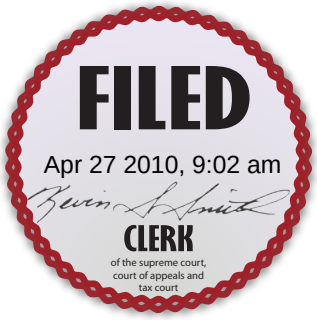

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IN THE
COURT OF APPEALS OF INDIANA

RICHARD KNIOLA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0909-CR-919
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0810-FA-235330

APRIL 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Appellant Richard Kniola appeals his conviction and sentence for burglary, a class A felony. Ind. Code § 35-43-2-1. We affirm.

ISSUES

Kniola raises 3 issues for review, which we restate as:

I. Whether the trial court abused its discretion by admitting Kniola's statement following a warrantless arrest in Kniola's home.

II. Whether the trial court abused its discretion by admitting Kniola's statement after questioning.

III. Whether the trial court abused its discretion in the course of sentencing Kniola.

FACTS

In the early morning hours of September 25, 2008, Carlton Beever was sleeping in bed in his home when he was awakened by someone hitting him in the face. Beever, who was eighty-three (83) years old, could not identify the person who was attacking him, but he heard another person in the room urging the attacker to keep hitting him. The attacker hit Beever until Beever lost consciousness. When Beever regained consciousness, he was alone, and he went to a neighbor's house and called the police.

While investigating at Beever's house, the police discovered that all of the closets, cabinets, and dresser drawers were open. They recovered a fingerprint at the scene, which was identified as being left by Edward Underhill. The police arrested Underhill,

who gave a statement in which he admitted he had participated in the burglary and implicated Kniola.

The police arrested Kniola, who gave a statement to the police confessing his involvement in the burglary at Beever's house. The State charged Kniola with burglary as a class A felony,[1] and the trial court found him guilty as charged after a bench trial. The trial court sentenced Kniola to serve forty-five (45) years.

DISCUSSION AND DECISION

I. ADMISSION OF STATEMENT FOLLOWING WARRANTLESS ARREST

Kniola originally challenged the admission of his statement through a motion to suppress but now appeals following a trial at which he objected to the admission of the statement. 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. *Montgomery v. State*, 904 N.E.2d 374, 377 (Ind. Ct. App. 2009), *transfer denied*. We review the admission of evidence for an abuse of the trial court's discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* We do not reweigh the evidence,

[1] The governing statute states:

> A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony. However, the offense is . . . a Class A felony if it results in: (A) bodily injury; or (B) serious bodily injury; to any person other than a defendant.

Ind. Code § 35-43-2-1.

and we consider conflicting evidence in a light most favorable to the trial court's ruling. *Id*. We consider evidence from the trial as well as evidence from the suppression hearing that is not in direct conflict with the trial evidence. *Id.*

Kniola argues that the trial court should have suppressed his custodial statement because it was the fruit of an unlawful warrantless arrest in his home in violation of his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

The Fourth Amendment to the United States Constitution states, in relevant part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." The Fourth Amendment applies to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 650, 81 S.Ct. 1684, 1689, 6 L.Ed.2d 1081 (1961) (quotation omitted). The fundamental purpose of the Fourth Amendment is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes, and their belongings. *Montgomery*, 904 N.E.2d at 377-378.

The Fourth Amendment protects against warrantless and nonconsensual entry into a residence by police to search for a felony arrestee even when officers have probable cause to make the arrest. *Henderson v. State*, 769 N.E.2d 172, 175 (Ind. 2002) (citing *Payton v. New York*, 445 U.S. 573, 576, 100 S.Ct. 1371, 1374-75, 63 L.Ed.2d 639 (1980)). For a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies. *Montgomery*, 904

N.E.2d at 378. The State bears the burden of proving that an exception to the warrant requirement existed at the time of a warrantless search. *Id.*

In this case, after Underhill implicated Kniola in the burglary, Detective Cameron Brosseau of the Indianapolis Police Department came to Kniola's home in the early morning hours of October 15, 2008. Detective Brosseau knew that Tina Clark, who was Underhill's sister and Kniola's girlfriend, also lived there. At the residence, Detective Brosseau recognized a van that Underhill had seen Kniola drive and had described for Detective Brosseau. Detective Brosseau watched the house for an hour to an hour and a half before calling for backup. Three police officers and one K-9 officer responded to Detective Brosseau's request.

