke that if he cooperated with law enforcement officers and supplied information regarding his source of the drugs, “it would help him.” Tr. p. 14, 65, 96, 143, 210, 275-76. Although no promises of leniency were made, Trooper Etter told Blaschke that he would inform the prosecutor of his anticipated cooperation. In response, Blaschke told Trooper Etter that Crouch, an individual whom he had known for many years, had sold him the methamphetamine. Blaschke stated that Crouch was a commercial truck driver who traveled through Indiana every couple of weeks. Crouch would stop at Blaschke’s wrecker service, which was located near Stilesville off of I-70, and supply him with methamphetamine in

¹ Ind. Code § 35-48-4-1.1.

² I.C. § 35-48-4-6.1.

exchange for cash or for work that Blaschke would perform on Crouch's truck.

Following this interview, Trooper Etter went to Blaschke's business. At some point, a drug-sniffing dog arrived on the premises, but it did not alert to any contraband. Trooper Etter told Blaschke to contact him the next time that Crouch was in town and he would try to set up a controlled buy.

On March 5, 2007, Blaschke telephoned Trooper Etter and informed him that Crouch was at his business. A short time later, Blaschke called Trooper Etter again and told him that he had just purchased two bags of methamphetamine from Crouch for \$600. Trooper Etter had Blaschke meet him in Mooresville, where he took custody of the suspected drugs and performed a field test on the substances. The test was positive for methamphetamine, and Trooper Etter told Blaschke to call him when Crouch was ready to leave.

Later that afternoon, several officers set up surveillance along I-70 near the Stilesville exit. At some point, the officers observed Crouch pull into a truck stop and remain there for approximately one hour. Thereafter, Crouch proceeded eastbound on I-70 to I-465, where he pulled into another truck stop at the Harding Street/State Road 37 exit. After remaining at the truck stop for approximately forty-five minutes, Crouch drove back onto I-465, entered I-70, and proceeded eastbound.

At some point, Indiana State Trooper Tim Denny observed Crouch pass him on I-70 at a speed of 75 miles per hour in a posted 65-miles-per-hour zone. Trooper Denny also saw Crouch follow the vehicle in front of him too closely. As a result of these observations, Trooper Denny stopped Crouch's truck. Trooper Denny instructed Crouch to submit his

license, registration, logbook, and other documents. Crouch admitted that he may have been following the other vehicle too closely.

Shortly after the stop, Trooper Etter arrived at the scene with a K-9 unit. Trooper Etter was certified by the Department of Transportation (DOT) to conduct Level 3 inspections pursuant to the Federal Motor Carrier Safety Regulations. The certification specifically permitted Trooper Etter to enter the cab of the truck and check certain equipment. He also had the authority to look for alcohol, drugs, and other substances in the truck that would cause impairment to the driver.

At some point, Crouch produced an Indiana driver's license that listed Blaschke's wrecker company in Stilesville as his address. As Troopers Etter and Denny discussed the documents, Crouch told them that he actually lived in Colden, California. When asked about the inconsistency, Crouch told the officers that he maintained a room with a bed and a telephone at Blaschke's business so he could list it as a residence and obtain various commercial driver materials in Indiana at a lower cost. Notwithstanding Crouch's claims, it was determined that when the officers had previously searched Blaschke's business, there was no room that matched Crouch's description.

When Trooper Etter inspected the logbook, he learned that Crouch recently traveled from his residence in Colden to Vernon, California, and picked up a load of frozen seafood. Rather than heading for Philadelphia—his ultimate destination—Crouch returned to his residence and remained there for approximately sixteen hours. Also, instead of taking a direct route to Philadelphia, Crouch drove south to Tucson, Arizona, and then to Las Cruces,

New Mexico. The troopers were aware that Las Cruces is near El Paso, Texas, which is a city that serves as a major entry point into the United States for drugs and narcotics.

The officers also learned that Crouch then went north to San Juan, New Mexico, before returning to I-40 and proceeding to Tulsa. Trooper Etter estimated that Crouch drove approximately 250 miles “off-course” at his own expense. Tr. p. 220-22. In light of his training and experience in drug interdiction and the information that he had obtained from Blaschke, the oddness of Crouch’s route raised Trooper Etter’s suspicions.

