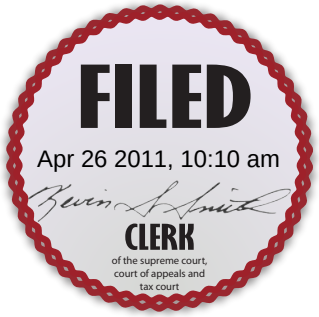

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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER CONWELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1008-CR-861
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0812-MR-295890

April 26, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Christopher Conwell appeals his convictions for two counts of Murder,[1] a felony, and Carrying a Handgun Without a License,[2] a class A misdemeanor. Specifically, Conwell argues that the trial court erred in admitting his post-arrest statement into evidence and that the trial court erred in denying his request to redact a portion of his statement that contained a detective's opinion and inadmissible hearsay evidence. Conwell also alleges that the detective had badgered him and that some of the remarks that were made during the interrogation unfairly prejudiced him.

Concluding that Conwell's statement was properly admitted into evidence and finding no other error, we affirm the judgment of the trial court.

FACTS

In December 2008, Jazy Williams drove Conwell, her former boyfriend, to Indianapolis from Fort Wayne. Jazy dropped Conwell off at a residence that was occupied by Avery Elzy and Michael Hunt. Conwell had met Elzy in an online chat room.

At some point during the visit, Conwell displayed a handgun to Tory Parker, an acquaintance, who was also at the residence. The gun appeared to be a black .38 revolver with no hammer. Parker also noticed that Conwell had a tattoo on his left hand, with the word "Goon" on it. Appellant's App. p. 41. Conwell told Parker that he was a member of a gang in Fort Wayne called the "Goons." Id.

[1] Ind. Code § 35-42-1-1.

[2] Ind. Code § 35-47-2-1.

On Christmas day, Elzy invited approximately twenty people over to the house for a party. They all drank alcohol and smoked marijuana. By 11:30 p.m., everyone had left the residence, except for Elzy, Hunt, and Conwell. Sometime after midnight, Conwell called Jazy and asked for directions from Elzy's house to Fort Wayne. Conwell told Jazy that he had recently purchased a car and did not need a ride back.

The next morning, Elzy's mother called Elzy's cell phone, but got no answer. At approximately noon, Parker drove by Elzy's house and noticed that the garage door was open, which he thought was unusual. After discovering that Elzy's blue Sable automobile was not in the driveway, Parker called the police.

Later that afternoon, Officer Robert Carver of the Indianapolis Metropolitan Police Department (IMPD) went to Elzy's residence in response to a missing persons report. Officer Carver opened the front door to the residence and noticed a trail of blood in the hallway. He followed the trail and discovered a dead pit bull in one of the rooms.

Officer Carver then found the bodies of Elzy and Hunt in a bedroom. Hunt had been shot twice in the head, and it was determined that one of the shots had been fired into his temple from eighteen to twenty-four inches away. The other shot was fired while the gun was held against Hunt's head. Elzy died from a single gunshot to the back of the head. It was determined that five .38 caliber bullets had been fired from the same gun.

An investigation revealed that Elzy's two cell phones were missing. As a result, the police department attempted to track those phones. Additionally, Donty Settles—Parker's friend who also attended the Christmas party—began calling one of Elzy's

numbers. At some point, an individual by the name of Superior McNare, who lived in Fort Wayne, answered the phone. During the conversation, McNare told Settles that she found a purse and a cell phone in an alley near her house on December 26. The Fort Wayne Police Department was contacted, and officers recovered both items.

Thereafter, Detective Tom Tudor, of the Indianapolis Police Department, retrieved the purse and cell phone from Fort Wayne police. Elzy's Indiana driver's license and various documents with her name on it were found in the purse. The cell phone contained several photographs of Elzy, pictures of the blue Sable automobile, and a video of Hunt, Settles, and Conwell.

The police obtained a court order regarding Elzy's other cell phone number, and it was determined that numerous calls were made to and from a number to an individual in Marion, by the name of Wesley Williams. When one of the detectives dialed the number on the morning of December 27, Williams answered and told the detective that Jazy was his daughter and that she used that number on his cell account. Jazy stated that she knew Conwell and that he had a tattoo on his left hand that said, "Goon." Appellant's App. p 42.

