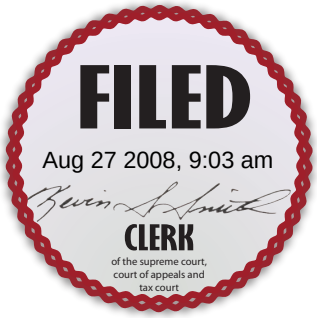

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IN THE
COURT OF APPEALS OF INDIANA

MARTIN ESTRADA a/k/a MARTIN PINEADA TOVAR, Appellant-Defendant, vs. STATE OF INDIANA, Appellee-Plaintiff.	))))))))))	No. 15A04-0802-CR-65

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0606-FA-3

August 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Martin Estrada appeals his convictions and fifty-year sentence for Class A felony dealing in heroin and Class B felony dealing in heroin. We affirm.

Issues

Estrada raises two issues, which we restate as:

I. whether the trial court abused its discretion by admitting evidence; and

II. whether his fifty-year sentence is appropriate in light of the nature of the offense and his character.

Facts

On June 27, 2006, Estrada and his girlfriend, Elida Yadira Miranda Montes, spent the night at Larry Hatfield's house in Lawrenceburg. Hatfield allowed the couple to sleep in his bedroom, and he slept on the couch. Prior to this overnight arrangement, Hatfield had been providing local law enforcement with information regarding suspected drug activity at his neighbor Deborah Chandler's residence. Hatfield was not under suspicion, nor were there any formal charges against him. Hatfield explained that he was acting on his own behalf and on behalf of those close to him who had lost their lives to drug use.

The Dearborn County Sheriff's Department Special Crime Unit ("SCU") had previously observed movement patterns in the area consistent with drug trafficking activity. The SCU had gathered information that Chandler was distributing heroin from her residence and that Estrada was visiting the area and selling heroin. Chandler had asked Hatfield if Estrada could spend the night at his house and then Estrada personally

called Hatfield with that request. Hatfield informed SCU officers that Estrada would be staying overnight on June 27, 2006. SCU began surveillance of Hatfield's and Chandler's residences at approximately 2:00 p.m. that day. They observed Chandler make several trips between the residences. They also followed Estrada and Montes to a local grocery store and back to Hatfield's residence.

On June 28, 2006, officers observed Kim Cremeans arrive at Chandler's house. At about 1:45 that afternoon, Chandler came to Hatfield's home and asked him to call emergency services. Chandler told Hatfield, Estrada, and Montes that Cremeans had overdosed on heroin and appeared to be dying. Montes and Estrada grabbed a small bag and left Hatfield's house. SCU officers followed Estrada in two vehicles. Detective Shane McHenry observed that Estrada was driving using "cleaning tactics" or efforts to notice and evade surveillance by frequently stopping, driving in emergency lanes, and pulling into businesses and sitting in the parking lot. Tr. p. 333. SCU officers followed Estrada's car into Ohio and then enlisted the help of Ohio officers. An Ohio officer noticed that Estrada's vehicle did not have an Ohio license plate on the front bumper, which is a misdemeanor. The officer stopped Estrada, arrested him, and impounded the vehicle. While impounding the vehicle, officers found rubber balloons and electrical tape inside.

Meanwhile, Detective McHenry called Hatfield and asked if Estrada and Montes left any belongings behind. Hatfield opened the bedroom door, walked approximately one foot into the room, saw bags, balloons, a black-tar like substance, scales, and clothes and reported the same to Detective McHenry. Detective McHenry told Hatfield to close

the bedroom door and wait upstairs. Detective McHenry and other officers arrived at Hatfield's home and obtained Hatfield's written consent to search the home. Detective McHenry went with Hatfield to the bedroom, opened the door, and looked into the room. Based on the balloons, scissors, digital scale, and plate with black residue, Detective McHenry completed an affidavit and obtained a search warrant. Officers searched the residence upon receipt of the warrant. Along with the items of drug paraphernalia in the bedroom, officers also found just over fifteen grams of heroin. DNA testing revealed that samples on the balloons matched Estrada.