Thereafter, Trooper Denny issued Crouch a warning ticket and told him that he was free to go. However, as Crouch started walking toward his truck, Trooper Denny honked his horn and motioned for Crouch to return to the police vehicle. Trooper Denny informed Crouch that they had not yet inspected the load on the semi. At some point, one of the troopers asked Crouch if he was transporting any weapons, drugs, or large amounts of cash. Crouch responded that he was not and refused to give the officers his permission to search the cab of his truck. However, several officers then opened the trailer and began inspecting the load. At about the same time, Trooper Etter removed the K-9 unit from his patrol car, and the dog “alerted” to the odor of drugs at both the passenger and driver’s side door. Id. at 31-34, 79, 81-88, 133-34, 225-26.

After the dog alerted, Trooper Etter informed Crouch that he was going to search the cab. Trooper Etter and Detective Matt Hall of the Indianapolis-Marion County Police Department entered the truck and found a plastic bag containing sixteen capsules of a crystal-like substance and some digital scales in the sleeper compartment. Based on his experience,

Trooper Etter believed that the capsules “looked like crystal meth.” Id. at 53-54, 134, 227, 231. Crouch was arrested and, during a search of his person, Trooper Etter discovered an amber plastic pill bottle in Crouch’s pants pocket that contained five capsules of a crystal-like substance, similar to those discovered in the truck. After Crouch was informed of his Miranda³ rights, he informed the officers that he had purchased the capsules at a truck stop in Kingman, Arizona, for \$1.00 apiece.

The officers subsequently submitted the suspected drugs to the Indiana State Police laboratory for analysis. The capsules recovered from the cab of the truck weighed 5.6 grams and contained methamphetamine and a “cutting agent.” Id. at 293-96. The five capsules found in Crouch’s pockets were identified as methamphetamine.

On March 6, 2007, the State charged Crouch with dealing in methamphetamine, a class A felony, and possession of methamphetamine, a class C felony. Prior to trial, Crouch moved to suppress the evidence that was recovered from the search of his truck and his pockets. Specifically, Crouch alleged that

1. The evidence against [him] was seized by officers in violation of the 14th Amendment of the Constitution of the United States Constitution and Article 1 Section 11 of the Indiana Constitution.
2. On March 5, 2007, Indiana State Police Master Trooper Tim Denny initiated a traffic stop on Mr. Crouch in a Kenworth semi tractor.
3. During the course of the traffic stop, Trooper Denny, Trooper Will Etter, Officer Matt Hall of IMPD, and Sgt. Paul McDonald of IMPD engaged in a non-consensual warrantless search of the vehicle in which Mr. Crouch was stopped.

³ Miranda v. Arizona, 384 U.S. 436 (1966).

4. The search occurred after the purpose for the stop had been completed.

Appellant's App. p. 23. The trial court denied the motion to suppress and found:

5. At 2:10 p.m. on March 5, 2007, Blaschke phoned Etter and informed the Trooper that he had just obtained methamphetamine from Crouch. Blaschke further informed Etter that Crouch had exited Blaschke's service center and was traveling in a tractor trailer.

6. Etter obtained the methamphetamine from Blaschke, but did not witness the alleged transfer from Crouch.

7. Etter and Denny, in cooperation with undercover officers, located Crouch's tractor trailer and began surveillance.

8. In less than ten (10) minutes Crouch stopped at the TA truck stop. He had pulled up to the fuel pump and remained at the truck stop approximately forty-five (45) minutes.

9. Upon leaving the TA stop, Crouch proceeded directly to the Mr. Fuel truck stop and once again pulled up to the pumps. He remained at Mr. Fuel approximately sixty (60) minutes.

10. Trooper Denny observed Crouch traveling . . . 75 miles per hour in a . . . 65 mile per hour zone on I-70. Denny further observed Crouch tailgating . . . behind a pickup truck hauling a cement mixer.

