ATTORNEY FOR APPELLANT:

JOSEPH M. CLEARY
Collignon & Dietrick
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JOHN MINTER,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

No. 49A05-0911-CR-666

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G20-0706-FA-102193

November 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

John Minter appeals his convictions for dealing in cocaine as a class A felony,[1] possession of cocaine as a class C felony,[2] and unlawful possession of a firearm by a serious violent felon as a class B felony.[3] Minter raises two issues, which we revise and restate as:

I. Whether the trial court properly denied Minter's Batson challenge; and

II. Whether the trial court abused its discretion by admitting evidence obtained during a search.

We affirm.

The relevant facts follow. At some point during the three days preceding June 5, 2007, a confidential informant visited Room 242 of Motor 8 Inn in Indianapolis, Indiana. The informant was inside Room 242 on several occasions and observed cocaine in the possession of a black male identified as "John," and John told the informant that the cocaine was for sale. Defendant's Exhibit A. The informant knew from prior use how to identify cocaine and had provided evidence in the past that led to several seizures of controlled substances which resulted in convictions. In addition, Indianapolis Metropolitan Police Department Detective Marc Campbell conducted surveillance on Room 242 and observed hand-to-hand transactions with numerous people going in and

[1] Ind. Code § 35-48-4-1 (Supp. 2006).

[2] Ind. Code § 35-48-4-6 (Supp. 2006).

[3] Ind. Code § 35-47-4-5 (Supp. 2006).

out of the room. Based upon this and other information, Detective Campbell obtained a search warrant for Room 242 and the person described in the affidavit.

On June 5, 2007, Detective Campbell and Detective Gary Riggs executed the search warrant. As Detective Campbell and Detective Riggs approached Room 242, they observed Minter exit the room carrying a blue bag. As Minter "was about to exit on the stairs," Detective Campbell called the name "John" and Minter turned around and acknowledged the detectives. Transcript at 196. The detectives handcuffed Minter, took him back to Room 242, did a sweep of the room for their safety, and read Minter his Miranda rights. Detective Campbell asked Minter if he had narcotics, and Minter nodded towards the blue bag. Detective Riggs opened the bag and discovered "cocaine, digital scales, [and] additional ammo for a thirty-eight special that was in the bag as well." Id. at 198. When questioned regarding the cocaine, Minter stated that "he was just sellin' enough to make ends meet." Id. at 209.

On June 6, 2007, the State charged Minter with: Count I, dealing in cocaine as a class A felony; Count II, possession of cocaine as a class C felony; Count III, possession of cocaine and a firearm as a class C felony;[4] Count IV, unlawful possession of a firearm by a serious violent felon as a class B felony; and Count V, carrying a handgun without a license as a class A misdemeanor. On November 6, 2007, Minter filed a motion to suppress the evidence seized during the execution of the search warrant. The court held a

[4] Under Count III of the charging information, the State alleged under Ind. Code § 35-48-4-6 that Minter knowingly possessed a controlled substance and a firearm. However, Ind. Code § 35-48-4-6 relates to possession of cocaine or narcotic drug.

hearing on the motion to suppress on March 25, 2008, at which Minter argued that the search warrant was not properly obtained. The court denied Minter's motion to suppress.

On the first day of trial on September 2, 2009, Minter objected to and moved to suppress the evidence of the search on the basis that the alleged facts did not support the issuance of the warrant, and the court overruled Minter's objection and denied his motion. During *voir dire*, the State exercised one of its peremptory challenges to excuse an African American prospective juror.[5] After the jury was selected and returned to the jury box, a colloquy occurred between the court and counsel,[6] and the court stated that "there were only two . . . African Americans no [sic] the entire panel of thirty-eight" and that Minter could "make a record" during a break. Id. at 69. Minter later presented arguments that the State's challenge was improper under Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986), and the court overruled Minter's objection.

