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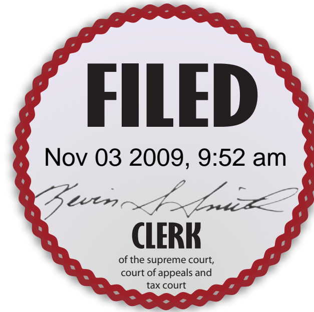

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IN THE
COURT OF APPEALS OF INDIANA

DANIEL REED,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 24A01-0809-CR-415
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0609-FA-660

November 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Daniel J. Reed, Jr., appeals his conviction and sentence, after a jury trial, for dealing in methamphetamine as a class A felony.

We affirm in part, reverse in part, and remand for sentencing.[1]

ISSUES

1. Whether the State's dismissal of the charge as a class B felony and its subsequent re-filing as a class A felony violated Reed's substantial rights and/or his right to a speedy trial.

2. Whether the trial court erred in the admission of evidence.

3. Whether Reed's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

1. Stop and Knock; Search; Arrest

At approximately 10:30 p.m. on March 17, 2005, Franklin County Sheriff's Deputy John Roberts was on routine road patrol in Laurel, Indiana. As he drove past Reed's mobile home located approximately seventy-five feet from the roadway, he smelled a very "strong chemical odor" and experienced a burning sensation in his eyes and nose. (Tr. 58). Based upon his law enforcement training, his certification as a drug recognition expert, and his experience in conducting and/or participating in numerous methamphetamine arrests, Deputy Roberts immediately identified the odor as anhydrous ammonia and suspected that methamphetamine was being manufactured nearby. In an effort to err on the side of caution, Deputy Roberts contacted and asked fellow deputy

[1] We heard oral argument on June 10, 2009, and thank counsel for their able presentations.

Greg Mehlbauer and Laurel Reserve Deputy Jim Day to drive past Reed's mobile home and to inform him if they observed anything unusual. After driving by Reed's mobile home, they reported that they smelled a strong chemical odor in the vicinity of Reed's home. Deputy Mehlbauer identified the odor as anhydrous ammonia or ether and suspected that a methamphetamine lab was in process. The deputies determined that the odor was emanating from a particular mobile home. Deputy Roberts personally knew Reed and that he lived in that particular mobile home with his wife and children. Roberts suggested that he and Deputy Mehlbauer conduct a "stop and knock" at Reed's residence. (Tr. 61).

As the deputies approached the mobile home, they noted that the already strong chemical smell intensified. Deputy Roberts knocked on the door, and when Reed's wife, Shannon, answered, they asked to speak with Reed. Reed came outside, shut the door behind him and spoke with the deputies. Deputy Roberts explained to Reed that he smelled a strong chemical odor and suspected that methamphetamine was being manufactured on the premises. He asked whether Reed would consent to a search; Reed refused. Deputy Roberts then asked whether Shannon would consent to a search; she deferred to Reed. Deputy Roberts told Reed and Shannon that he was going to obtain a search warrant, and that Deputy Mehlbauer would remain at the scene to ensure that evidence was not destroyed. Neither Reed nor Shannon was placed under arrest at that time. Nor is there any evidence that they were not free to leave or free to move freely within the mobile home. Other law enforcement officers soon arrived on the scene but remained outside.

Reed, Shannon, their three minor children, and Shannon's sister, Gayla Maxie, an adult, remained inside the mobile home. As Deputy Mehlbauer monitored the occupants, he developed a severe headache and stepped outside periodically to escape the noxious fumes. Mehlbauer became increasingly concerned for the children's safety and arranged for the removal of the children from the mobile home.

