MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Chelsea Newman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 15, 2022

Court of Appeals Case No.
22A-CR-594

Appeal from the
Blackford Superior Court

The Honorable
John N. Barry, Judge

Trial Court Case Nos.
05D01-2105-CM-161
05D01-2108-F6-297

Darden, Senior Judge.

Statement of the Case

[1] Chelsea Newman appeals from her conviction of one count of Level 6 felony unlawful possession of a legend drug,[1] contending that the trial court abused its discretion by admitting at trial statements she made to her community corrections supervisor during a meeting and subsequent compliance check. We affirm.

Facts and Procedural History

[2] In August 2021, Newman was already serving a prior sentence on home detention. Her home detention was supervised by Kelly Cale, a case manager employed by Blackford County Community Corrections. On August 26, 2021, Newman went to Cale's office for a routine weekly meeting. During the course of that meeting, something was revealed which prompted Cale to want to conduct a compliance check of Newman's home. Cale and Newman went to Newman's home together and were met there by law enforcement officers who routinely accompany or meet community corrections officers for visits such as this for safety purposes. The officers involved in this instance were Officer Gary Banter of Blackford County Community Corrections and Blackford County Sheriff's Department Investigator Taylor Lefever.

[1] Ind. Code § 16-42-19-13 (2011) (offense); Ind. Code § 16-42-19-27(b)(2019) (Level 6 felony).

[3] Newman, Cale, and the officers entered Newman's home and went down the hallway to Newman's bedroom. Newman's boyfriend was there and was still in bed. The law enforcement officers began their compliance search of Newman's home while Cale and Newman walked through her kitchen and then sat in her dining room. Newman "was a little agitated and upset." Tr. Vol. II, p. 21. As Cale and Newman talked in the dining room, Cale asked Newman if the officers would find anything in the house. Newman told Cale that "we would find Flexeril . . . in a cellophane wrapper" "in the bedroom." *Id.* at 28-29. Cale, who was familiar with Newman's prescriptions as part of her supervision, knew that Newman did not have a prescription for Flexeril. Cale relayed the information to Officer Lefever. The officers found the Flexeril in a cigar box on the bed above where Newman's boyfriend was laying in her bed. Newman told Cale that "she uses the Flexeril. She crushes it up and puts it on a nerve on her tooth for a toothache." *Id.* at 31.

[4] Officer Lefever testified at trial that he found a wooden box with the cellophane wrapper containing "some prescription medications." *Id.* at 33. Based on his investigations and research, he suspected that the medication he had found was Cyclobenzaprine or Flexeril. He confirmed his suspicion by using "a drug app called drug.com . . . to go to the pill identifier on the app and type in the inscriptions on either side of the pill." *Id.* at 34. The app will then supply a picture of the pill "and will tell you the description, the classification, the type of drug it is, what the manufacture[r] names are." *Id.* The officer also found an orange syringe cap and a cotton ball. Officer Lefever testified that in his

experience, the cotton ball is used "when the drug is broken down into a liquid and then used through a process of drawing the drugs into the syringe. And then using the syringe intravenously." *Id.* at 38.

[5] Blackford County Sheriff's Department Chief Deputy James Heflin testified at trial as to the chain of custody of the evidence taken from Newman's home. Jerry Hetrick, a forensic scientist with the Indiana State Police Laboratory Division, testified about the laboratory procedures for receiving and testing evidence. The results of testing the cotton ball revealed "the presence of Methamphetamine." *Id.* at 55. The results of testing of the pills, in addition to information gathered from the search on drugs.com, revealed that the manufacturer of the pill was InvaGen Pharmaceuticals, Inc., and that the pills were Cyclobenzaprine, and that the generic name for Cyclobenzaprine is Flexeril. He further testified that Cyclobenzaprine is not a controlled substance, but is a prescription drug and a legend drug.