On September 3, 2009, the jury found Minter guilty of Counts I, II, and III as charged and to carrying a handgun without a license in Count IV. On October 27, 2009, the court entered judgment of conviction on Counts I, III, and IV.[7] The court sentenced

[5] The Voir Dire Transcript does not disclose which prospective jurors were excused by peremptory challenge exercised by the prosecutor and which were excused by peremptory challenge exercised by defense counsel. In addition, the Voir Dire Transcript does not disclose the race of the prospective jurors. The parties do not dispute on appeal that the State exercised one of its peremptory challenges to excuse the one African American prospective juror in the first group or panel of prospective jurors to be questioned.

[6] The record does not disclose what counsel discussed with the court during this colloquy.

[7] The court did not enter judgment for Count II.

Also, with respect to the allegations in Count IV that Minter had previously been convicted of a felony, the CCS entry dated September 3, 2009, shows that the court ordered: "Count 4 (part II of Count

Minter to forty years for his conviction under Count I for dealing in cocaine, ten years for his conviction under Count III for possession of cocaine and a firearm, and four years for his conviction under Count IV for possession of a firearm by a serious violent felon, and ordered that the sentences be served concurrent with each other. Additional facts will be provided as necessary.

I.

The first issue is whether the trial court properly denied Minter's Batson challenge. "The exercise of racially discriminatory peremptory challenges is constitutionally impermissible." McCormick v. State, 803 N.E.2d 1108, 1110 (Ind. 2004). Peremptory challenges based on race violate the juror's Fourteenth Amendment right to equal protection of the law and require a retrial. Highler v. State, 854 N.E.2d 823, 826 (Ind. 2006). A defendant's claim of racial discrimination in a peremptory strike "triggers a three-step inquiry." Id. (citing Bradley v. State, 649 N.E.2d 100, 105 (Ind. 1995) (citing Batson v. Kentucky, 476 U.S. 79, 96-98, 106 S. Ct. 1712 (1986)), reh'g denied).

First, the defendant must make a *prima facie* showing that the prosecutor exercised peremptory strikes based on race. Hardister v. State, 849 N.E.2d 563, 576 (Ind. 2006) (citing Batson, 476 U.S. at 96-98, 106 S. Ct. 1712). To establish a *prima facie* case of racial discrimination in the process of jury selection, a defendant must show that (1)

5) to be heard at separate jury trial setting . . . on 10/20/09 . . . ." Appellant's Appendix at 29. However, the CCS shows that the October 20, 2009 trial was later vacated. According to the exchanges between the court and counsel at the October 27, 2009 hearing, Minter had admitted to the enhancement as charged under Count IV of having been previously convicted of a class C felony.

the excused juror is a member of a cognizable racial group; (2) the prosecutor excused the jurors on account of their race; and (3) the facts and circumstances of the case raise an inference that the exclusion was based on race. McCants v. State, 686 N.E.2d 1281, 1284 (Ind. 1997). "The removal of some African American jurors by the use of peremptory challenges does not, by itself, raise an inference of racial discrimination." Highler, 854 N.E.2d at 827 (citing McCormick, 803 N.E.2d at 1111). "However, the removal of 'the only . . . African American juror that could have served on the petit jury' does 'raise an inference that the juror was excluded on the basis of race.'" Id. (quoting McCormick, 803 N.E.2d at 1111).

Second, once the defendant presents a *prima facie* case of racial discrimination in the use of a peremptory challenge, "the burden shifts to the State to present a race-neutral explanation for striking the juror." Highler, 854 N.E.2d at 827 (citing Batson, 476 U.S. at 97-98, 106 S. Ct. 1712). Third, the trial court must evaluate the persuasiveness of the justification offered by the party making the peremptory challenge, but the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the peremptory challenge.[8] See Highler, 854 N.E.2d at 828.

A trial court's decision as to whether a peremptory challenge was discriminatory is given great deference on appeal and will be set aside only if found to be clearly erroneous. Forrest v. State, 757 N.E.2d 1003, 1004 (Ind. 2001). Trial court judges are

[8] While the burden of production shifts in step two of the analysis to the party exercising the peremptory challenge, the overall burden to prove discriminatory use of peremptory challenges remains on the party who objected to the challenge. Ashabraner v. Bowers, 753 N.E.2d 662, 672 n.2 (Ind. 2001) (citing Purkett, 514 U.S. 765, 768, 115 S. Ct. 1769 (1995)).

much better situated than are appellate judges to weigh the credibility of the proffered explanation for striking the prospective juror. See Jeter v. State, 888 N.E.2d 1257, 1264 (Ind. 2008), cert. denied, 129 S. Ct. 645 (2008).