11. Denny initiated a traffic stop and issued Crouch a warning citation for the speeding and following too closely.

12. While Denny was issuing the warning citation, Etter arrived on scene.

13. Etter is a D.O.T. certified enforcement officer authorized to conduct level III D.O.T. inspections. For the purpose of this Motion the Court determines the following sequence of events:

- a. 6:27 Denny pulls Crouch over.
- b. 6:28 Etter arrives on scene.
- c. 6:30 Denny has Crouch seated in the Troopers commission.
- d. 6:31 Denny advises Crouch that he will be issued a warning citation.

- e. 6:39 Denny completes filling out the citation and advises Crouch that it's a "warning."
- f. 6:39 Etter advises Crouch that he is going to conduct a D.O.T. inspection.
- g. 6:54 Etter advised Crouch that he was free to go.
- h. 6:55 Crouch exits Denny's vehicle.
- i. 6:55 Etter advised Crouch that he wishes to check the trailer (allowed by Level III D.O.T. inspection).
- j. 6:57 Denny asks Crouch for consent to search the cab.
- k. 6:57 Crouch refuses.
- l. 6:58 Etter asks for consent to search the tractor. Crouch denies.
- m. 6:58 Etter walks the K9 to the trailer.
- n. 7:02 D.O.T. inspection of the trailer is completed.
- o. 7:04 K9 sniff completed.

CONCLUSIONS

1. Denny's initial stop of Crouch was lawfully based upon two (2) uncontroverted [traffic] violations.
2. Denny was authorized to briefly detain Crouch for the purpose of dealing with the observed violations.
3. Denny completed issuing the citations at 7:39 p.m. Under normal circumstances, detaining Crouch an additional nineteen (19) minutes to initiate a K9 search may have been unreasonable. However, Crouch is an over the road truck driver with a CDL subject to the D.O.T. regulations to which he has impliedly consented by accepting the CDL.
4. The K9 search commenced two (2) minutes prior to the completion of the D.O.T. inspection and concluded a mere four (4) minutes after conclusion of the inspection.
5. Since the K9 inspection commenced contemporaneous with the lawful D.O.T. inspection and concluded a mere two (2) minutes later, the delay was not unreasonable.

Id. at 34-36.

At a jury trial that commenced on June 3, 2008, the trial court admitted the drugs into

evidence over Crouch’s objection. Blaschke was also granted use immunity in exchange for his testimony against Crouch. Crouch was found guilty of both charges, and at the sentencing hearing that was conducted on June 24, 2008, the trial court sentenced Crouch to twenty years of incarceration—the minimum sentence for a class A felony⁴—for dealing in methamphetamine. The trial court suspended six years and placed Crouch on probation. The trial court also sentenced Crouch to two years of incarceration for possession of methamphetamine, the minimum sentence for a class C felony,⁵ which was ordered to run concurrently with the sentence that was imposed on the dealing count. In imposing the sentence, the trial court found no aggravating circumstances and identified the following significant mitigating factors: (1) lack of criminal history; (2) Crouch’s military record; and (3) Crouch’s age and health. Crouch now appeals.

DISCUSSION AND DECISION

I. Admissibility of Evidence

Crouch contends that the convictions must be set aside because the trial court improperly admitted the drugs that were seized from the truck and his pockets into evidence at trial. Specifically, Crouch maintains that the admission of this evidence violated his right to be free from unreasonable search and seizure under the Fourth Amendment to the United States Constitution because the period of his detention was “unreasonably prolonged after the

⁴ Ind. Code § 35-50-2-4.

⁵ I.C. § 35-50-2-6.

warning tickets were issued, and the subsequent utilization of a K-9 was only after Crouch denied consent to search his tractor and trailer.” Appellant’s Br. p. 5. Thus, Crouch asserts that the evidence should have been excluded because the “K-9 search was not simultaneous to, or permissibly close in time to the reason for the initial stop.” Id.

