

Claudia Scott (“Scott”) has filed an interlocutory appeal challenging the trial court’s denial of her motion to suppress. Scott argues that her Fourth Amendment rights were violated by a sheriff deputy’s nonconsensual entry into her home during the deputy’s attempt to execute an arrest warrant for Scott’s son. Concluding that the deputy’s belief that Scott’s son was present in the home was reasonable, we affirm the trial court’s denial of Scott’s motion to suppress.

Facts and Procedural History

On May 8, 2009, an arrest warrant for Clayton Williams (“Williams”) was faxed to Marion County Sheriff’s Deputy Kenny Sanders (“Deputy Sanders”). Deputy Sanders checked Williams’s address listed on the warrant with Williams’s bureau of motor vehicle records and reviewed the case reports and prior police reports. Deputy Sanders also printed the warrant details from the JUSTIS computer system. Tr. p. 11. Williams’s address on all documents and reports was listed as 3419 North Cecil Avenue.

Deputy Sanders then proceeded to the North Cecil Avenue address. When he arrived, he showed a picture of Williams to an unidentified neighbor. The neighbor stated that Williams lived at the Cecil Avenue address with his mother and that Williams drove a white truck. As Deputy Sanders approached the residence, he observed that a white pick-up truck was parked directly in front of the house.

When the deputy knocked on the door, Scott, who is Williams’s mother, opened the door. Deputy Sanders mistakenly stated that he had an arrest warrant for *Cecil* Williams, and Scott responded that the deputy had the wrong address. The deputy realized his mistake and stated his arrest warrant was for Clayton Williams. He also

showed the arrest warrant to Scott. Tr. p. 15. Scott told the officer that Williams was not at home. Eventually, Deputy Sanders and accompanying officers entered the residence and searched for Williams without Scott's consent.

As a result of that search, Scott was charged with Class D felony neglect of a dependent, Class A misdemeanor battery on a police officer, and Class A misdemeanor resisting law enforcement. Scott later filed a motion to suppress all evidence obtained during the search of her residence. Scott argued that the evidence should be suppressed because 1) the State had failed to produce the arrest warrant, and 2) there were no exigent circumstances to support the nonconsensual, warrantless search of Scott's residence.

On March 9, 2010, the trial court held a hearing on Scott's motion to suppress. Deputy Sanders testified that the actual arrest warrant was thrown away after Williams was arrested. Tr. p. 11. But the parties stipulated to the admission of Exhibit 1, a May 7, 2009 document titled "Probable Cause Minutes." The document lists Clayton Williams's name and the following entry is initialed: "Information and Probable Cause Affidavit filed. Probable cause found. Clerk ORDERED to issue WARRANT for the arrest of the Defendant and ORDERS bond set in the amount of \$50,000 Type SR." Ex. Vol., State's Ex. 1; Tr. p. 12. The trial court also admitted a copy of a JUSTIS system record, which lists Williams's name, date of birth, address on Cecil Avenue, social security number, and physical description. The record establishes that an arrest warrant for felony battery was issued on May 7, 2009. Ex. Vol., State's Ex. 2; Tr. p. 12.

The trial court denied Scott's motion to suppress on March 16, 2010. Thereafter, Scott belatedly asked the trial court to certify its interlocutory order to allow for an

interlocutory appeal. On June 16, 2010, the trial court granted Scott's motion. Our court accepted jurisdiction of this appeal on August 6, 2010.

Standard of Review

Scott argues that the trial court abused its discretion when it denied her motion to suppress. We review the trial court's denial of a motion to suppress evidence for an abuse of discretion. Montgomery v. State, 904 N.E.2d 374, 377 (Ind. Ct. App. 2009), trans. denied. A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it. Id. In conducting our review, we do not reweigh the evidence, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Webster v. State, 908 N.E.2d 289, 291 (Ind. Ct. App. 2009), trans. denied. However, we also consider uncontested evidence favorable to the defendant. Id.

Discussion and Decision

Scott initially argues that the evidence was insufficient to establish the existence of an arrest warrant. A similar claim was raised in Williams v. State, 898 N.E.2d 400 (Ind. Ct. App. 2008), trans. denied. In that case, during a routine traffic stop, the officer determined that the defendant had an outstanding warrant for his arrest. During the search incident to arrest, marijuana was found in the defendant's pocket. On appeal, the defendant argued that the State's failure to place the arrest warrant into evidence amounted to reversible error. Id. at 402. Our court rejected the argument after observing that the defendant did not challenge the warrant's validity and the record was devoid of any indication of invalidity. Id. at 403.

Similarly, Scott has not challenged the validity of the warrant for her son's arrest, only the existence of the warrant. At the suppression hearing, the State introduced the following exhibits: 1) "Probable Cause Minutes" dated May 7, 2009, which lists Clayton Williams's name and contains the following initialed entry: "Information and Probable Cause Affidavit filed. Probable cause found. Clerk ORDERED to issue WARRANT for the arrest of the Defendant and ORDERS bond set in the amount of \$50,000 Type SR[;]" and, 2) a copy of a JUSTIS system record, which lists Williams's name, date of birth, address on Cecil Avenue, social security number, and physical description. The record establishes that a warrant for felony battery was issued on May 7, 2009. Ex. Vol., State's Exs. 1 & 2; Tr. p. 12.