The investigation revealed that Conwell had driven to Kandice Wade's Fort Wayne residence in a blue car, shortly after Christmas. Conwell told Wade that he had just purchased the vehicle. Wade also noticed that Conwell had a blue bag. She looked inside and saw a small, black, "western-type" handgun. Tr. p. 539. Wade was very

frightened, so she tossed the gun in a nearby alley. The purse and cell phone had been discovered approximately three blocks from Wade's residence.

It was determined that one of the telephones belonging to Elzy had been used to call Jazy at 12:14 a.m., on December 26. Detective Todd Lappin discerned from the locations of the cell phone towers that successive calls had been made on Interstate 69 and moving toward Fort Wayne.

On the morning of December 31, two detectives went to Jazy's residence after receiving a "ping" from Elzy's missing cell phone. Tr. p. 485, 615. Jazy was enrolled at Indiana Purdue University in Fort Wayne and lived in a student apartment. Sometime in 2008, Conwell had broken out the windows of Jazy's vehicle. As a result, the campus police conducted an investigation and warned Conwell that he was not permitted on any university property, including Jazy's apartment.

An arrest warrant had been issued for Conwell, and when the officers arrived at Jazy's apartment, she gave them consent to search. When the officers entered, they encountered Qualin Starks on a couch in the common area of the apartment. Starks identified Conwell from a photograph that the officers showed to him. He then directed the police officers to a back bedroom in the apartment. Conwell was found in the bedroom and arrested.

Conwell was then transported to Indianapolis at Detective Tudor's request. Detective Tudor advised Conwell of the Miranda[3] warnings, asked Conwell if he understood those rights, and directed Conwell to place his initial on the form as Detective Tudor read the rights aloud to him.

Conwell acknowledged that he was waiving his rights and provided a statement to Detective Tudor. Although Conwell initially denied his involvement in the murders, he eventually admitted shooting both Hunt and Elzy. Conwell stated that he shot both of the victims in the head. Conwell also acknowledged that he had telephoned Jazy for directions back to Fort Wayne. Id. at 125, 132, 148.

Conwell was charged with two counts of murder and one count of carrying a handgun without a license. On June 12, 2009, Conwell filed a request for the trial court to redact some of Detective Tudor's statements that were made during the interview. Following a hearing on September 30, 2009, the trial court ordered some, but not all of the redactions that Conwell desired. More particularly, the trial court struck various references to "marijuana," "smoking," other drug usage, and the prior use and/or possession of firearms. Tr. p. 921-60. The trial court refused to order alleged hearsay evidence redacted from the statement because many of the statements and questions from Detective Tudor were "normal interrogation" techniques and independent evidence established many of the other propositions. Id. at 943, 945. The trial court also declined to redact portions of the statement that Conwell asserted amounted to alleged "badgering"

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

techniques by Detective Tudor. Id. at 946. Finally, the trial court overruled Conwell's request to redact Detective Tudor's statements that allegedly concerned the credibility of the witnesses. Id. at 950-52.

On March 16, 2010, Conwell moved to suppress the post-arrest statement. Conwell argued that his statement was not admissible because it was "obtained pursuant to the warrantless entry into a private apartment and bedroom." Appellant's App. p. 242. Following a hearing, the trial court denied Conwell's motion to suppress on June 9, 2010. The trial court found that the police officers had a valid arrest warrant for Conwell when they entered Jazy's apartment. It was determined that Detective Tudor's verbal confirmation to one of the officers that a valid arrest warrant had been issued was sufficient to make the arrest. The trial court also ruled that even if an arrest warrant had not been issued, the evidence demonstrated that Jazy consented to the search of the apartment. Finally, it was determined that Conwell's statements should not be excluded as "fruit of the poisonous tree" because they were made "outside the premises, while in lawful custody from a probable cause arrest." Id. at 333.

Following a four-day jury trial, Conwell was found guilty as charged. At a sentencing hearing that commenced on July 14, 2010, Conwell was sentenced to fifty-five years of incarceration on each count of murder. Those terms were ordered to run consecutively to each other. Conwell was also sentenced to one year on the handgun charge that was ordered to run concurrently to the murder sentences, for an aggregate sentence of 110 years. Conwell now appeals.