In resolving this issue, we initially observe that the admissibility of evidence is within the sound discretion of the trial court. Moffitt v. State, 817 N.E.2d 239, 245 (Ind. Ct. App. 2004). We will reverse a trial court’s decision regarding the admission of evidence only for an abuse of discretion. Flake v. State, 767 N.E.2d 1004, 1009 (Ind. Ct. App. 2002). An abuse of discretion occurs when the trial court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before the court. Id. In determining the admissibility of evidence, this court will only consider the evidence in favor of the trial court’s ruling and the unrefuted evidence in the defendant’s favor. Sallee v. State, 777 N.E.2d 1204, 1210 (Ind. Ct. App. 2002). We will not reverse the trial court’s decision to admit evidence if that decision is sustainable on any ground. Crawford v. State, 770 N.E.2d 775, 780 (Ind. 2002).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of a traditional arrest. Moultry v. State, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004). Moreover, a warrantless arrest must be supported by probable cause. Hampton v. State, 468 N.E.2d 1077, 1079 (Ind. Ct. App. 1984). However, a police officer may briefly detain a person for investigatory purposes without a warrant or

probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity ““may be afoot.”” Moultry, 808 N.E.2d at 170-71 (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)).

In accordance with Indiana Code section 34-28-5-3, a police officer may briefly detain a person whom the officer believes has committed an infraction or an ordinance violation. See Datzek v. State, 838 N.E.2d 1149, 1154 (Ind. Ct. App. 2005). Although stopping an automobile and detaining its occupants constitutes a “seizure” within the meaning of the Fourth Amendment, a police officer does not violate the Fourth Amendment by detaining and questioning an individual who has just committed a traffic violation. Kenner v. State, 703 N.E.2d 1122, 1126 (Ind. Ct. App. 1999). However, the United States Supreme Court has determined that a seizure that is justified solely to issue a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission. Illinois v. Caballes 543 U.S. 405, 407 (2005).

Information that is lawfully obtained during a permissible seizure may provide the officer with reasonable suspicion of criminal conduct that will justify prolonging the stop to permit a reasonable investigation. United States v. Martin, 422 F.3d 597, 602 (7th Cir. 2005); see also Myers v. State, 839 N.E.2d 1146, 1149 (Ind. 2005) (following Caballes in holding that a dog sniff, if reasonable, does not violate the United States or Indiana Constitutions). The critical facts in determining whether a vehicle was legally detained at the time of a canine sweep are whether the traffic stop was concluded and, if so, whether there

was reasonable suspicion at that point to continue to detain the vehicle for investigatory purposes. Bradshaw v. State, 759 N.E.2d 271, 273-74 (Ind. Ct. App. 2001). A seizure that is justified “solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” Myers, 839 N.E.2d at 1149 (quoting Caballes, 125 S.Ct. at 837) (emphasis added). The burden is on the State to show the time for the traffic stop was not increased due to the canine sweep. Id.

At least one court has determined that whether a police officer has reasonable suspicion to expand the scope of a traffic stop is determined by examining the totality of the circumstances in light of the officer’s experience. U.S. v. Morgan, 270 F.3d 625, 630 (8th Cir. 2001).⁶ Even though each factor giving rise to suspicion might appear to be innocent when viewed alone, a combination of factors may warrant further investigation when viewed in total. Id. at 631.

In this case, Crouch relies primarily on this court’s opinion in Wilson v. State, 847 N.E.2d 1064 (Ind. Ct. App. 2006), for the proposition that the troopers lacked a reasonable suspicion to continue the detention and conduct the search of his truck after the purpose of the traffic stop had been completed. In Wilson, the evidence established that

During the early morning hours of March 9, 2005, Officer Eric Fields of the Greenfield Police Department noticed Wilson in a car parked in a CVS parking lot. Wilson and his companion were watching the patrol car. Wilson drove to a Gas America parking lot, and Officer Fields noticed Wilson watching him as Wilson cleaned his windshield. Officer Fields continued his patrol. About twenty minutes later he returned to the Gas America station,

⁶ Although federal appellate court decisions are not binding on this court, we may recognize those cases as persuasive authority. McBride v. State, 440 N.E.2d 1135, 1137 n. 4 (Ind. Ct. App. 1982).

where Wilson and his companion were still parked. Officer Fields again noticed Wilson and his companion watching him.