Detective Brosseau and two of the officers approached the front door of Kniola's residence, and the other officers went to the back door. The two officers with Detective Brosseau drew their weapons. Detective Brosseau opened a storm door and knocked on the front door several times. No one answered, but Detective Brosseau saw someone look out a window through a set of blinds. The third time he knocked, Detective Brosseau identified himself and called out to Clark. Detective Brosseau asked Clark to answer the door and speak with him.

Clark opened the door, and Detective Brosseau placed his foot into the threshold of the door. Detective Brosseau asked Clark where Kniola was, and she did not respond. Clark was restraining a dog with one hand, and Detective Brosseau asked Clark to make sure she held onto the dog. Clark backed into the house with the dog and sat down on a couch. Detective Brosseau and the two officers stepped into the house. Detective

Brosseau again asked Clark where Kniola was. Clark turned her head towards a kitchen and bathroom and shouted Kniola's name. The officers found Kniola in a bathroom and arrested him.

The State does not contend that an exigent circumstance justified the officers' warrantless entry into Kniola's home. Instead, the State argues that even if the warrantless entry into Kniola's home violated his rights under the Fourth Amendment, Kniola's subsequent confession at the police station is still admissible because the officers had probable cause to arrest Kniola.

In *Henderson*, police officers had probable cause to arrest Henderson for murder and other offenses and went to Henderson's house with another resident of the house. 769 N.E.2d at 176. When the resident opened the door, the police officers entered the house and arrested Henderson. *Id.* Henderson subsequently gave an incriminating statement to the police at the station. *Id.* Our Supreme Court noted, "[W]here the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton*." *Id.* at 175-176 (quoting *New York v. Harris*, 495 U.S. 14, 21, 110 S.Ct. 1640, 1644-45, 109 L.Ed.2d 13 (1990)). Our Supreme Court determined that the police had probable cause to arrest Henderson and concluded that the trial court did not err by admitting Henderson's statement. *Henderson*, 769 N.E.2d at 176.

Thus, for the purposes of Kniola's Fourth Amendment claim, we must determine whether the police had probable cause to arrest Kniola. It is well settled that a police

officer may arrest a suspect without a warrant if the officer has probable cause to believe that the suspect has committed a felony. *Henderson*, 769 N.E.2d at 176 (quotation omitted). Probable cause exists when, at the time of the arrest, the arresting officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect had committed a criminal act. *Id.* (quotation omitted).

Here, Beever told the police that at least two people participated in the burglary. The officers found Underhill's fingerprint inside the home and arrested him. Underhill admitted to the police that he participated in the burglary and stated that Kniola was also a participant. This information would warrant a person of reasonable caution to believe that Kniola had committed a felony. Therefore, the police had probable cause to arrest Kniola, and the admission of Kniola's confession into evidence at trial despite the police's warrantless entry into his home did not violate Kniola's rights under the Fourth Amendment to the United States Constitution.