The State charged Estrada with Class A felony dealing in heroin, Class B felony dealing in heroin, and Class B felony conspiracy to deal heroin. Estrada filed a motion to suppress evidence obtained during the search of his vehicle and Hatfield's residence and the DNA evidence, which was denied.[1] The matter proceeded to a three-day trial and the evidence was admitted over Estrada's objections. A jury convicted Estrada of Class A felony dealing in heroin and Class B felony dealing in heroin. The trial court sentenced Estrada to fifty years for the Class A felony conviction and twenty years for the Class B felony conviction, to be served concurrently. This appeal followed.

Analysis

I. Admission of Evidence

[1] The hearing on the motion was held on October 17, 2007, and the trial court took the matter under advisement. The chronological case summary does not contain an entry for the denial of this motion, but presumably it was denied before the start of trial.

Estrada contends that the search of the bedroom violated his Fourth Amendment rights.[2] He argues that he had a legitimate expectation of privacy in the bedroom at Hatfield's house, and therefore, the trial court improperly admitted the evidence. Estrada takes issue with Hatfield's initial examination of the bedroom and Detective McHenry's look into the bedroom. He contends these actions constituted warrantless searches and made items recovered during the subsequent search fruits of the poisonous tree.

We will reverse a trial court's ruling on the admissibility of evidence only for an abuse of discretion. Kelley v. State, 825 N.E.2d 420, 424 (Ind. Ct. App. 2005). An abuse of discretion occurs if a decision is clearly against the logic and effect of the facts and circumstances before the court. Id. Where a pretrial suppression hearing was held, courts may reflect upon the foundational evidence from that hearing if it is not in direct conflict with the evidence introduced at trial. Id. at 426. Additionally, we should consider evidence from the motion to suppress hearing that is favorable to the defendant and has not been countered or contradicted by foundational evidence offered at the trial. Id.

"The Fourth Amendment protects against unreasonable searches and seizures by generally requiring search warrants precedent to a lawful search." Best v. State, 821 N.E.2d 419, 429 (Ind. Ct. App. 2005), trans. denied. A well-recognized exception to the

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[2] Estrada also seems to argue that the search violated his rights under the Indiana Constitution, Article I, Section 11. Although he mentions Article I, Section 11 of the Indiana Constitution, Estrada does not develop a cogent argument, claim, or analysis regarding his state constitutional rights. The separate argument on these grounds is waived. See Richardson v. State, 800 N.E.2d 639, 647 (Ind. Ct. App. 2003) ("Richardson's failure to cite any authority or make any separate argument specific to the state constitutional provision waives the state constitutional argument on appeal."), trans. denied.

warrant requirement is a voluntary and knowing consent to search. Krise v. State, 746 N.E.2d 957, 961 (Ind. 2001). "Authority to consent to a search can be either apparent or actual. Actual authority requires a sufficient relationship to or mutual use of the property by persons generally having joint access to or control of the property for most purposes." Gado v. State, 882 N.E.2d 827, 832 (Ind. Ct. App. 2008), trans. denied. Clearly, Hatfield had actual authority over the bedroom—he was the resident of the home and it was his own bedroom. Hatfield's clothes and other possessions were in the bedroom. Estrada, the overnight guest, had left the premises.

Estrada insists that he still retained an ongoing legitimate privacy interest in Hatfield's bedroom as an overnight guest. "A defendant must have a legitimate expectation of privacy in the premises that is the subject of the search before he can challenge the search as unconstitutional." Matson v. State, 844 N.E.2d 566, 570 (Ind. Ct. App. 2006), trans. denied. Indiana recognizes the legitimate privacy rights of overnight guests who may claim Fourth Amendment protection. Id. (recognizing that overnight guests have a legitimate expectation of privacy, and may claim Fourth Amendment protections, but one who is merely present with the consent of the householder may not). Estrada insists that he was still in possession of the room and the facts do not indicate he left the premises permanently.