[6] The State charged Newman with one count of Level 6 felony possession of methamphetamine, one count of Level 6 felony possession of a legend drug, one count of Class B misdemeanor possession of marijuana, and one count of Level 6 felony escape. Prior to trial, the State dismissed the count alleging possession of marijuana. At the conclusion of Newman's jury trial, Newman was found guilty of possession of a legend drug as a Level 6 felony and was acquitted of the other remaining counts. At sentencing, Newman was found to have violated the terms and conditions of her prior ordered home detention sentence and her placement in community corrections. As a result, her prior

placement for that conviction was revoked, and she was ordered to serve the balance of her previously ordered sentence, less credit time, in the Blackford County Security Center. As for the current offense, Newman was then ordered to serve 614 days in the Department of Correction consecutively to her sentence in the Blackford County Security Center.

Discussion and Decision

[7] Newman appeals, challenging the trial court's decision to admit the statements she made to Cale, her community corrections case manager. More specifically, she argues that statements she made to her case manager during a police search of her home without the benefit of *Miranda*[2] warnings, rendered her statements inadmissible. We disagree.

[8] Trial courts enjoy broad discretion when it comes to the admissibility of evidence. *Kelley v. State*, 825 N.E.2d 420, 424 (Ind. Ct. App. 2005). "Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court abused its discretion." *Id.* "An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court." *Id.*

[9] In *Miranda*, the United States Supreme Court held that "when law enforcement officers question a person who has been taken into custody or otherwise

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[2] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

deprived of [her] freedom of action in any significant way, the person must first be warned that [she] has a right to remain silent, that any statement may be used as evidence against [her], and that [she] has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444. "Statements elicited in violation of *Miranda* are generally inadmissible in a criminal trial and subject to a motion to suppress." *Theobald v. State*, 190 N.E.3d 455, 459 (Ind. Ct. App. 2022). "*Miranda* is triggered only if the person is subject to 'custodial interrogation.'" *Id*. "Custody under *Miranda* occurs when two criteria are met: (1) 'the person's freedom of movement is curtailed to the degree associated with formal arrest' and (2) 'the person undergoes the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* "'Interrogation' for purposes of *Miranda* 'constitutes questions, words, or actions that the officer knows or should know are reasonably likely to elicit an incriminating response.'" *Id.*

[10] Breaking down the *Miranda* triggers, we first examine to whom the incriminating statements were made. Cale is a community corrections case manager charged by the trial court with monitoring and supervising Newman. Community corrections programs and employees are treated similarly to probation offices and their employees. *Compare, Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999) ("Our standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation."). A community corrections program is statutorily defined as follows:

> As used in this chapter, "community corrections program" means a program consisting of residential and work release, electronic monitoring, day treatment, or day reporting that is:
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> (1) operated under a community corrections plan of a county and funded at least in part by the state subsidy provided under IC 11-12-2; or
>
> (*2) operated by or under contract with a court or county.*

Ind. Code § 35-38-2.6-2 (1994) (emphasis added).

[11] Thus, like probation departments, community corrections programs are distinct from law enforcement and are operated by or under a contract with a court or county. *See id.*; *and see Ryle v. State*, 842 N.E.2d 320, 324 (Ind. 2005) ("Probation in Indiana is a court function, and probation officers are trained, tested, hired, and supervised directly by the judiciary.").

[12] Consequently, Cale was not a law enforcement officer and the questioning and responses were non-custodial as Cale was carrying out her function as Newman's case manager for Blackford County Community Corrections. The record is devoid of any evidence suggesting that Officers Banter or Lefever engaged in the questioning which may have revealed Newman's incriminating statements. Further, their functions were conducted at Cale's direction and not as a traditional law enforcement function. And there is nothing in the record to suggest that Cale's monitoring and compliance check was anything more than routine. *See Hensley v. State*, 962 N.E.2d 1284, 1290 (Ind. Ct. App. 2012) ("police were pursuing their own agenda and conducted an investigatory search under the guise that it was a probationary search. The search was prompted by

the police officers, not by the probation officer."). Therefore, we need not examine the other *Miranda* requirements.