Turning to Kniola's claim under Article 1, Section 11 of the Indiana Constitution, that provision states, in relevant part, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated . . . ." Although Section 11 appears to have been derived from the Fourth Amendment and shares the same language, we interpret and apply it independently from Fourth Amendment jurisprudence. *Primus v. State*, 813 N.E.2d 370, 373 (Ind. Ct. App. 2004). Section 11 should receive a liberal construction in its application to guarantee that people are free from unreasonable search and seizure. *Id.*

The validity of a search pursuant to Article 1, Section 11 of the Indiana Constitution turns on an evaluation of the reasonableness of officer conduct under the totality of the circumstances. *Montgomery*, 904 N.E.2d at 381. 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 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 under the totality of the circumstances, the officers' intrusion was reasonable. *Id.*

In this case, the police had a strong suspicion or knowledge that Kniola had participated in the burglary. Nevertheless, there is no evidence that the officers had a law enforcement need to enter the house without a warrant. There was no indication that Kniola was about to flee or that anyone was in danger. In addition, the officers' warrantless, nonconsensual entry into Kniola's home in the early morning hours is exactly the type of intrusion that Article I, Section 11 is concerned with preventing.

The key question is whether Kniola's statement is still admissible despite the unreasonableness of the officers' warrantless entry. For guidance, we turn to the United States Supreme Court's opinion in *Harris*, whose facts are similar to the facts of this case. In *Harris*, the police had probable cause to arrest Harris for murder. 495 U.S. at 15. Officers came to Harris' apartment, without a search warrant, and knocked on his door. *Id.* The officers displayed their guns and badges, and Harris allowed them to enter. *Id.* Harris was taken to a police station, where he signed a written inculpatory statement. *Id.* at 16. The United States Supreme Court concluded that the officers' improper

warrantless intrusion into Harris' home to arrest him did not require that his subsequent confession be excluded from evidence. *Id.* at 21. The Court determined that Harris' statement "at the police station was not the product of being in unlawful custody. Neither was it the fruit of having been arrested in the home rather than someplace else." *Id.* at 19. The Court further noted, "the rule in *Payton* was designed to protect the physical integrity of the home; it was not intended to grant criminal suspects, like Harris, protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime." *Id.* at 17. Because the statement was not the fruit of the unlawful arrest, and because the exclusionary rule in *Payton* applies to evidence gathered in the home or found as the direct result of an improper warrantless intrusion, the Court concluded that excluding Harris' statement would not further the purposes of the Fourth Amendment. *Id.* at 20.

Similarly, in *Snellgrove v. State*, 569 N.E.2d 337, 341 (Ind. 1991), officers had probable cause to arrest Snellgrove for armed robbery. The police went to Snellgrove's residence without an arrest or search warrant and knocked on the front door. *Id.* at 339. Snellgrove's fiancé let the officers in, and the officers arrested Snellgrove. *Id.* At the station, Snellgrove gave an incriminating statement. *Id.* Our Supreme Court determined the officers' warrantless intrusion into Snellgrove's house was unlawful. *Id.* at 340. Nevertheless, our Supreme Court also concluded that Snellgrove's statement was properly admitted into evidence. *Id.* at 343. The Court noted that the police had probable cause to arrest Snellgrove, and the warrantless arrest was not an attempt to force

Snellgrove to make a confession against his will. *Id.* at 342. Snellgrove's decision to confess was an act of free will, not the product of his illegal arrest. *Id.* at 343.

We find the reasoning in *Harris* and *Snellgrove* persuasive as applied to Kniola's claim under Article I, Section 11 of the Indiana Constitution. It is likely that if any incriminating evidence had been found in Kniola's home as a result of the officers' warrantless intrusion, that evidence should have been suppressed. However, Kniola made his incriminating statement at the police station, not in his home, and he was not in unlawful custody at the time he made his statement. As is noted above, the police had probable cause to arrest Kniola for his involvement in the burglary. We cannot say that Kniola's incriminating statement was directly caused by or related to the officers' warrantless intrusion into his home. Therefore, we conclude that the trial court did not abuse its discretion by admitting Kniola's statement into evidence.

II. VOLUNTARINESS OF STATEMENT

Kniola also argues that the trial court erred by admitting his statement into evidence because the police coerced him into making the statement in violation of his rights under the Indiana Constitution.