Estrada submits that the fact that he left the house is not conclusive evidence that he gave up his privacy rights as an overnight guest in the bedroom. He insists there was no evidence to prove that he did not intend to return and points to the items he left behind. We cannot speculate as to why Estrada left items behind and his chances of

returning, but Hatfield testified that Estrada "fled out of there like a jet" after hearing about the overdose victim. Tr. p. 675. It is telling that police captured Estrada across state lines in Ohio, after he attempted to evade their surveillance for over an hour. It was not as if Estrada had made a trip to the grocery store with the clear intention of returning with his purchase. The testimony indicated that both Chandler and Estrada asked Hatfield if Estrada could stay the night June 27, 2006, and there was no evidence that Estrada would be staying multiple nights. When he left the next afternoon, Estrada lost any privacy interests he may have had in the bedroom. We agree with the State's reasoning that the implication of Estrada's proclaimed ongoing privacy interest would lead to an absurd result that "forbids any access to or viewing of the room by Hatfield until some unspecified time at which a warrant might be obtained allowing Hatfield to sleep in his own bed." Appellee's Br. p. 15.

Estrada also contends that Hatfield acted "as an agent of instrument of law enforcement" by speaking to officers on the phone and looking into his bedroom and telling officers what he saw. Appellant's Br. p. 12. Estrada goes on to argue that such actions by Hatfield could amount to allowing law enforcement to use "confidential informants to conduct warrantless intrusive searches." Id. We disagree. Hatfield was not merely an informant when he looked into the bedroom and reported what he saw. Rather, it was Hatfield's own bedroom, a place that he had every right to observe, enter, and examine.

We conclude that Estrada had no legitimate expectation of privacy once he fled Hatfield's bedroom after his one night stay. Hatfield had the right to enter the bedroom

and the authority to consent to the officer's viewing of the bedroom prior to the issuance of the warrant. The viewing of the bedroom and subsequent search pursuant to the warrant did not violate Estrada's Fourth Amendment rights. The trial court did not abuse its discretion in admitting the evidence gathered from the bedroom.

II. Sentence

Estrada contends his fifty-year sentence is inappropriate considering the nature of the offense and his character. The trial court sentenced Estrada to fifty years for Class A felony dealing in heroin and twenty years for Class B felony dealing in heroin, to run concurrently. We assess whether a sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offenses. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

In assessing Estrada's character, we note that his criminal history involves convictions in California and Arizona. Following a California conviction for possession of methamphetamine with the intent to deliver, Estrada was deported to Mexico. In 2005, he was convicted in federal court in Arizona for illegally entering the United States. He admitted using cocaine, heroin, opiates, and past addiction to methamphetamine. Estrada was not only in this country illegally, he was transporting heroin across the country and into Indiana. He argues that because he has fathered a

child in the United States, he should be given a reduced sentence or time on probation to assist in raising the child. Considering that the child was not born until after Estrada was incarcerated for distributing heroin while in the company of another woman referred to as his wife, we cannot conclude that this circumstance merits a reduction to the sentence.[3]

Regarding the nature of the crime, Estrada contends that he should be offered leniency in sentencing because this was not a crime of violence. Although we acknowledge that this was a nonviolent situation, we cannot ignore the fact that Estrada transported heroin into Indiana. Then, when a user nearby began to overdose he fled the scene and attempted to evade police surveillance. Estrada argues that because the amount of drugs is less than fifteen grams of "impure heroin" the nature of this crime does not warrant the maximum sentences.[4] Appellant's Br. p. 20. We find the purity of the heroin irrelevant to this analysis. See Ind. Code § 35-48-4-1(a)(1) (noting that the drug can be "pure or adulterated"). The circumstances surrounding the arrest and conviction indicate that Estrada was illegally in the country and involved in the drug trade. Estrada has not convinced us that his sentence is inappropriate.

Conclusion

The admission of evidence seized from Hatfield's bedroom did not amount to an abuse of the trial court's discretion. Estrada's fifty-year sentence is appropriate. We affirm.

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[3] Estrada's brief describes Montes as his wife, but testimony indicates her relationship to him was not clear and may have been a girlfriend. Another woman, Edna Boyle, is the mother of the child.

[4] Exhibit 49 indicates that the amount of heroin is just over fifteen grams, not under it.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.