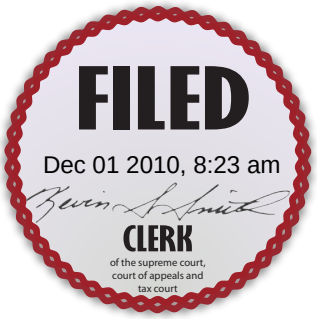

ATTORNEY FOR APPELLANT:

CHARLES L. MARTIN
Boonville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana
Indianapolis, Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DAVID E. STUTSMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 87A01-1003-CR-187
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WARRICK CIRCUIT COURT
The Honorable David O. Kelley, Judge
Cause No. 87C01-0811-FB-102

DECEMBER 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Appellant-Defendant David E. Stutsman appeals his convictions after a jury trial for dealing in methamphetamine, a Class B felony, Indiana Code section 35-48-4-1.1(a) (2006); possession of two or more chemical reagents or precursors with intent to manufacture a controlled substance, a Class D felony, Indiana Code section 35-48-4-14.5(e) (2006); possession of methamphetamine, a Class D felony, Indiana Code section 35-48-4-6.1(a) (2006); maintaining a common nuisance, a Class D felony, Indiana Code section 35-48-4-13(b) (2001); and possession of paraphernalia, a Class A misdemeanor, Indiana Code section 35-48-4-8.3 (2003). We affirm.

Stutsman raises two claims, which we consolidate and restate as whether the trial court abused its discretion in admitting evidence at trial.

Early in the morning on November 6, 2008, Sergeant Todd Neff of the Warrick County Sheriff's Department was responding to a report of an alarm when he encountered cows in the roadway near the end of a driveway. The driveway led to the only nearby house, so Neff drove up the driveway to see if the cows' owner was there. Neff saw Stutsman standing outside the house in a carport. Neff parked his truck between the carport and a shed, got out of the truck, and immediately smelled a strong odor of anhydrous ammonia.

Neff told Stutsman about the cows and asked him about the odor. Stutsman claimed not to smell anything and asserted that the cattle belonged to Stutsman's employer. Neff asked Stutsman for permission to look in the shed for the source of the odor. Stutsman agreed and went to get the cattle.

Neff could not smell any ammonia in the shed, so he shined a flashlight into the carport and saw two garbage bags that appeared to contain used coffee filters. When Stutsman returned, Neff asked for permission to search the bags and Stutsman refused. At that point, Neff was unable to identify the source of the anhydrous ammonia odor. Neff called for backup, and three additional officers arrived. All three smelled a strong chemical odor upon arriving at the scene.

As the other officers arrived, Neff asked Stutsman if anyone was in the house, and Stutsman said his girlfriend, Michelle, was inside. Neff knocked on the door to Stutsman's house and loudly asked Michelle to come outside. No one responded. At that point, Neff opened the front door and smelled an even more powerful odor of ammonia. One of the other officers heard someone in the house coughing and gasping for air. The officers entered, found Michelle, escorted her out, and looked in the house to see if anyone else was inside. During their sweep, the officers saw materials and equipment that they believed were being used to make methamphetamine. Subsequently, the officers obtained a search warrant and searched Stutsman's home.

Prior to trial, Stutsman filed a motion to suppress evidence, which the trial court denied. Stutsman sought discretionary interlocutory review, and this Court denied his request. After a trial, a jury convicted Stutsman of the crimes identified above. This appeal followed.

Stutsman claims that the trial court erred by denying his motion to suppress and by admitting certain evidence at trial. Once a case proceeds to trial, the question of whether the trial court erred in denying a motion to suppress is no longer viable. *Baird v. State*,

854 N.E.2d 398, 403 (Ind. Ct. App. 2006), *trans. denied*. The only available argument is whether the trial court erred in admitting the evidence at trial. *Id.* We review the admission of evidence for an abuse of discretion. *Montgomery v. State*, 904 N.E.2d 374, 377 (Ind. Ct. App. 2009), *trans. denied*. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.*

Stutsman contends that the admission of evidence that was obtained pursuant to the search warrant violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. At trial, Stutsman objected to the admission of that evidence and cited to the federal constitution but not to the state constitution. Consequently, his claim under the Indiana Constitution is waived for appellate review. *See McKinney v. State*, 873 N.E.2d 630, 646 (Ind. Ct. App. 2007), *trans. denied* (determining that the appellant waived a sentencing claim for review by raising it for the first time on appeal).

Stutsman argues that the trial court should not have issued a search warrant for his residence because the officers illegally entered his home without a warrant when they went to look for his girlfriend, and without considering the evidence the officers observed while in his home there was not probable cause to issue a search warrant.[1]

The Fourth Amendment, which is made applicable to the states by reason of the Fourteenth Amendment, requires that no search warrant be issued unless it is supported

[1] Stutsman also contends that Neff acted illegally by sending Stutsman to round up the cows while Neff looked into the carport with his flashlight. Stutsman did not state this ground at trial, so it is waived for appellate review. *See McKinney*, 873 N.E.2d at 646.

by probable cause. *Cheever-Ortiz v. State*, 825 N.E.2d 867, 871-72 (Ind. Ct. App. 2005). There are limited exceptions to the warrant requirement under the Fourth Amendment. *Baird*, 854 N.E.2d at 404. One exception is when exigent circumstances exist. *Id.* Under this exception, police officers may enter a residence or curtilage without a warrant if the situation suggests a reasonable belief of risk of bodily harm or death, a person in need of assistance, a need to protect private property, or actual or imminent destruction or removal of evidence before a search warrant may be obtained. *Id.*

In this case, the officers all smelled a strong chemical odor at Stutsman's house. Stutsman told the officers that his girlfriend was inside the house, and Neff had heard a "thumping" noise coming from the attic area above the carport. Tr. p. 59. The officers knocked on the door and called out but no one responded. When the officers opened the door they encountered a stronger odor of ammonia and one of them heard someone coughing and gasping inside. Under these circumstances, the officers were justified in entering Stutsman's house because the situation suggested a reasonable belief of a person in need of assistance. *See Baird*, 854 N.E.2d at 404 (determining that the officers' warrantless entry onto the defendant's property was permissible because they were investigating possible harm to persons or private property after receiving a report of an explosion).

Because the officers' warrantless entry into Stutsman's house was legal, the trial court properly considered the officers' observations in the house when deciding whether to issue the search warrant. Stutsman's claim that there was insufficient probable cause to issue a search warrant must fail. *See Davis v. State*, 907 N.E.2d 1043, 1052 (Ind. Ct.

App. 2009) (determining that an officer's observations after entering the defendant's property under exigent circumstances supported the issuance of the search warrant). Therefore, the trial court did not abuse its discretion by admitting into evidence at trial the evidence found during execution of the search warrant.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.