[13] Further, as a condition of placement in home detention in lieu of incarceration, Newman voluntarily entered into an agreement to abide by certain rules of home detention in exchange for this conditional liberty. Newman's rules included that: "(9) You shall abide by any conditions and rules provided by your case worker." Exhibit Vol. II, p. 6. That rule reads broadly enough to include conversing with her case manager about matters concerning compliance (or non-compliance) with the rules. As a panel of this Court said in *Brabandt v. State*, 797 N.E.2d 855, 863-64 (Ind. Ct. App. 2003), "[t]he general obligation to appear and answer questions truthfully does not convert otherwise voluntary statements into compelled statements."

[14] In *Brabandt*, the probationer admitted to his probation officer during a routine probation meeting that he had violated the terms and conditions of his probation by using Oxycontin. 797 N.E.2d at 859. The meeting during which the confession took place was a routine one, conducted pursuant to the terms and conditions of his probation, he was not in custody, nor was he in handcuffs or under arrest. *Id.* at 862. Herein, Newman's non-custodial statements made in compliance with the rules of home detention and community corrections

similarly are admissible.[3] As in *Brabandt*, Newman, "reporting on [her] progress, [] was compelled to tell the truth." *See id.* at 864. The location where she made the disclosures is of no moment here as she was responding to routine questions from Cale both in Cale's office and at Newman's home.

[15] Though our analysis could end here, finding no reversible error, we further observe that Newman's statements were merely cumulative of other properly admitted evidence. "The erroneous admission of evidence may also be harmless if that evidence is cumulative of other evidence admitted." *Pelissier v. State*, 122 N.E.3d 983, 988 (Ind. Ct. App. 2019), *trans. denied.* And among the terms of the home detention rules Newman signed is the term providing that: "(11) You are subject to searches of your person, property and place of residence by any community corrections officer or law enforcement officer without probable cause, any suspicion or a search warrant." Exhibit Vol. II, p. 7.

[16] In general, a search warrant is a prerequisite to a constitutionally proper search and seizure. *Hensley*, 962 N.E.2d at 1288. "However, the United States Supreme Court has determined that "the 'special needs' of a probationary

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[3] *See also*, Cohn, Neil P., The Law of Probation and Parole, Revocation of Probation or Parole: Constitutional Rights and Guarantees § 21:43 Right to remain silent; Introduction—Policy considerations (Sept. 2021 Update) ("As described elsewhere, some persons on conditional release are subject to a term which requires them to report their activities to, or answer the questions of, their counselor. Since these responses may well provide proof of a violation of another condition, the probationer or parolee is in the unenviable position of either committing a violation by not answering such queries, or establishing another violation by answering truthfully.") (footnote omitted).

system, particularly the need to supervise probationers closely, justifie[s] warrantless searches based on reasonable suspicion rather than probable cause." *Id.* (citing *State v Schlechty*, 926 N.E.2d 1, 3-4 (Ind. 2010)). Nevertheless, "[a] probationer or community corrections participant may, by a valid advance consent or search term in the conditions of release, authorize a warrantless search of his or her premises without reasonable suspicion." *State v. Vanderkolk*, 32 N.E.3d 775, 775 (Ind. 2015).

[17] Here, Term (11), a term to which Newman voluntarily agreed and consented, advised her that she was subject to searches of her property "without probable cause, any suspicion or a search warrant." Exhibit Vol. II, p. 7. The monitoring and compliance search of her property revealed that legend drugs were in her bedroom. Officers found a cigar box containing a cotton swab, an orange syringe cap, and a cellophane wrapper containing Flexeril, "just above [Newman's boyfriend], where he was laying. Just above his head." Tr. Vol. II, p. 40. The testimonial evidence and exhibits regarding the legend drug, found in Newman's home, were properly admitted, although not specifically challenged here on appeal. However, the above evidence is sufficient to establish that Newman had violated the terms of her community corrections placement. *See* Exhibit Vol. II, p. 6; *see also* Ind. Code §§ 16-42-19-13 & -27(b).

[18] We conclude that the trial court did not abuse its discretion by admitting Newman's statements in evidence in her instant trial.

Conclusion

[19] In light of the foregoing, we affirm the trial court's judgment.

[20] Affirmed.

Robb, J., and Pyle, J., concur.