At approximately 1:30 a.m.,[2] Deputy Roberts returned with a search warrant. The police searched Reed's mobile home, an adjacent shed, and a camper.[3] While conducting the search, the police saw a worn path from Reed's mobile home to the camper and observed an electric cord running from the mobile home to the camper. The search yielded various items commonly associated with the manufacturing of methamphetamine, including the following: (1) an HCL generator, consisting of a Hawaiian punch bottle with a hole in its cap and black tubing threaded through the opening, which tested positive for ammonia; (2) coffee filters; (3) six funnels; (4) two plates with white residue that field-tested positive for methamphetamine; (5) a bag containing two bottles of liquid fire drain cleaner and a container of salt; (6) three more containers of salt; and (7) three rolls of aluminum foil.[4] The police also found approximately 5.81 grams of finished methamphetamine and a baggie of marijuana.

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[2] In an unforeseen development, Deputy Roberts had to go to another county for the search warrant because the local judge was unavailable.

[3] Reed asserts that the camper was not listed among the areas to be searched on the search warrant, but has failed to include the search warrant or the probable cause affidavit in the record for our review; thus, we decline to address his challenges to the validity of the search warrant.

[4] Foil is frequently used to heat methamphetamine prior to inhalation.

In searching the area around the mobile home, police discovered a buried cooler containing stripped lithium batteries.[5] When the skirting underneath the mobile home was pulled back, law enforcement discovered a cracked drain pipe from which raw sewage with a strong chemical odor poured out onto the ground.[6] The Indiana State Police clandestine lab technicians arrived and found other ingredients and items used in or associated with the manufacture of methamphetamine: (1) coffee filters containing "pill dough" -- byproduct from pseudo-ephedrine pills, (tr. 81); (2) a propane tank with a discolored valve, which discoloration indicates that the tank once contained anhydrous ammonia; (3) three bottles of rubbing alcohol; and also a receipt for the purchase of Coleman fuel, an ingredient used in the manufacture of methamphetamine. Reed and Shannon were placed under arrest.

2. Pre-trial Proceedings

On April 6, 2005, the State charged Reed and Shannon with class B felony dealing in methamphetamine; class D felony possession of methamphetamine; class D felony neglect of a dependent; and class A misdemeanor possession of marijuana. On April 8, 2005, the trial court held an initial hearing during which it set the omnibus date for May 13, 2005. On June 15, 2005, the State filed a motion for a trial setting. The trial court scheduled Reed's jury trial for January 30, 2006.

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[5] These are batteries from which the internal lithium strips have been removed for use in manufacturing methamphetamine.

[6] There was evidence presented at trial that the plumbing in the mobile home had been disconnected from the sewage line. As a result, waste materials poured directly from the mobile home onto the ground.

On December 22, 2005, counsel for Reed moved to continue the jury trial. On January 17, 2006, Reed filed a motion to suppress all evidence obtained pursuant to the search of his home and property. On January 24, 2006, the trial court granted Reed's motion for a continuance[7] and rescheduled the jury trial for July 31, 2006. On January 31, 2006, the trial court scheduled a suppression hearing for March 29, 2006. On March 28, 2006, Reed moved to continue the March 29, 2006, suppression hearing due to witness unavailability and advised that the State "ha[d] been contacted and d[id] not object." (App. 143). Apparently, the foregoing motion was granted because on May 22, 2006, Reed again moved the trial court to schedule another suppression hearing date. On June 1, 2006, the trial court scheduled a suppression hearing for June 28, 2006.

On June 21, 2006, the State moved to continue the June 28, 2006, suppression hearing because the State's law enforcement witness had a training schedule conflict. On June 29, 2006, the trial court granted the State's motion and reset the suppression hearing for August 16, 2006. On July 2, 2006, Reed moved to continue the July 31, 2006, jury trial date because there were "outstanding suppression issues . . . which w[ould] likely not be resolved before the trial date[.]" (App. 148). On July 11, 2006, the trial court denied Reed's motion to continue the jury trial. On July 19, 2006, Reed filed a motion for an immediate suppression hearing. The trial court granted the motion and scheduled a suppression hearing for July 26, 2006.