Officer Fields drove to a nearby parking lot and turned out his headlights so he could watch Wilson's car. Wilson drove out of the parking lot and accelerated very quickly to a high rate of speed. Wilson's license plate light was out, and Officer Fields stopped Wilson's car. During the traffic stop, Wilson was "very nervous." His "hands were shaking" and he was "having trouble getting his license and vehicle registration." Officer Fields noted Wilson paused often when speaking.

After obtaining Wilson's license and registration, Officer Fields returned to his vehicle to run license and warrant checks on Wilson and to write warning tickets for the license plate light and speeding violations. Wilson's license check was returned at 1:58 a.m. and reflected a misdemeanor drug violation. The time indicated on the warning tickets Officer Fields prepared was 2:06 a.m.

Officer Fields spoke with his riding partner, Patrolman Moore, about Wilson and his companion, then the officers asked Wilson to step out of his car. Officer Fields asked if "there was anything in the vehicle we needed to know about like weapons or illegal narcotics," and Wilson replied there was not. Officer Fields then asked Wilson whether he had any weapons on him, and Wilson replied he had a knife.

Patrolman Moore patted down Wilson, and Wilson told the officers he had \$4,000.00 in cash in his pocket. Officer Fields asked if he could search Wilson's car, and Wilson declined to permit the search. Officer Fields returned to his patrol car and at approximately 2:15 a.m. called for backup and for a unit with a drug-sniffing dog.

Officer Michael Noble arrived shortly thereafter and after speaking with Officer Fields, spoke with Wilson and his companion. Officer Noble heard "conflicting stories" from Wilson and his companion, and noted Wilson was "very nervous." Wilson mentioned several times that he was cold, but declined several offers by Officer Noble to get Wilson's jacket out of his car. Officer Noble told Wilson they were waiting for Officer Fields to finish writing the warning tickets and "were also waiting on dispatch to advise us on their warrant checks."

The dog arrived as Officer Fields gave Wilson the warning tickets. The dog alerted on two different areas of the vehicle, and the officers found narcotics and a gun. Wilson was arrested and charged with numerous offenses, including dealing in methamphetamine, a Class A felony. . . . The trial court denied Wilson's motion to suppress the evidence police seized from his car.

847 N.E.2d at 1066. In reversing the trial court's denial of Wilson's motion to suppress, we observed that

[T]he circumstances of Wilson's traffic stop did not give rise to reasonable suspicion. A person's nervousness when stopped by the police at 2:00 a.m. is understandable, as is watching a passing patrol car. Carrying \$4,000.00 in cash is unusual, but it is not illegal. Officer Fields did not have reasonable suspicion to detain Wilson after the traffic stop was concluded and until the arrival of a drug-sniffing dog that was summoned only after Wilson declined to consent to a search.

Id. at 1068 (emphasis added).

In this case, the Trooper Etter knew that Crouch was implicated in selling methamphetamine in light of Blaschke's claims that he had purchased the drug from Crouch on a regular basis. Tr. p. 14-15, 120, 143, 210-11, 273, 276. As indicated above, Crouch sold Blaschke two baggies of methamphetamine on the morning of the arrest, which Blaschke gave to Trooper Etter shortly after the sale. Id. at 41-42, 67, 136, 212, 277-79.

Trooper Denny stopped Crouch for the traffic violations at approximately 6:27 p.m. As Crouch was exiting his truck, Trooper Etter arrived approximately one minute later with the drug-sniffing dog. As noted above, Trooper Etter was certified by the D.O.T. to conduct Level 3 inspections pursuant to the Federal Motor Carrier Safety Regulations of motor carriers and their loads. Id. at 22, 40-41, 92-94, 129, 175, 208. The certification also permitted Trooper Etter to enter the semi's cab area to search for certain equipment and to look for alcohol, drugs, and other substances that would cause impairment to the driver. As Trooper Etter checked Crouch's worklog, Trooper Denny wrote the warning tickets for the infractions. Trooper Etter realized that Crouch did not take a direct route with his present

load. Indeed, it was established that Crouch took a southern route through Arizona and New Mexico to an area near El Paso. Id. at 218-22. Trooper Etter knew that El Paso is a major entry point for drugs and narcotics. Id. at 220. In essence, Crouch's logbook indicated that he drove approximately 250 miles from a direct route at his own expense. Id. at 220-22.