The voluntariness of a confession is to be determined from a totality of the circumstances. *Berry v. State*, 703 N.E.2d 154, 157 (Ind. 1998). The State bears the burden of proving beyond a reasonable doubt that the defendant voluntarily and intelligently waived his or her rights, and that the defendant's confession was voluntarily given. *Id.* We review the record for evidence of inducement by way of violence, threats,

promises, or other improper influence. *Id.* We do not re-weigh the evidence, but rather determine whether there is substantial evidence to support the trial court's findings. *Id.*

In this case, the police arrested Kniola on the morning of October 15, 2008, brought him to police headquarters, and began questioning him in an interview room at 7:45 am. At the beginning of the questioning, Detective Brosseau and Kniola reviewed a document captioned "Custodial Interrogation" which advised Kniola of his *Miranda* rights. Tr. Exhibit Volume p. 52. The document also contains a "Waiver of Rights" provision which states, in relevant part, "[t]his WAIVER of my RIGHTS has been KNOWINGLY and VOLUNTARILY made by me without any promises or threats having been made to me and further without any pressure or coercion having been used against me." *Id.* After reviewing the document, Kniola wrote his initials next to each of the rights listed on the document and signed the document at the bottom.

During the questioning, Kniola was chained to a wall. Two detectives questioned Kniola for several hours, with breaks during that period. One of the detectives testified at the suppression hearing that they did not threaten Kniola or promise him anything in exchange for a statement. The officers told Kniola that they found a fingerprint at the scene and did not indicate whose print it was, although they knew at that time that it was Underhill's fingerprint. In addition, the officers mentioned to Kniola that evidence collected at the scene of the burglary would be subjected to DNA analysis. At around 11:00 am, Kniola admitted his involvement in the burglary. After a break, Kniola described his involvement in the burglary on a taped statement. Given the Waiver of Rights that Kniola reviewed and signed prior to questioning and the detective's testimony

that the police did not threaten Kniola or promise him anything in exchange for his statement, there is substantial evidence to support the trial court's decision to admit Kniola's statement into evidence.

Kniola contends that the detectives illegally induced him to confess by threatening to charge his girlfriend Tina Clark as an accessory if he did not provide an incriminating statement. Kniola cites *Hall v. State*, 255 Ind. 606, 266 N.E.2d 16 (Ind. 1971). In that case, police officers interrogating the appellant about a burglary told appellant that his wife was also a prime suspect in the burglary. *Id.* at 19. The officers implied that if he did not confess, they would also arrest his wife, and their small children would necessarily be placed in the custody of others. *Id.* at 19. Our Supreme Court concluded that the threat to charge the appellant's wife, with the added threat that appellant's children would be placed in someone else's care, rendered the appellant's statement involuntary. *Id.*

By contrast, in *Ellis v. State*, 707 N.E.2d 797, 801 (Ind. 1999), the appellant contended that his confession was involuntary because the police threatened to arrest his brother and sister if he did not cooperate. However, at the time of the interrogation, appellant's brother and sister had given statements implicating themselves in the crime at issue, so our Supreme Court concluded that the police had a good faith basis for suggesting to appellant that they could arrest his siblings in connection with the crimes. *Id.* at 802.

In this case, Detective Brosseau told Kniola during questioning that "if I found evidence that [Clark] was involved that I would, I would arrest her." Tr. p. 130. Unlike

the threat in *Hall*, Detective Brosseau's conditional statement does not imply that the decision to arrest Clark hinged on whether Kniola confessed to participating in the robbery. In fact, the statement implies that if Clark was involved in the burglary, she could have been arrested without regard to whether Kniola confessed. At the time he questioned Kniola, Detective Brosseau thought it was possible that Clark was involved in the burglary because Beever had initially told Detective Brosseau that he thought he heard a woman's voice while he was being beaten.