In this case, during *voir dire* when defense counsel asked the prospective jurors whether any of them had a problem sitting for "an extended period of time" and whether that would "be a distraction," one of the prospective jurors (hereinafter "Prospective Juror E.S.") responded affirmatively and stated that she had "to go to the bathroom pretty regular." Voir Dire Transcript at 29. Defense counsel then asked Prospective Juror E.S. whether she would "be okay" if the court "would give [her] times . . . to be excused and take a break for that," and Prospective Juror E.S. answered by stating "Yeah." Id. at 30. The State exercised one of its peremptory challenges to excuse Prospective Juror E.S., and the parties concede that Prospective Juror E.S. was African American.

At some point after the jury was selected and returned to the jury box, a colloquy occurred between the court and counsel outside the hearing of the jury, and the court then stated: "It would have been nice if you had done that during Voir Dire, so we could have corrected it somehow. I will let you make it at some other time. I am not going to stop for now. Since it is meaningless now, that I can't do anything about it." Transcript at 68-69. The court also stated: "[I]t was beyond our control that there were only two I think African Americans no [sic] the entire panel of thirty-eight but next time we take a break I'll let you make a record." Id. at 69.

Later, Minter presented arguments related to his Batson objection. Minter's defense counsel argued that there were thirty-eight jurors in the jury pool and that two of those were African American. Minter also argued that the first panel consisted of fourteen jurors and that one of those fourteen jurors was African American. The court stated: "I think you have to show more than just striking the first African American that was in the panel to establish a Batson Challenge." Id. at 110. Defense counsel argued that "[g]iven that there was only one" and that the juror's answers did not show bias, "there was no other basis other than her race to strike her." Id. The court then stated that the juror "had some questions and concerns about sitting . . . ." Id. Defense counsel noted that the juror stated that she could continue if there were breaks. The court overruled Minter's objection.

Minter argues on appeal that "[a]fter voir dire but before the jury was sworn the defense made a Batson objection," that "[t]he court instructed the defense that [it] would permit them to make their record at a break," and that "[t]he State did not object to this procedure." Appellant's Brief at 8. Minter argues that "[t]he defense objected to [Prospective Juror E.S.'s] excusal [sic] that it was based on race" and that "[t]he State remained silent throughout and the trial court never asked the State to provide a race neutral reason for [Prospective Juror E.S.'s] challenge." Id. Minter argues that he "established a prima facie case by the excusal [sic] of [Prospective Juror E.S.]." Id. at 9. Minter argues that "[t]here appears to be one other prospective juror who was African-American but that fact alone should not alter the calculus." Id. Minter also argues that

"[t]he record does not shed any light in this case on where the other African-American juror was in the venire." Id.

The State argues that the trial court properly found that Minter "failed to show a *prima facie* case of purposeful discrimination in jury selection." Appellee's Brief at 10. The State argues that "[i]t appears from the record that [Minter] made his objection after the jury was sworn in" and that "[b]y accepting the jury, [Minter] waived any claim of error in the jury selection." Id. The State also argues "[t]he jury panel contained two African-American individuals" and that "[Minter] could not satisfy the first prong of the Batson test." Id. at 12. In his reply brief, Minter argues that his Batson argument is not waived because the trial court "explicitly allowed the defense to make a record on its objection at a later time" and because the State did not argue waiver to the trial court. Appellant's Reply Brief at 3. Minter further argues that "the defense noted that there were but two African Americans in the entire panel and only one in the first panel . . . ." Id.