On July 21, 2006, the State moved to continue the jury trial due to "witness unavailability problems." (App. 153). The trial court denied the State's motion.

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[7] The record reveals that at the time, counsel was representing both Daniel and Shannon Reed.

Subsequently, on July 24, 2006, the State moved to dismiss the charges against Reed. The trial court granted the State's motion to dismiss on July 25, 2006. On September 22, 2006, the State refiled identical charges against Reed, except it enhanced the dealing in methamphetamine count from a class B felony to a class A felony.[8]

After several continuances by both parties, the jury trial was reset to August 13, 2007. On March 21, 2007, Reed filed a motion to suppress "all evidence obtained by the State relating to the charges." (App. 30). The trial court scheduled a hearing on the motion to suppress for June 13, 2007. After more continuances and the appointment of new pauper counsel, on January 9, 2008, the trial court issued an order setting Reed's jury trial for March 31, 2008. On February 27, 2008, charged Reed with the crime of intimidation against his wife, Shannon, after she decided to testify against him.

On March 25, 2008, Reed filed a motion to suppress all evidence stemming from the search of his home and property. The State filed a motion for use immunity[9] as to Gayla. Prior to trial, the trial court conducted a hearing on Reed's motion to suppress and denied it. The trial court granted the State's motion for use immunity as to Gayla.

3. <u>Trial Proceedings</u>

The matter proceeded to jury trial on March 31, 2008; both Shannon and Gayla testified on behalf of the State. Shannon testified that she recently pled guilty to possession of methamphetamine as a class B felony; neglect of a dependent as a class D

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[8] The record does not reflect why the State refiled the charge as a class A felony.

[9] Use immunity' bars use, at a subsequent criminal proceeding, of testimony compelled of the witness. *Penny v. Review Bd. of Ind. Dept. of Workforce Development,* 852 N.E.2d 954, 962 (Ind. Ct. App. 2006).

felony; and possession of marijuana as a class A misdemeanor. She testified that on the evening of the incident, she and Gayla had purchased and shoplifted large quantities of pseudoephedrine tablets for Reed to use in manufacturing methamphetamine. She testified that Reed had manufactured and consumed methamphetamine in the woods, but, on this particular occasion, had brought it into the mobile home over her objections. She testified that Reed refused to allow her and the children to leave the mobile home. Shannon also testified that Reed had threatened her for cooperating with the criminal investigation and for her decision to plead guilty.

Gayla testified that earlier in the day of the underlying incident, she and Shannon purchased and stole approximately 2500 Sudafed (pseudoephedrine) tablets for Reed to use in manufacturing methamphetamine; and Reed procured the remaining ingredients. Gayla also testified that she gave Reed the pseudoephedrine tablets and had left the mobile home earlier in the day. When she returned in the evening, she knew that the methamphetamine was inside the mobile home because she "could smell it when [she] walked up to the door." (Tr. 182). She testified that the fumes were so strong that she asked Shannon to let her take the children away "to get them out of the odor," but Shannon responded that Reed had refused to let her or the children leave. (Tr. 178). She testified that within approximately twenty minutes of her returning to the mobile home, the police knocked at the door; and while Reed and the officers spoke outside the mobile home, Shannon "started gathering stuff up, pouring it out, throwing it away, and she [Gayla] . . . just help[ed] her." (Tr. 180). She testified that she and Shannon had

"dumped the [liquid methamphetamine] chemicals down the bathroom sink." (Tr. 180). The jury convicted Reed on all three counts.

4. Sentencing

The trial court conducted a sentencing hearing on June 11, 2008. It identified Reed's lack of any criminal history as the sole mitigating circumstance; and the presence of the children in the home as the lone aggravating factor. The trial court then imposed the following sentences, to be served concurrently: on count I, class A felony dealing in methamphetamine, thirty years; on count II, class D felony neglect of a dependent, three years; and on count III, class A misdemeanor possession of marijuana, one year. Reed now appeals.