Furthermore, Deputy Sanders testified that an arrest warrant for Clayton Williams was faxed to the eastside warrant office. The deputy checked Williams's address listed on the warrant with Williams's bureau of motor vehicle records and he reviewed the case reports and prior police reports. Deputy Sanders also printed the warrant details from the JUSTIS computer system. Tr. p. 11. Williams's address on all documents and reports was listed as 3419 North Cecil Avenue. The deputy also testified that he showed the arrest warrant to Scott. Tr. p. 15.

We do not condone the Deputy Sanders's decision to throw the arrest warrant away after Williams was arrested, and in future instances under different facts, such a decision by a law enforcement officer may prove fatal to the search authorized by the destroyed warrant. However, under the facts and circumstances in this appeal, the evidence is sufficient to establish the existence of the warrant. Because Scott has not

alleged that the warrant was invalid, we conclude that the trial court did not abuse its discretion when it denied Scott's motion to suppress for the reason that the State had not produced the arrest warrant or introduced it into evidence. See Williams, 898 N.E.2d at 403.

Scott also argues that the trial court abused its discretion when it denied her motion to suppress because Deputy Sanders's entry into her home violated her Fourth Amendment rights. Specifically, Scott claims there were no exigent circumstances to justify the nonconsensual, warrantless search of her residence.

The Fourth Amendment protects "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.

"At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." In recognition of this principle, the police may not enter a home by force to make a "routine" arrest without a warrant. An arrest warrant founded on probable cause gives the police "limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." The belief is judged on the information available to the officers at the time of entry and need not prove to have been correct in hindsight. As one leading treatise summarized, it is "generally accepted" that reason to believe "involves something less than" probable cause.

Duran v. State, 930 N.E.2d 10, 14-16 (Ind. 2010) (internal citations omitted).

"When the home that officers seek to enter is not that of the subject of the arrest warrant, officers must obtain a search warrant absent exigent circumstances." Id. at 16 (citing Steagald v. United States, 451 U.S. 204, 216 (1981)). Exigent circumstances include that "a suspect is fleeing or likely to take flight in order to avoid arrest[.]" Rush

v. State, 881 N.E.2d 46, 51 (Ind. Ct. App. 2008). “Most jurisdictions require that the police have a reasonable belief that the dwelling is the residence of the subject of the warrant and that the subject is present at the time the officers attempt to enter on authority of an arrest warrant.” Duran, 930 N.E.2d at 16 (citations omitted). Therefore, to lawfully enter Scott’s residence, Deputy Sanders had to reasonably believe that Williams resided in Scott’s home and that Williams was present when Deputy Sanders entered the home.

The evidence more than supports the conclusion that Deputy Sanders reasonably believed that Williams resided at Scott’s home on Cecil Avenue. Deputy Sanders checked the address listed for Williams on the warrant against prior police records, case reports, and Williams’s BMV records. All documents and records reviewed listed the Cecil Avenue address.

But Scott argues that Deputy Sanders did not have a reasonable belief that Williams was present in Scott’s home and attempting to avoid arrest when the deputy entered the home on authority of the arrest warrant. We disagree. When he arrived at Scott’s home, Deputy Sanders showed a picture of Williams to a neighbor. The neighbor stated that Williams lived at the Cecil Avenue address with his mother and that Williams drove a white truck. As Deputy Sanders approached the residence, he observed a white pick-up truck parked directly in front of the house.

“[W]hen a citizen volunteers information to the police, there may be more reason to believe that the information is reliable because informants who come forward voluntarily are ordinarily motivated by good citizenship or a genuine effort to aid law enforcement officers in solving a crime.” Id. (citing Pawloski v. State, 269 Ind. 350, 354,

380 N.E.2d 1230, 1232 (1978)). The information the unidentified neighbor provided to Deputy Sanders was corroborated by the presence of the white truck and that fact that the neighbor was aware that Williams resided with his mother. See id. (“[E]ven information volunteered by a citizen requires some corroboration.”).

For all of these reasons, we conclude that Deputy Sanders’s belief that Williams was present in Scott’s home was reasonable. Accordingly, Deputy Sanders’s nonconsensual, warrantless entry into Scott’s residence did not violate her Fourth Amendment rights,¹ and therefore, the trial court acted within its discretion when it denied Scott’s motion to suppress.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.

¹ In her Appellant’s Brief, Scott also argues that the search violated her Article One, Section Eleven rights under the Indiana Constitution. But aside from a brief citation to the constitutional provision in her motion to suppress, Scott did not present this argument to the trial court. See Appellant’s App. pp. 36-38; Tr. pp. 18-21; 25-26. Accordingly, Scott’s Article One, Section Eleven claim is waived. See Washburn v. State, 868 N.E.2d 594, 601 n.2 (Ind. Ct. App. 2007), trans. denied; Howard v. State, 818 N.E.2d 469, 477 (Ind. Ct. App. 2004), trans. denied.

Waiver notwithstanding, Scott cannot establish that Deputy Sanders’s nonconsensual, warrantless entry into her home was unreasonable under the totality of the circumstances. See Litchfield v. State, 824 N.E.2d 356, 359 (Ind. 2005) (holding that the legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of police conduct under the totality of the circumstances). Deputy Sanders was attempting to execute an arrest warrant at Scott’s home, and as stated above, he reasonably believed that Williams was present in the home. Moreover, the deputy reasonably suspected that Scott was helping her son avoid arrest.