We initially note, as the State argues, that Minter waived his Batson objection by failing to make a timely objection. In order for error to be preserved for review, a timely and adequate objection must be raised at trial. Chambers v. State, 551 N.E.2d 1154, 1158 (Ind. Ct. App. 1990). "The purpose of the requirement for a timely objection is to alert the trial court and to permit prevention or immediate correction of an error without waste of time and effort." Godby v. State, 736 N.E.2d 252, 255 (Ind. 2000), reh'g denied. The proper time for a Batson objection is immediately after the peremptory challenges were

made. Chambers, 551 N.E.2d at 1158. Here, Minter's counsel did not make an objection until after the jury had been selected. At that point, even if the trial court had sustained Minter's objection, Minter does not point to the record to show that other prospective jurors who had not been challenged or selected for the jury and remained in the jury pool were still available and could have been placed on the jury at that stage. "A timely objection would have allowed the trial court to follow Batson and make a determination regarding the intent of the challenges." Id. Minter's failure to make a timely objection results in the waiver of his argument. See id.

Waiver notwithstanding, the trial court did not err in overruling Minter's Batson objection. The record reveals that Prospective Juror E.S. was in the first group or panel of prospective jurors to be questioned by counsel, and that Prospective Juror E.S. was excused by peremptory challenge. The record also reveals that the initial jurors were selected from the first two groups or panels of prospective jurors to be questioned, and that the third group or panel of prospective jurors was called in order to select an alternate juror.[9] Later on the first day of trial, the court excused one of the initial jurors and placed the alternate juror on the jury. The parties concede that Prospective Juror E.S. was one of two African Americans in the thirty-eight member jury pool and the only African American in the first group or panel of prospective jurors to be questioned.

[9] It appears that the first group or panel of prospective jurors, which included Prospective Juror E.S., included prospective juror numbers one through fourteen. The second group or panel of prospective jurors included prospective juror numbers fifteen through twenty-eight. The third and final group or panel of prospective jurors, which was the group or panel from which the alternative juror was selected, consisted of prospective juror numbers twenty-nine through thirty-eight.

Our review does not disclose, and Minter does not point to the record to show, that the State exercised a peremptory challenge to excuse the other African American in the jury pool. All thirty-eight members of the jury pool were questioned by counsel. As previously mentioned, the initial jurors were selected from the first two groups or panels of the jury pool, and the alternate juror, who later was placed on the jury, was selected from the third and final group or panel in the jury pool. Minter did not develop the record below and does not point to the record on appeal to establish that the other or second African American prospective juror was not a part of the second group or panel of prospective jurors or otherwise had little chance as a practical matter of serving on the jury.[10]

Based upon our review of the record, we cannot say that the facts and circumstances of this case raise an inference that the exclusion of Prospective Juror E.S. was based on race and that Minter made a *prima facie* showing that the prosecutor exercised an improper peremptory strike under Batson. See Highler, 854 N.E.2d at 827 (noting that the "removal of some African American jurors by the use of peremptory challenges does not, by itself, raise an inference of racial discrimination") (citation

[10] In support of his argument that the fact that there was "one other prospective juror who was African-American . . . should not alter the calculus," Minter cites to McCants v. State, 686 N.E.2d 1281 (Ind. 1997). Minter argues that in McCants, the Court "noted that while there were two other African-American jurors in the venire, they were among the last so they had little chance of serving." Appellant's Brief at 9 (citing McCants v. State, 686 N.E.2d at 1284 n.1). As described above, the record does not reveal whether the other African American prospective juror here was in the second or third groups or panels to be questioned, and both the second and third groups or panels were questioned by counsel, with members of the second group being selected for the original jury and a member of the third group being selected as an alternate juror and subsequently placed on the jury. Minter does not point to the record to show, and our review of the record does not disclose, that the other African American prospective juror in this case had little chance of serving on the jury.

omitted); Hardister, 849 N.E.2d at 576-577 (holding the defendant had not established a *prima facie* case of discrimination where the defense presented evidence that the State exercised five of six peremptory challenges to strike potential black jurors but did not strike the two remaining black jurors); Lindsey v. State, 916 N.E.2d 230, 237 (Ind. Ct. App. 2009) (holding that the defendant failed to make the requisite *prima facie* showing that the State exercised a peremptory strike on the basis of race where the State used a peremptory strike to remove one black prospective juror but not another and noting that "[t]he State's removal of [one black prospective juror] by peremptory strike is not enough to give rise to an inference of racial discrimination"), trans. denied. The trial court did not err in overruling Minter's Batson objection.