Additional facts will be provided as necessary.

DECISION

Reed first argues that the State's dismissal and subsequent refiling of the enhanced dealing in methamphetamine charge violated his substantial rights. Next, he argues that the trial court erred in admitting evidence during the trial. Lastly, he contends that the trial court abused its sentencing discretion.

1. Dismissal/Re-filing

Reed argues that he suffered prejudice to his substantial rights from the State's dismissal and refiling of charges against him. He has not, however, properly preserved this issue for appeal. *See Slinkard v. State,* 807 N.E.2d 127, 128 (Ind. Ct. App. 2004) ("Normally, a failure to object to error in a proceeding, and thus preserve an issue on appeal, results in waiver."). The record reveals that Reed lodged no objection to the

State's dismissal of the charges or its refiling of the charge as a class A felony in the trial court. This issued is deemed waived.

2. Admission of Evidence

Reed argues that the deputies' initial entry to his property and home violated the Fourth Amendment and Article I, Section 11 of Indiana's Constitution, which prohibits unreasonable searches and seizures. As a result, he argues, the trial court erred when it admitted the illegally-obtained evidence at trial. We disagree.

We reverse a trial court's ruling on the admissibility of evidence only when the trial court abused its discretion. *Kelley v. State,* 825 N.E.2d 420, 424 (Ind. Ct. App. 2005). An abuse of discretion may occur if a decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

A. Fourth Amendment

Reed asserts that the deputies' "knock and talk" tactic and warrantless entry violated the Fourth Amendment. We disagree.

> The Fourth Amendment to the Constitution of the United States protects citizens against unreasonable searches and seizures. A knock and talk investigation 'involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint, and eventually requesting permission to search the house.' Such 'knock and talk' investigations do not per se violate the Fourth Amendment.
>
> The prevailing rule is that, absent a clear expression by the owner to the contrary, police officers, in the course of their official business, are permitted to approach one's dwelling and seek permission to question an occupant. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude a 'seizure' has occurred. A seizure does not occur simply because a police officer approaches a person, asks questions, or requests

> identification. Courts examining the Fourth Amendment implications of the knock and talk procedure have held that a seizure occurs when, 'taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'

Redden v. State, 850 N.E.2d 451, 458 (Ind. Ct. App. 2006) (internal citations and quotations omitted).

We have previously acknowledged the somewhat coercive nature of the knock and talk tactic, noting that it "'pushes the envelope' and can easily be misused"; that said, however, we cannot say that a Fourth Amendment violation occurred under the instant facts. *Hayes v. State,* 794 N.E.2d 492, 497 (Ind. Ct. App. 2003). We are not persuaded that the deputies' knock and talk investigation violated Reed's Fourth Amendment rights. Our review of the circumstances surrounding the encounter reveals that when the deputies knocked at Reed's door and asked for consent to search his mobile home, Reed denied them entry and suggested that they obtain a search warrant. There is no support in the record for a finding that the deputies threatened or coerced Reed, or otherwise conducted themselves in a manner that would "have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Id.* at 496. Based upon the totality of the circumstances, we conclude that no illegal seizure occurred as a result of the deputies' knock and talk investigation.

Next, Reed argues that the deputy's entry into his home to "freeze the scene" and to guard against the destruction of evidence violated the Fourth Amendment. (Tr. 62). We disagree.

One of the established exceptions to the Fourth Amendment's warrant requirement allows police to dispense with the warrant requirement where "the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona,* 437 U.S. 385, 394 (1978). "Among the exigencies that may properly excuse the warrant requirement are threats to the lives and safety of officers and others and the imminent destruction of evidence." *Holder v. State,* 847 N.E.2d 930, 936 (Ind. 2006) (citing *Minnesota v. Olson,* 495 U.S. 91, 100 (1990)). "Law enforcement may be excused from the warrant requirement because of exigent circumstances based on concern for safety as long as the State can prove that a delay to wait for a warrant would gravely endanger the lives of police officers and others." *Holder,* 847 N.E.2d at 937.