DISCUSSION AND DECISION

I. Admission of Statement Into Evidence

Conwell argues that the trial court erred in admitting his post-arrest statement into evidence because it was the product of an illegal arrest. More particularly, Conwell maintains that the statement should have been excluded under Article I, Section 11, of the Indiana Constitution.

We review the trial court's denial of a motion to suppress as we do in challenges to the sufficiency of the evidence. Litchfield v. State, 824 N.E.2d 356, 358 (Ind. 2005). We determine whether substantial evidence of probative value exists to support the trial court's ruling. Id. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's decision. Id. We will affirm the trial court's ruling if it is sustainable on any legal grounds that are apparent from the record. Richardson v. State, 848 N.E.2d 1097, 1101 (Ind. Ct. App. 2006).

At the outset, we will address the State's argument that Conwell lacks standing to argue that the arresting officers "intruded into the bedroom of an apartment in which he was trespassing." Appellee's Br. p. 11. The State contends that because Conwell was trespassing on university property, he did not have an objective expectation of privacy in the premises. Thus, the State maintains that Cornwell lacked standing to challenge the police officers' entry into the room to arrest him. See Allen v. State, 893 N.E.2d 1092, 1100 (Ind. Ct. App. 2008) (holding, among other things, that the defendant did not have an objective expectation of privacy in the victims' residence and, thus, did not have

standing to challenge the search of the residence under the search-and-seizure provision of the Indiana Constitution), trans. denied.

We note that while the State advances this standing argument on appeal, it did not raise the issue under Article I, Section 11 of the Indiana Constitution at the trial court level. Thus, the State has not preserved the issue, and we will proceed to address Conwell's claims on the merits. See Willis v. State, 780 N.E.2d 423, 427 (Ind. Ct. App. 2002) (holding that the State waived the claim of standing under the Indiana Constitution because it was not raised at the trial court level).

Article I, 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.

The purpose of Article I, Section 11 is to protect from unreasonable police activity, those areas of life that Hoosiers regard as private. Moran v. State, 644 N.E.2d 536, 540 (Ind. 1994). In determining whether the police behavior was reasonable under Section 11, the Court must consider each case on its own facts and construe the constitutional provision liberally so as to guarantee the rights of people against unreasonable searches and seizures. Brown v. State, 653 N.E.2d 77, 79 (Ind. 1995). Houses and premises of citizens receive the highest protection. Moran, 644 N.E.2d at 540. The validity of a search pursuant to Article I, Section 11, turns on an evaluation of the reasonableness of the police officer's conduct under the "totality of the

circumstances." Shotts v. State, 925 N.E.2d 719, 726 (Ind. 2010). The reasonableness of a search or seizure turns on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred; 2) the degree of intrusion that the method of the search or seizure imposes on the citizen's ordinary activities; and 3) the extent of law enforcement needs. Id. It is the State's burden to show that the intrusion was reasonable under the totality of the circumstances. Id.

In this case, the degree of concern or suspicion that a violation has occurred was high. The police officers had probable cause and a warrant had been issued for Conwell's arrest. Moreover, based on the information that the detectives had gathered, there was a strong indication that Conwell committed the murders.

Notwithstanding the above, Conwell complains that the State lacked a high degree of certainty that he committed the offenses because there is no "written arrest warrant" in the record. Appellant's Br. p. 8. Notwithstanding this claim, we have determined that the signature of the issuing judge or magistrate on the issuance of a warrant is a ministerial act. State v. Smith, 562 N.E.2d 428, 429 (Ind. Ct. App. 1990). Provided that the judge or magistrate has found probable cause and intended to issue the warrant, the omission of the signature will not invalidate the warrant. Id. It is sufficient if the arresting officer has been informed that a warrant has been issued and the officer reasonably relies on that representation. Carlisle v. State, 319 N.E.2d 651, 653 (Ind. Ct. App. 1974).

In this case, it is apparent that the judge gleaned from the probable cause affidavit and the other information contained in the file that a valid arrest warrant had been issued and obtained. Tr. p. 1014-15. In short, when considering the circumstances here, we conclude that the State satisfied its burden of showing that there was a high degree of certainty that Conwell committed the charged offenses.