II.

The next issue is whether the trial court abused its discretion by admitting evidence obtained during the search. Although Minter originally challenged the admission of the evidence through a motion to suppress, he now challenges the admission of the evidence at trial. Thus, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Jefferson v. State, 891 N.E.2d 77, 80 (Ind. Ct. App. 2008) (citation omitted), trans. denied. 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. Id. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Id. at 80-81 (citing Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), reh'g denied. We do not

reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Id. at 81. However, we must also consider the uncontested evidence favorable to the defendant. Id. Even if the trial court's decision was an abuse of discretion, we will not reverse if the admission constituted harmless error. Id.

Both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution require probable cause for the issuance of a search warrant. Mehring v. State, 884 N.E.2d 371, 376 (Ind. Ct. App. 2008), reh'g denied, trans. denied. Probable cause is a fluid concept incapable of precise definition and must be decided based on the facts of each case. Id. (citing Figert v. State, 686 N.E.2d 827, 830 (Ind. 1997)); Massey v. State, 816 N.E.2d 979, 984-985 (Ind. Ct. App. 2004). "Probable cause to search premises is established when a sufficient basis of fact exists to permit a reasonably prudent person to believe that a search of those premises will uncover evidence of a crime." Esquerdo v. State, 640 N.E.2d 1023, 1029 (Ind. 1994). The decision to issue the warrant should be based on the facts stated in the affidavit and the rational and reasonable inferences drawn therefrom. Id. When seeking a search warrant, "the police must follow the warrant statute, I.C. § 35-33-5-2, which specifies the minimum information necessary to establish probable cause." Id. (internal citation omitted).

On review, we focus on whether a "substantial basis" existed for a warrant authorizing the search or seizure, and doubtful cases are resolved in favor of upholding the warrant. Redden v. State, 850 N.E.2d 451, 461 (Ind. Ct. App. 2006) (citing Mitchell

v. State, 745 N.E.2d 775, 783 (Ind. 2001)), trans. denied. In determining whether a substantial basis exists, we, with significant deference to the judge's determination, must "focus on whether reasonable inferences drawn from the totality of the evidence support the determination." Id. Our review of a trial court's "substantial basis" determination is *de novo*. Id. (citing Houser v. State, 678 N.E.2d 95, 98 (Ind. 1997)). Furthermore, we will not invalidate a warrant by interpreting probable cause affidavits in a hypertechnical, rather than a commonsense, manner. Rios v. State, 762 N.E.2d 153, 161 (Ind. Ct. App. 2002).

In this case, the affidavit prepared by Detective Campbell provided in part:

> **Detective Marc Campbell, Police Officer,** swears or affirms that he believes and has good cause to believe that a controlled substance, to wit: Cocaine, an extract of Coca, the possession of which is unlawful, is being kept, used and sold from inside the Motel room #242 at 3731 N. Shadeland Motor 8 Inn, Indianapolis, Marion County, Indiana.
>
> This affiant bases his belief on the following information: that within the past seventy-two (72) hours of June 5, 2007, [a] confidential, credible and reliable informant came personally to this affiant and stated that within the past seventy-two (72) hours of June 5, 2007, he/she was personally inside the motel room #242 located at the Motor 8 Inn 3731 N Shadeland, Indianapolis, Marion County, Indiana and observed in the possession of a B/M/ Light skin, short blk hair, 250lbs, 5'11, a substance said informant believed to be Cocaine, an extract of Coca. The said informant was further told by the same black male, that the substance he had in his possession was in fact Cocaine, an extract of Coca and was for sale. Said informant has seen several ounces of Cocaine on several occasions in the possession of John at the above location in the last seventy-two (72) hours. Said informant is known personally by this affiant to be a past user of Cocaine, an extract of Coca and knows Cocaine, an extract of Coca by its appearance and the manner in which it is packaged for sale. Said informant is reliable in that information provided by the informant in the past has resulted in several seizures of controlled substances and these cases have resulted in convictions in court. Said informant is confidential in that revealing the