In *Holder*, our supreme court stated the following regarding exigent circumstances surrounding the suspected presence of methamphetamine in a residence:

> Several courts have concluded that a belief that an occupied residence contains a methamphetamine laboratory, which belief is found on probable cause based largely on observation of odors emanating from the home, presents exigent circumstances permitting a warrantless search for the occupants' safety. *See, e.g., Kleinholz v. United States,* 339 F.3d 674, 676-77 (8th Cir. 2003) (concluding that the 'volatile nature of [methamphetamine] labs ... justified an immediate but limited search' by exigent circumstances because the police had probable cause to believe the home contained a lab); *United States v. Rhiger,* 315 F.3d 1283, 1289-90 (10th Cir. 2003) (concluding that the strong odor of methamphetamine production springing from a residence and an agent's knowledge about the 'inherent dangerousness of an active methamphetamine lab' contributed to reasonable grounds for agents immediately to enter the home in order to protect the public); *United States v. Walsh,* 299 F.3d 729, 734 (8th Cir. 2002) ('The potential hazards of methamphetamine manufacture are well documented, and numerous cases have upheld limited warrantless searches by police officers who had probable cause to believe they had

> uncovered an on-going methamphetamine manufacturing operation.'); *United States v. Wilson,* 865 F.2d 215, 217 (9th Cir. 1989) ('[F]aced with a potential disaster in the form of an ether explosion and fire ... exigent circumstances existed because ... a reasonable person could have believed that immediate entry was necessary to safeguard public safety ....').

Id. at 939. We agree that such is the case here.

At trial, Deputy Roberts, who has undergone drug interdiction and clandestine methamphetamine lab interdiction training and has prior experience investigating meth labs in Franklin County, testified that as he drove past Reed's property, he smelled a "strong chemical odor." (Tr. 58). The strong "solvent smell" or "ammonia smell" was perceptible even as Roberts sat and smoked in his squad car with the windows partially cracked. (Tr. 58). Roberts testified that "[m]eth lab, instantly went through [his] mind," and he had "no doubt" that the odor originated from Reed's property. (Tr. 59).

In order to be certain, however, Deputy Roberts asked deputies Mehlbauer and Day to drive past Reed's residence and to share their observations with him. Mehlbauer and Day reported that they smelled a strong chemical odor near Reed's home. Relying upon his training and experience involving other meth lab investigations, Mehlbauer testified that the smell was "a strong ammonia smell mixed with an ether smell." (Tr. 212).

After conferring, Roberts and Mehlbauer concluded that the odor was either anhydrous ammonia or ether, both commonly associated with the manufacture of methamphetamine and approached Reed's residence to conduct a knock and talk. The record reveals that as Roberts and Mehlbauer neared the mobile home, they observed that the strong chemical odor intensified. They asked Reed whether they could search the

premises and after Reed refused, Roberts left to obtain a search warrant. In the meantime, Mehlbauer stood inside the doorway of the mobile home to secure the scene until Roberts returned with the search warrant.

In support of his contention that no exigency existed, Reed notes that Deputy Mehlbauer voluntarily remained inside the mobile home with the occupants and minor children. Reed's Br. at 33. We agree that it was less than prudent to expose the minor children and himself to the noxious fumes while awaiting Roberts' return with a search warrant;[10] however, that incident of poor judgment[11] does not negate the reasonable belief that a methamphetamine lab was inside the home, which belief was "found on probable cause based largely on observation of odors emanating from the home." *Holder,* 847 N.E.2d at 939; *Kleinholz,* 339 F.3d at 676-77.

