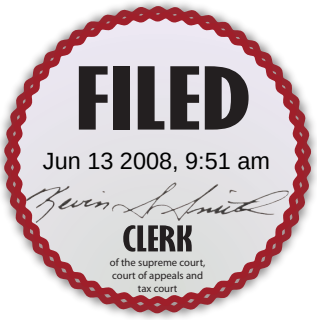

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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY MONAHAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A04-0801-CR-28
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable G. Michael Witte, Judge
Cause No. 15D01-0602-FD-14

June 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jeffrey Monahan appeals his conviction and sentence following a bench trial for possession of paraphernalia, as a class A misdemeanor;[1] and possession of a controlled substance, as a class D felony.[2]

We affirm.

ISSUES

1. Whether the trial court abused its discretion in admitting evidence.

2. Whether the trial court abused its discretion in sentencing Monahan.

FACTS

At approximately 1:00 a.m. on September 27, 2005, James Brennaman observed "a suspicious vehicle parked in front of [his] neighbor's lot." (Tr. 40). Brennaman noticed the vehicle because "[i]t was parked on the street," which was unusual. (Tr. 41). Brennaman also recalled seeing the same vehicle "a few nights before . . . ." (Tr. 42). Brennaman telephoned 911, identified himself, and reported the vehicle. Brennaman reported that he had seen the same vehicle on a previous night; the vehicle did not belong to any of his neighbors; and there were people getting in and out of the vehicle.

Subsequently, Dearborn County Sheriff's Deputy Wallace Lewis received a dispatch regarding a suspicious vehicle in the Ester Ridge area, which is "very rural," with "[a] lot of acreage between houses," and "[n]ot a whole lot of traffic pass[ing] through there." (Tr. 6). The dispatch operator described the vehicle as a mini-van sitting

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[1] Ind. Code § 35-48-4-8.3.

[2] Ind. Code § 35-48-4-7.

on the road. The dispatch operator reported that the caller had seen the vehicle a previous night; it did not belong to any of the caller's neighbors; and people were getting in and out of the van.

When Deputy Lewis arrived at Ester Ridge, he observed a dark-colored van being driven down the roadway. Deputy Lewis, however, did not observe any traffic violations. After Deputy Lewis started following the van in his police vehicle, the van pulled into a driveway.

Deputy Lewis followed the van and activated his emergency lights. When Deputy Lewis approached the van, he observed "two male subjects in the van." (Tr. 48). The occupants of the van seemed "[n]ervous." (Tr. 48).

The driver of the van identified himself as Monahan. The passenger identified himself as Nick Keller. Monahan told Deputy Lewis that he was in the area to visit a girlfriend.

Dispatch advised Deputy Lewis that there was a warrant out of Ripley County for Monahan's arrest. Accordingly, Deputy Lewis placed Monahan under arrest.

Deputy Lewis could not release the van to Keller as Keller's driver's license had been suspended; thus, Deputy Lewis impounded the van and conducted an inventory search of the van. Among other things, Deputy Lewis discovered a small plastic container, containing "a rock substance," (Tr. 55), and a "plastic syringe with a cap" inside the van. (Tr. 56). Subsequent tests determined that the rock-like substance contained heroin.

On February 3, 2006, the State charged Monahan with Count 1, possession of paraphernalia, as a class A misdemeanor; and Count 2, possession of a schedule II controlled substance, as a class D felony. On October 10, 2006, Monahan filed a motion to suppress evidence. The trial court held a hearing on Monahan's motion to suppress. On March 30, 2007, the trial court denied Monahan's motion to suppress.

The trial court conducted a bench trial on July 31, 2007, during which Monahan objected to the admission of the evidence regarding the heroin and syringe. The trial court found Monahan guilty as charged and sentenced him to a one-year suspended sentence on Count 1, to be served concurrent with the sentence on Count 2. On Count 2, the trial court sentenced Monahan to three years, with two years suspended. The trial court further ordered that the sentences be served consecutive to Monahan's sentence in a separate case, in which he had been convicted of attempted theft, criminal mischief, and neglect of a dependent.

DECISION

1. Admission of Evidence

Monahan asserts the trial court abused its discretion in admitting evidence that he possessed heroin and drug paraphernalia. The admission of evidence is a matter left to the sound discretion of the trial court, and a reviewing court will reverse only upon an abuse of that discretion. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* "We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling."

Lundquist v. State, 834 N.E.2d 1061, 1067 (Ind. Ct. App. 2005). "However, we must also consider the uncontested evidence favorable to the defendant." *Id.*

Monahan argues that the seizure of the heroin and syringe resulted from a detention that violated the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Namely, Monahan contends that Deputy Lewis lacked reasonable suspicion to conduct an investigatory stop.