> identity of the informant could directly endanger the life of the informant and would destroy any future use of the informant.
> I detective Campbell conducted surveillance on room #242 and observed the above described male conducting hand to hand transactions with numerous people going in and out and staying for short times which [through] my training and experience is consistent with narcotics dealing.
>
> Based upon the above information, I am requesting a search warrant be issued for the room #242 located at 3731 N. Shadeland, Indianapolis, Marion County, Indiana. Said Motel is described as the two (2) story Tan Motel with brown doors and the number "242" is affixed to the front of the door to be search[ed]. Said residence consists of a living room, dining area, kitchen, bedroom(s), and bathroom(s). I request this search to include all rooms, closets, drawers, shelves and personal effects contained therein and thereon where Cocaine, an extract of Coca may be concealed. I further request this search to include the residence curtilage and the person of a B/M Light skin, short . . . .

Defendant's Exhibit A.

On the first day of trial, Minter moved to suppress the evidence of the June 5, 2007 search, arguing that the affidavit did not contain evidence that there was probable cause to issue the search warrant. The court denied Minter's motion.

Minter argues on appeal that the court erred in denying his motion to suppress under the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution. Specifically, Minter argues that "[p]robable cause in this case was based almost entirely on the word of a confidential informant," that "[t]he CI provided no nexus with room 242 other than claiming to see cocaine in the possession of the black male," and that "[t]here were no facts provided to the magistrate about how the cocaine was packaged and . . . about the CI observing any sales." Appellant's Brief at 4. Minter argues that "[w]hile the detective claimed to have done surveillance on room 242, he did not inform the

magistrate of when he did that or how long he did that." Id. at 5. Minter argues that "a stay in a hotel room is by its very nature temporary" and that "the omission of any facts regarding how long the black male might be in Room 242 is critical." Id. Minter also argues that his rights under Article 1, Section 11 of the Indiana Constitution were violated because "[t]here was limited knowledge that a violation was occurring in Room 242" and "[t]here had been no complaints about Room 242 and it was only a confidential informant that had brought this problem to police." Id. at 6. The State argues that there was probable cause and the search warrant was properly issued and that the trial court properly admitted the evidence of the search. In his reply brief, Minter argues that "[i]n this case, there is only an unsupported conclusion by the informant that it appeared cocaine was being sold from the room without any facts to back up that claim." Appellant's Reply Brief at 1.

The affidavit in this case provided that the informant observed cocaine inside Room 242. The informant further observed "several ounces of Cocaine on several occasions" at that location during the three days preceding June 5, 2007. Defendant's Exhibit A. The informant observed cocaine "in the possession of John" during that time at the location. Id. The affidavit also provided that Detective Campbell conducted surveillance on Room 242 and observed the black male described in the affidavit "conducting hand to hand transactions with numerous people going in and out . . . ." Id. The statements in the affidavit indicate that the informant was inside Room 242 on more than one occasion during the three days preceding the request for and exercise of the

search warrant, that there was a connection between Room 242 and the sale of cocaine, and that a black male person identified as John was in possession of cocaine at that location. Based upon our review of the record, we conclude that the affidavit prepared by Detective Campbell and reasonable inferences therefrom provided a substantial basis for a reasonable person to conclude that probable cause existed and that cocaine would be found in Room 242 of the Motor 8 Inn.[11] See Mehring, 884 N.E.2d at 380-381 (holding that the issuing magistrate had a substantial basis for concluding that probable cause existed and that there was a fair probability that the evidence of the offense was probably present at the defendant's residence); Massey, 816 N.E.2d at 984-988 (holding that a probable cause affidavit and reasonable inferences therefrom provided sufficient evidence for a reasonable person to believe drugs would be found in the house where a confidential informant observed cocaine).