Given the deputies' detection of the strong ether and ammonia odors and their knowledge of the volatility of methamphetamine labs, we find that their initial warrantless entry onto Reed's premises was for a legitimate law enforcement reason. We also find that their subsequent entry into the doorway of his home to freeze the scene was justified under the exigent circumstances exception to the Fourth Amendment's warrant requirement because the deputies had probable cause to believe that Reed was operating a methamphetamine lab in his home. We find no Fourth Amendment violation.

B. Indiana

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[10] The record reveals that Deputy Mehlbauer did ultimately arrange for the removal of the children from the premises.

[11] At trial, the Franklin County Sheriff testified that "everybody should've been removed from that trailer." (Tr. 133).

Reed also asserts that the deputy's entry onto his property was in violation of Article I, Section 11 of the Indiana Constitution, which 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.

"Our analysis of claims under Section 11 does not demand that we look to the same requirements as those examined under the United States Constitution; rather, our investigation under Section 11 places the burden on the State to demonstrate that each relevant intrusion was reasonable in light of the totality of the circumstances." *Holder,* 847 N.E.2d at 940.

> As we consider reasonableness based upon the particular facts of each case, the Court also gives Art. I, § 11, a liberal construction to angle in favor of protection for individuals from unreasonable intrusions on privacy. At the same time, 'Indiana citizens have been concerned not only with personal privacy but also with safety, security, and protection from crime. It is because of concerns among citizens about safety, security, and protection that some intrusions upon privacy are tolerated, so long as they are reasonably aimed toward those concerns. Thus, we have observed that 'the totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure. Our determination of the reasonableness of a search or seizure under Section 11 often 'turn[s] 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 ordinary citizen's ordinary activities, and 3) the extent of law enforcement needs.

Id. (quoting *Litchfield v. State,* 824 N.E.2d 356, 360 (Ind. 2005)).

Here, given (1) the pervasive ether and ammonia fumes perceived independently from the roadway by deputies Roberts, Mehlbauer, and Day as they drove near Reed's

home; (2) the deputies' initial investigation and subsequent determination that the odor was, in fact, coming from Reed's home, where he lived with his wife and minor children; (3) the fact that the odor intensified in strength as the deputies approached Reed's home; and (4) the deputies' knowledge, based upon their drug interdiction training and law enforcement experiences, that ether and ammonia pose a considerable threat to public safety and are commonly associated with manufacture of methamphetamine, the record supports a finding that the deputies' concerns that Reed was operating a methamphetamine lab and the extent of law enforcement needs for the protection of the public outweighed the degree of law enforcement intrusion imposed upon Reed by the deputies' entry onto his premises and warrantless entries into the doorway of his home. Based upon the foregoing, we find no violation of Article I, Section 11.

C. Search Warrant

Reed also argues that the search warrant was not supported by probable cause and that the search exceeded the scope of the warrant. We are not persuaded.

First, probable cause requires only a fair probability of criminal activity, not a prima facie showing. *Rios v. State,* 762 N.E.2d 153, 159 (Ind. Ct. App. 2002). The evidence in support of the substantial basis that Officer Roberts relied upon to establish probable cause to obtain a search warrant consisted of the following: (1) that he and deputies Mehlbauer and Day each independently perceived very strong ether and/or ammonia fumes from the roadway as they drove near Reed's home; (2) that they experienced burning sensations in their eyes and noses commonly associated with the presence of ether and/or anhydrous ammonia; (3) that they engaged in further

investigation before determining that the odor was coming from Reed's home; and (4) that the odor intensified as they approached Reed's home.

We agree that before the issuance of the search warrant, the trial court properly took into consideration Roberts' law enforcement training, his certification as a drug recognition expert, his past experience with methamphetamine arrests, his ability to identify the strong chemical solvent odor as methamphetamine clearly established that there was a fair probability that someone was manufacturing methamphetamine in the premises.