At 6:39 p.m., Trooper Denny finished writing Crouch the warning citations. At the same time, Trooper Etter informed Crouch that he was going to conduct a Level 3 D.O.T. inspection. Approximately fifteen minutes later, the officers informed Crouch that he was free to go. However, once they realized that the truck had not yet been inspected, Trooper Denny honked his horn and summoned Crouch back to his vehicle. Id. at 27-28, 76, 130-31, 223. At 6:55 p.m., Crouch was again informed that Trooper Etter was going to inspect the load. Crouch refused to give his consent for the officers to search the cab area of his truck at 6:58 p.m. As a result, Trooper Etter immediately removed the drug sniffing dog from his vehicle. As other officers inspected Crouch's load, Trooper Etter walked the dog around the truck. The Level 3 load inspection ended at 7:02 p.m., and the K-9 sniff concluded at 7:04 p.m.

The record reflects that the K-9 sniff began approximately two minutes prior to the completion of the Level 3 inspection and concluded approximately two minutes after the conclusion of the load inspection. The load inspection concluded while the sniff was occurring and arguably ended the purpose of the traffic stop. However, we cannot say that the additional two minutes that Trooper Etter took to complete the K-9 sniff were unreasonable when considering the information that the officers had obtained concerning

Crouch's previous sales of methamphetamine as well as the reasonable suspicion that developed in light of the false information that was contained in Crouch's commercial driver's license and his log book. Thus, unlike the circumstances in Wilson, Crouch has failed to show that the police officers unreasonably extended the traffic stop beyond its purposes. As a result, the trial court did not err in admitting the methamphetamine into evidence in violation of Crouch's rights under the Fourth Amendment.⁷

II. Sufficiency of the Evidence

Crouch contends that the evidence was insufficient to support his convictions. Although Crouch does not argue that the State failed to prove any of the essential elements of the offenses, he attacks the credibility of Blaschke's trial testimony and maintains that his "due process rights were violated by coercion or unfair investigation methods utilized by police against Blaschke causing Blaschke to then implicate [him] in criminal conduct so to perpetuate his own freedom." Appellant's Br. p. 5. In essence, Crouch's challenge to the sufficiency of the evidence is that his convictions must be set aside because, absent Blaschke's alleged tainted testimony, the police officers would not have discovered that he

⁷ Although Crouch maintained in his motion to suppress that the search violated his constitutional rights under both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution, he makes no claim or argument in his appellate brief that Section 11 yields a different result than that produced under the Fourth Amendment. Thus, we will not consider Crouch's state constitutional claim. See D.L. v. State, 877 N.E.2d 500, 503 (Ind. Ct. App. 2007) (observing that because the appellant made no separate argument specifically treating and analyzing a claim under the Indiana Constitution distinct from the Fourth Amendment analysis, the claim could be resolved on the basis of federal constitutional doctrine alone), trans. denied.

possessed or dealt in methamphetamine.

In addressing Crouch's challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider the evidence most favorable to the verdict and the reasonable inferences that can be drawn therefrom. Id. Where there is substantial evidence of probative value to support the verdict, it will not be disturbed. Id. Conflicting evidence must be considered in the light most favorable to the trial court's ruling, and we will affirm the conviction unless no reasonable fact finder could find the elements of the crime proved beyond a reasonable doubt. Id. at 146-47.

In this case, although Crouch maintains that his convictions must be set aside because the police officers allegedly violated Blaschke's due process rights, we note that Crouch did not object to the admission of Blaschke's testimony at trial on the grounds that any due process violation occurred. Thus, Crouch has waived the issue. See Grace v. State, 731 N.E.2d 442, 444 (Ind. 2000) (holding that a specific objection must be presented, and any grounds not raised in the trial court are not available on appeal).