Furthermore, before Kniola's interrogation Detective Brosseau had previously expressed a willingness to arrest Clark if she was found to have participated in the burglary. At the time of Kniola's arrest in his home, Kniola had heard Detective Brosseau tell Clark that he would arrest her if he found out that she was involved in the burglary. Thus, there is evidence that Detective Brosseau was not threatening in bad faith to arrest Clark to induce Kniola to confess. Rather, the detective was reiterating his previous, publicly-stated intention to arrest Clark if he discovered that she was involved in the burglary, and at that time he had reason to think that she may have participated in the crime.

Under these circumstances, this case more closely resembles *Ellis* than *Hall*, and *Hall* is distinguishable. We conclude that the trial court did not abuse its discretion by admitting Kniola's confession into evidence.

III. SENTENCING

Kniola contends that his sentence is erroneous because one of the aggravating factors identified by the trial court is improper and unsupported by the evidence.

The offenses in this case were committed after the April 25, 2005 revisions to the sentencing statutes. Therefore, we review Kniola's sentence under the advisory sentencing framework. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for 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.* (quotation omitted). One way in which a trial court may abuse its discretion is by finding aggravating and mitigating factors that are not supported by the record, are improper as a matter of law, or the court fails to include factors that are clearly supported by the record and advanced for consideration. *Id.* at 490-491.

Kniola argues that the trial court erred by finding "the injury inflicted on the victim which is above that level of injury necessary to support the charge is an aggravating factor." Tr. p. 87. Specifically, Kniola contends that the trial court essentially improperly cited an element of the charging information, that Beever's orbital socket was fractured during the burglary, as an aggravating factor. We disagree. The trial court did not cite Beever's fractured eye socket as its reason for identifying the severity of the injury as an aggravating factor. In fact, the trial court failed to specifically identify the reasons for identifying the severity of Beever's injury as an aggravating factor. Nevertheless, when the record indicates that the trial judge engaged in the evaluative process but simply did not sufficiently articulate his or her reasons for enhancing a sentence and the record indicates that the sentence imposed was not

otherwise inappropriate in light of the nature of the offense and the character of the offender, then the purposes underlying the specificity requirement have been satisfied. *See Adkins v. State*, 532 N.E.2d 6, 9 (Ind. 1986).[2]

In *Adkins*, the trial court cited appellant's "background and prior felony" as an aggravating factor. *Id.* at 8. Our Supreme Court concluded that the trial court failed to sufficiently articulate the reason for an enhanced sentence. *Id.* at 9. Nevertheless, evidence of the appellant's criminal history had been presented to the trial court in the pre-sentence investigation report, and our Supreme Court concluded that the trial court had engaged in a sufficient evaluative process to sustain the enhanced sentence. *Id.*

Here, the trial court explicitly identified the aggravating and mitigating factors it found based on the evidence presented. Furthermore, with respect to the severity of Beever's injury, ample evidence was presented during trial to show that Beever had suffered more than the minimum level of harm necessary to establish the offense. Beever was beaten to the point of unconsciousness. He was hospitalized for three or four days and had facial lacerations that required stitches. In addition, when Beever was released from the hospital, he was unable to live by himself for some time and lived with his girlfriend while he convalesced. These facts were not stated in the charging information and were not necessary to prove the charge. We conclude that the trial court engaged in a sufficient evaluative process and that there was evidence to support the trial court's

[2] Our Supreme Court considered Adkins' challenge to an aggravating factor under an older standard of review, specifically whether the sentence in question was "manifestly unreasonable." *Adkins*, 532 N.E.2d at 9. We accept the reasoning in *Adkins* but have applied it in the context of our current standard of review for sentences under Indiana Appellate Rule 7(B).

determination that Beever's injury was more severe than necessary to support the charge. Beever does not contend that the aggravating factor was otherwise inappropriate. Therefore, the trial court did not abuse its discretion in citing the severity of Beever's injury as an aggravating factor.

IV. CONCLUSION

For these reasons, we affirm the trial court's judgment.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.