Also, we are not persuaded by Reed's claim that the search of the camper exceeded the scope of the search warrant. Notwithstanding the obvious implications, as noted in FACTS, law enforcement officers observed a well-worn path that led from Reed's mobile home to the camper as well as an electrical cord running from the mobile home to the camper; Reed argues that because the search warrant failed to specifically mention the camper therein, that the police lacked authority to search it or the surrounding area. Thus, he argues, the receipt for the Coleman fuel and the tank with traces of anhydrous ammonia near the camper should be excluded as products of an illegal search.

The State posits, and we agree, that any error from the State's admission of the Coleman fuel receipt and the storage tank was harmless error. "Harmless error occurs when the conviction is supported by substantial independent evidence of guilt which satisfies the reviewing court that there is no likelihood that the erroneously admitted evidence contributed to the conviction. *Morales v. State,* 749 N.E.2d 1260, 1267 (Ind.

Ct. App. 2001). We must find that there is no substantial likelihood the error contributed to the verdict, or, in other words, that the error was unimportant in relation to everything else before the jury on the issue in question. *Id*.

The record indicates that the State primarily made its case against Reed by introducing into evidence the precursors and equipment used to manufacture the methamphetamine -- namely, the HCL generator; the drain cleaner and salt; finished methamphetamine; coffee filters of pseudoephedrine pill dough; and the buried cooler of stripped lithium batteries -- all of which were found inside Reed's mobile home or in the surrounding area of his curtilage.

Even if, for the sake of argument, we accepted Reed's claim, we find that because the State presented ample independent evidence of Reed's guilt, the admission of the articles found near the camper constitutes harmless error.

3. Sentence

Sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of that discretion. *Field v. State,* 843 N.E.2d 1008, 1010 (Ind. Ct. App. 2006), *trans. denied.* An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Reed argues that his sentence is inappropriate.[12] We agree. We are authorized to revise a sentence if it is inappropriate in light of the nature of the offense and the

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[12] Because we find this issue to be dispositive, we do not reach his claim that the trial court also considered an improper aggravating circumstance.

character of the offender. Ind. Appellate Rule 7(B). 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 v. State,* 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State,* 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress,* 848 N.E.2d at 1081. The advisory sentence for a class A felony is thirty years. Here, the trial court imposed the following concurrent sentences: class A felony dealing in methamphetamine count, thirty years; neglect of a dependent count, three years; and possession of marijuana count, one year. Thus, Reed received a thirty-year aggregate sentence.

We agree with Reed that there is nothing particularly egregious about the nature of the offense that would distinguish it from the typical offense of dealing methamphetamine as a class A felony. Our assessment of the facts and circumstances and Reed's character reveals that Reed was thirty years of age, gainfully employed, there was no evidence that he had distributed or sold methamphetamine and that he had absolutely no prior juvenile or adult criminal history whatsoever before he committed the instant offenses. "Our General Assembly has determined that a defendant's lack of criminal history is so significant that trial courts 'shall' consider it when determining what sentence to impose." I.C. § 35-38-1-7.1(a); *Asher v. State,* 790 N.E.2d 567, 571 (Ind. Ct. App. 2003). "This statute appropriately encourages leniency towards [a]

defendant[ ] who ha[s] not previously been through the criminal justice system." *Biehl v. State,* 738 N.E.2d 337, 339 (Ind. Ct. App. 2000). That Reed had no previous contact with the criminal justice system before committing the instant offenses reflects favorably upon his character. *See* Ind. Code section 35-38-1-7.1(b)(6) (the court may consider that the defendant had been leading a law-abiding life as a mitigating circumstance); *see also Cloum v. State,* 779 N.E.2d 84, 91 (Ind. Ct. App. 2002) ("a lack of criminal history is generally recognized as a 'substantial' mitigating factor.").

Accordingly, we find that Reed has demonstrated that his sentence is inappropriate, and we revise his sentence as follows: for the class A felony offense of dealing in methamphetamine, we reduce his sentence to a period of twenty years, to be served concurrently with his other sentences.

Affirmed in part, reversed in part, and remanded for sentencing.

RILEY, J., and BARNES, J., concur.