Waiver notwithstanding, we note that individuals who are not personally the victims of illegal government activity generally may not assert the constitutional rights of others. United States ex rel. Cunningham v. DeRobertis, 719 F.2d 892, 895-96 (7th Cir. 1983). However, Crouch maintains that an exception to this rule applies when it is established that a violation of another's rights prejudices the defendant's right to a fair trial. Indeed, at least one court has observed that such a due process exception is implicated when the government

seeks a conviction through the use of evidence that is obtained by extreme coercion or torture. United States v. Chiavola, 744 F.2d 1271, 1273 (7th Cir. 1984).

Even were we to recognize such an exception, Crouch has made no showing that Blaschke was subjected to physical torture, coercion, or any other improper conduct by the police that resulted in him implicating Crouch as the seller of the methamphetamine. Indeed, the record demonstrates that Trooper Etter informed Blaschke that if he cooperated with law enforcement and gave information regarding his source of methamphetamine, it would help him. Tr. p. 14, 65, 96, 143, 210, 275-76, 290. Moreover, Trooper Etter made no promises of leniency or assurances that Blaschke would not be prosecuted. Id. at 65, 96, 143, 210, 290. In essence, Crouch has failed to prove that the police violated Blaschke's due process rights in obtaining evidence from him. As a result, Crouch's challenge to the sufficiency of the evidence on this basis fails.⁸

III. Sentencing

A. Mitigating Circumstances

Crouch claims that his sentence must be set aside because the trial court overlooked certain mitigating circumstances. In particular, Crouch claims that the trial court abused its discretion because it did not consider his remorse, the lack of a victim, and the likelihood that

⁸ As an aside, we note that Crouch makes a perfunctory claim that his convictions must be set aside because Blaschke's testimony was inherently improbable or incredible. Appellant's Br. p. 14. However, this particular type of challenge pursuant to the "incredible dubiousity rule" is available only when a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence. Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). As set forth in the facts, several police officers and other witnesses testified at trial against Crouch, and there is circumstantial evidence of Crouch's guilt. Thus, the incredible dubiousity rule is inapplicable in this case.

the crime would not be repeated, as mitigating factors. Appellant's Br. p. 22-24. Therefore, in light of these additional mitigators, Crouch claims that his sentence must be reduced.

In addressing Crouch's contention, we initially observe that sentencing decisions rest within the sound discretion of the trial court, and we review those decisions on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id.

An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999). In other words, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced as such by the defendant. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer, 868 N.E.2d at 493. Moreover, the trial court is not obligated to explain why it did not find a mitigating factor to be significant. Id. However, when a trial court fails to find a mitigator that is clearly supported by the record, a reasonable belief arises that the trial court improperly overlooked that factor. Banks v. State, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006).

Notwithstanding Crouch's contention that the trial court overlooked certain mitigating circumstances in determining what sentence to impose, the record reflects that Crouch offered all of his proffered mitigators in his presentence memorandum or during his argument at the sentencing hearing. Moreover, the trial court mentioned them in the sentencing order. Appellant's App. p. 43-47, 77-78; sent. tr. p. 21-26.

Our review of the record shows that Crouch did not present any proof that he would respond affirmatively to short-term incarceration or probation. As for Crouch's assertion that the crime was "victimless" and caused no harm, it is nonetheless clear that society is the victim of these offenses because it must deal with—and care for—those who become dependent as a result of methamphetamine addiction. Thus, we find that the trial court did not err in refusing to identify Crouch's alleged "victimless" crime as a mitigating circumstance.

Finally, although Crouch maintains that the trial court should have identified his expression of remorse as a significant mitigating factor and denies that he ever sold drugs to anyone, Blaschke's testimony belied that statement. Moreover, Crouch admitted to one of the state troopers that he purchased methamphetamine at a truck stop in Arizona for \$1.00 per capsule. Tr. p. 141. Although Crouch apologized to the trial court for his deeds and the pain that he caused his wife, we find that the trial court was within its discretion in not being convinced that Crouch's alleged expression of remorse was credible and should be considered a significant mitigating circumstance. See Gibson v. State, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006) (observing that remorse, or lack thereof, by a defendant often is

something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility). As a result, Crouch's claim that the trial court overlooked certain proffered mitigating factors fails, and we decline to set aside his sentence on this basis.