We agree with Conwell that the degree of intrusion to Conwell that was caused by his arrest was high. Specifically, the arresting officers entered the bedroom where Conwell was arrested without knocking on the door or announcing their presence. On the other hand, the intrusion was ameliorated because other residents and occupants of the apartment granted the police officers permission to enter the apartment and look for Conwell. And the officers were specifically directed to the bedroom where Conwell was found and arrested. Also, as noted above, the Indiana University Police Department had specifically excluded Conwell from the premises. Thus, the degree of intrusion was further ameliorated in light of this additional factor.

We also note that Conwell's arrest was a "necessary and reasonable intrusion considering the needs of law enforcement and governmental interests at stake." Shotts, 925 N.E.2d at 727. Indeed, the record reflects that the arresting officers reasonably believed based on the arrest warrant that had been issued and the evidence in the accompanying probable cause affidavit that Conwell had murdered two individuals. And they knew that he could be armed.

Finally, we agree with the trial court's analysis that notwithstanding the validity of the arrest warrant or how the search was conducted, Conwell's statement should not have been excluded because he made the statements outside the premises, had waived his rights under Miranda, and confessed while in lawful police custody. In New York v. Harris, 495 U.S. 14 (1990), it was determined that a police officer's improper warrantless intrusion into the defendant's residence to arrest him did not require the suppression of his subsequent confession. More particularly, the exclusionary rule did not bar the State's use of the defendant's statement that he made at the police station because it was not a product of being in unlawful custody. Id. at 21. See also Snellgrove v. State, 569 N.E.2d 337, 341 (Ind. 1991) (observing that even though a warrantless intrusion into the defendant's residence was unlawful, the confession was properly admitted into evidence because there was probable cause for the arrest and the decision to confess was an act of free will and not the product of an illegal arrest).

In sum, we conclude that the arresting officers' actions were reasonable, considering the governmental interests and the steps that were taken when investigating and arresting Conwell. For the reasons discussed above, Conwell cannot prevail on his claim that his rights were violated under Article I, Section 11 of the Indiana Constitution. As a result, the trial court did not err in admitting Conwell's confession into evidence.

II. Redacted Statement

Conwell next claims that even if the admission of his statement into evidence did not violate the provisions of Article I, Section 11 of the Indiana Constitution, his

convictions must be reversed because the trial court did not properly redact various comments that Detective Tudor made during the interrogation. Specifically, Conwell asserts that some of the comments were hearsay and others amounted to improper statements about the credibility of witnesses and opinions about whether Conwell had committed the murders. Moreover, Conwell contends that Detective Tudor unnecessarily badgered him during the interrogation.

The trial court has broad discretion to admit evidence, and the determination regarding the admissibility of evidence will be reviewed on appeal only for an abuse of that discretion. Laster v. State, 918 N.E.2d 428, 432 (Ind. Ct. App. 2009). An abuse of discretion occurs only when the trial court's ruling is clearly against the logic and effect of the facts and circumstances before it, or if the trial court has misinterpreted the law. Id.

As a general rule, hearsay evidence, which is an out-of-court statement offered to prove the truth of the matter asserted, is not permitted. Ind. Evid. R. 801(c); Fowler v. State, 929 N.E.2d 875, 879 (Ind. Ct. App. 2010), trans. denied. But a statement is not hearsay if not offered to prove the truth of the matter asserted. Smith v. State, 721 N.E.2d 213, 216 (Ind. 1999). Moreover, our Supreme Court has determined that police questions and comments during an interview designed to elicit a response from a defendant are not offered to prove the truth of the matter asserted. Id.

As discussed above, the trial court agreed to redact some, but not all, of Detective Tudor's comments. More particularly, the trial court agreed to strike those comments

that related to marijuana smoking and the possession and use of firearms that were not relevant in this case.

Conwell does not claim that Detective Tudor made any assertions during the interview that were not otherwise substantiated at trial. Moreover, our review of the hearing on Conwell's request to have the statements redacted and the Detective Tudor's comments made during the interrogation do not reveal anything other than typical police interrogation techniques. And we cannot say that Detective Tudor's comments improperly reflected on the credibility of witnesses or resulted in badgering and unfair prejudice to Conwell. As a result, we conclude that the trial court did not err in denying Conwell's request to have additional comments redacted from his statement.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.