Minter also argues that the search pursuant to the search warrant was in violation of Article 1, Section 11 of the Indiana Constitution as "Indiana courts have given Art.

[11] In support of his argument in favor of his motion to suppress, Minter cited to the trial court and cites on appeal to Merritt v. State, 803 N.E.2d 257 (Ind. Ct. App. 2004). In Merritt, the probable cause affidavit indicated that a confidential informant had been in the defendant's residence on one occasion and that an unidentified black male offered to sell the informant cocaine, and the court on appeal noted that the affidavit did not state that the unidentified black male frequented, resided, or concealed contraband at the residence and did not state that there was good cause to believe the black male would possess cocaine in the residence when the warrant was obtained. Merritt v. State, 803 N.E.2d at 260-261. As previously noted, the confidential informant here observed several ounces of cocaine on several occasions in the possession of John in Room 242 during the three-day period preceding the execution of the warrant, and Detective Campbell also observed hand-to-hand transactions involving the black male at that location during the three-day period. The facts contained in the affidavit in Merritt are distinguishable from the facts in the affidavit prepared by Detective Campbell in this case. See Massey, 816 N.E.2d at 987-988 (finding that the facts set forth in the probable cause affidavit were distinguishable from the facts described in the affidavit in Merritt in part because the confidential informant did not have a one-time interaction with an unknown dealer like in Merritt).

One, Sec. 11 an expansive reading beyond the Fourth Amendment . . . ." Appellant's Brief at 6. Although the language of Article 1, Section 11 of the Indiana Constitution[12] largely tracks the language of the Fourth Amendment, Indiana has adopted a different analysis for claims brought under Article 1, Section 11. Litchfield v. State, 824 N.E.2d 356, 359-360 (Ind. 2005). Under Indiana's analysis, the validity of a search by the government turns on an evaluation of the reasonableness of the officer's conduct given the totality of the circumstances. Id.

Based upon the record, including the information contained in the probable cause affidavit as described above, the nature of the crime, the nature of the items being sought, and the normal and common sense inferences regarding where those items may be kept under the circumstances, we conclude that the totality of the circumstances established a substantial basis to believe that there was a fair probability that evidence that cocaine was being kept or sold would be found in Room 242 and on Minter's person. Thus, upon review of the totality of the circumstances, the search of Room 242 and Minter pursuant to the search warrant was reasonable and did not violate Article 1, Section 11. See Mehring, 884 N.E.2d at 381 (holding that upon review of the totality of the circumstances, including the information contained in the affidavit, the nature of the crime, the nature of the items being sought, and the normal and common sense inferences

[12] Article 1, Section 11 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.

regarding where one might keep such items, established a substantial basis to believe that there was a fair probability that evidence of the offense would be found in the defendant's apartment and thus that the search of the defendant's apartment pursuant to a search warrant was reasonable and did not violate Article 1, Section 11 of the Indiana Constitution).

In addition, to the extent that Minter argues that the confidential informant was not credible, we note that the affidavit prepared by Detective Campbell provided in part: "Said informant is reliable in that information provided by the informant in the past has resulted in several seizures of controlled substances and these cases have resulted in convictions in court." Defendant's Exhibit A. This was sufficient to demonstrate that the informant was credible and reliable. See Massey, 816 N.E.2d at 988 ("That an informant has provided information in the past that led to seizures of controlled substances and an arrest is sufficient to demonstrate the informant is credible and reliable") (citing Tinnin v. State, 275 Ind. 203, 208, 416 N.E.2d 116, 119 (Ind. 1981) ("It is well established that a statement in an affidavit declaring that the informant has previously supplied valid information is sufficient to satisfy the statutory requirement of facts as to the credibility of the informant")).

For the foregoing reasons, we affirm Minter's convictions for dealing in cocaine as a class A felony, possession of cocaine as a class C felony, and unlawful possession of a firearm by a serious violent felon as a class B felony.

Affirmed.

BRADFORD, J., concurs.

DARDEN, J., concurs in result.