B. Disproportionate Sentence

Finally, Crouch maintains that his sentence must be vacated because it "lacked proportionality to the gravity of the offense." Appellant's Br. p. 25. Although not abundantly clear from his appellate brief, Crouch is apparently claiming that the sentence is unconstitutional because it is disproportionate to the severity of the crimes for which he was convicted in violation of Article I, Section 16 of the Indiana Constitution.

Article I, Section 16 of the Indiana Constitution provides that "[a]ll penalties shall be proportioned to the nature of the offense." Determining the appropriate sentence for a crime is a function properly exercised by the legislature. Teer v. State, 738 N.E.2d 283, 290 (Ind. Ct. App. 2000). A criminal penalty violates the proportionality clause "only when a criminal penalty is not graduated and proportioned to the nature of the offense." Conner v. State, 626 N.E.2d 803, 806 (Ind. 1993). This court will not disturb the legislature's determination unless there is a showing of clear constitutional infirmity. In other words, we will not set aside a legislatively sanctioned penalty because it might seem too severe. Rather, a sentence may be unconstitutional by reason of its length, if it is so severe and entirely out of proportion to the gravity of offense committed as to "shock public sentiment and violate the judgment of a reasonable people." Pritscher v. State, 675 N.E.2d 727, 731 (Ind. Ct. App.

1996).

As noted above, dealing in methamphetamine as a class A felony carries an advisory sentence of thirty years with up to twenty years added for aggravating circumstances and up to ten years subtracted for mitigating circumstances. I.C. § 35-50-2-4. And, in accordance with Indiana Code section 35-50-2-5, the trial court was authorized to suspend “any part” of Crouch’s sentence. The sentencing range for possession of methamphetamine, a class C felony, is from two to eight years. I.C. § 35-50-2-6.

In our view, the legislature’s classification of the sale of methamphetamine as a class A felony is not “so severe and entirely out of proportion to the gravity of the offense committed as to shock public sentiment and violate the judgment of reasonable people.”⁹ Moreover, when examining the specific circumstances of Crouch’s sentence, the trial court identified three significant mitigating circumstances and no aggravating factors. It then sentenced Crouch to the minimum sentence on both offenses, ordered the sentences to run

⁹ We note that in those instances where the constitutional proportionality of a statute has been considered on appeal, our courts have often held that the statute at issue did not violate the Indiana Constitution. See, e.g., State v. Moss-Dwyer, 686 N.E.2d 109, 112-13 (Ind. 1997) (observing that the handgun application statute did not violate the proportionality requirement of Indiana Constitution); Cole v. State, 790 N.E.2d 1049, 1053 (Ind. Ct. App. 2003) (holding that the penalty for a knowing failure to deposit public funds did not violate the state constitution’s requirement that the penalty be proportioned to nature of crime); Laughner v. State, 769 N.E.2d 1147, 1156 (Ind. Ct. App. 2002) (recognizing that the offense of attempted solicitation of a child on the internet, a class C felony, did not violate proportionality clause of state constitution, despite the fact that the punishment was more severe than face-to-face solicitation of an actual child, a class D felony); Jones v. State, 766 N.E.2d 1258, 1265-66 (Ind. Ct. App. 2002) (observing that statutes permitting a promoter of prostitution to be punished by a sentence up to eight years longer than a person convicted of a first offense of prostitution did not violate the proportionality requirement of the state constitution); Teer, 738 N.E.2d at 290 (holding that the sentencing range for possession of a firearm by a serious violent felon of six to twenty years was not unconstitutionally disproportionate); Balls v. State, 725 N.E.2d 450, 452-53 (Ind. Ct. App. 2000) (holding that the welfare fraud statute did not provide for a disproportionate sentence in comparison with the general theft statute).

concurrently, suspended six of those years, and placed Crouch on probation. In short, we cannot say that Crouch's sentence was disproportionate to the gravity of the offenses that he committed. Thus, Crouch's claim fails.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.