Both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution protect the privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures. *Barfield v. State*, 776 N.E.2d 404, 406. (Ind. Ct. App. 2002). The police may stop an individual for investigatory purposes if, based on specific, articulable facts, the officer has a reasonable suspicion that criminal activity is afoot. *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003) (quoting *Terry v. Ohio*, 392 U.S. 1, 16 (1968)).

> Whether a particular fact situation justifies an investigatory stop is determined on a case-by-case basis. The "reasonable suspicion" requirement of the Fourth Amendment is satisfied if the facts known to the officer at the moment of the stop are such that a person "of reasonable caution" would believe that the "action taken was appropriate." In other words, the requirement is satisfied where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur. Reasonable suspicion entails something more than an inchoate and unparticularized suspicion or hunch, but considerably less than proof of wrongdoing by a preponderance of the evidence. Consideration of the totality of the circumstances necessarily includes a determination of whether the defendant's own actions were suspicious.

Crabtree v. State, 762 N.E.2d 241, 246 (Ind. Ct. App. 2002) (internal citations omitted).

In this case, Brennaman reported a suspicious vehicle stopped on the side of the road. Brennaman further reported that he had seen the vehicle a previous night; it did not belong to any of his neighbors; and people were getting in and out of the vehicle. All of this occurred in a very rural area with little traffic. Deputy Lewis then received a dispatch, conveying the information reported by Brennaman. When Deputy Lewis arrived in the area, he observed Monahan "driving down the roadway." (Tr. 7). When Deputy Lewis started following the van, Monahan drove the van onto a driveway.

Given the totality of the circumstances, we find that Deputy Lewis had reasonable suspicion to instigate a stop of Monahan for investigative purposes. Thus, "we cannot say the trial court erred to the extent it determined the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity had occurred or was about to occur." *Crabtree*, 762 N.E.2d at 247. Accordingly, we find no abuse of discretion in admitting evidence of the heroin and syringe.[3]

2. Sentence

Monahan asserts that the trial court abused its discretion by failing to enter a sentencing statement, "which would explain why it selected the maximum three-year and one-year sentences."[4] Monahan's Br. at 10. Monahan asks this court to "determine the appropriate sentence at the appellate level . . . ." Monahan's Br. at 11.

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[3] Finding no abuse of discretion in admitting the evidence, we need not address Monahan's assertion that the suppression of the evidence renders the evidence insufficient to support his convictions.

Sentences are within the trial court's discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Thus, we review a sentence for abuse of that discretion. *Id.*

In *Anglemyer*, Indiana's Supreme Court explained that

> Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. In order to facilitate its underlying goals, the statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.

(Internal citations omitted). "One way in which a trial court may abuse its discretion is failing to enter a sentencing statement . . . ." *Id.*

In this case, the trial court did not recite the reasons for imposing Monahan's sentence.[5] Where a trial court fails to enter a sentencing statement, we may "remand to the trial court for a clarification or new sentencing determination," or "we may exercise our authority to review and revise the sentence." *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007). Here, we choose to review Monahan's sentence under Indiana Appellate Rule 7(B).

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[4] Pursuant to Indiana Code section 35-50-2-7, "[a] person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1½) years." Pursuant to Indiana Code section 35-50-3-2, "[a] person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year . . . ."

[5] We note that the trial court was not required to enter a sentencing statement when it imposed the sentence for Monahan's misdemeanor conviction.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). In reviewing a sentence, we "exercise deference to a trial court's sentencing decision[.]" *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). It is the defendant's burden to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer*, 868 N.E.2d at 494 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

According to the pre-sentence investigation report (the "PSI"), Monahan's criminal history included convictions in Indiana for class D felony theft; resisting law enforcement; criminal mischief in 1999 and 2006; class B felony burglary; attempted theft; and neglect of a dependent. The PSI also reveals that Monahan had convictions in Ohio for driving while intoxicated; minor misdemeanor drug abuse; prohibited purchase of alcohol by a minor; possession of an open flask; possession of heroin; and possession of marijuana. The PSI also shows that Monahan has had his probation revoked.

Given Monahan's extensive criminal history and drug-related offenses, it is clear that prior attempts to rehabilitate Monahan and deter him from future unlawful conduct have failed. Based on the above, we conclude that the sentence imposed by the trial court was not inappropriate.

Affirmed.

NAJAM, J., and BROWN, J., concur.