MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sheirdan Lamont Sisk,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 30, 2023

Court of Appeals Case No. 23A-CR-1834

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-2208-F4-5765

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

[1] Police Officer Zach Sieg patted down Sheirdan[1] Sisk after Sisk crashed his vehicle into a mailbox while intoxicated. During the pat down, Sisk pulled away from Officer Sieg when asked if there were any weapons in his vehicle. Officer Sieg then detained Sisk, searched his vehicle, and found a handgun. The State charged Sisk with and obtained his convictions for unlawful carrying of a handgun, resisting law enforcement, and operating a vehicle while intoxicated. Sisk appeals only his unlawful carrying of a handgun and resisting law enforcement convictions, challenging the admissibility of certain evidence and the overall sufficiency of the evidence. Finding no error, we affirm.

Facts

[2] One morning in August 2022, Officer Sieg responded to a report of a vehicle in the middle of a road. When he arrived at the scene, Officer Sieg observed a vehicle not in the road but crashed into a mailbox. Sisk was unconscious in the driver's seat of the vehicle with the door open.

[3] Officer Sieg roused Sisk, immediately observed signs of intoxication, and asked Sisk to exit the vehicle. As Sisk complied, Office Sieg observed a magazine loaded with ammunition inside the vehicle. Officer Sieg began a pat-down of Sisk and asked him if he had any weapons in the vehicle. Sisk "pulled away"

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[1] Sisk's first name is spelled different ways in the record. We follow the spelling in the transcript of his bench trial—which matches the spelling used in the charging information, the trial court caption for these proceedings, and the pre-sentence investigation report.

from Officer Sieg. Tr. Vol. II, p. 21. Officer Sieg then "took [Sisk] to the ground" and detained him. Id. A search of Sisk's vehicle revealed a .45-caliber Glock handgun within reach of the driver's seat.

[4] The State charged Sisk with Level 5 felony unlawful carrying of a handgun, Class A misdemeanor resisting law enforcement, and Class A misdemeanor operating a vehicle while intoxicated.[2] As part of discovery, the State disclosed Sisk's criminal history, which included a 2020 federal court conviction for felony possession of a firearm.

[5] Sisk waived his right to a jury trial, and the trial court set his bench trial for early June 2023. When trial began, the State moved for a continuance stating that it needed more time to acquire documentation that would demonstrate that Sisk was the same "Sisk" referred to in a federal court case, which evidence was material to the State's Level 5 felony charge. The trial court granted the State's continuance request and reset Sisk's bench trial for the next month.

[6] Yet by the day before trial was set to start, the State had not disclosed any other documents. When Sisk moved to exclude any undisclosed records, the State revealed a 2021 file-stamped pro se federal court document captioned "Emergency Motion for Compassionate Release/Reduction in Sentence." Exh. Vol. 3, p. 33. Sisk had filed that document in his federal court case and sought

[2] A separate charge for the unlawful possession of a firearm by a serious violent felon was voluntarily dismissed after the State discovered that Sisk did not qualify as a "violent felon" under Indiana law.

emergency relief from his sentence in light of the COVID-19 pandemic. That document included Sisk's demographic and medical information, his home address and phone number, and his signature.

[7] At the start of the bench trial the next day, Sisk asked the court to exclude the document as an untimely discovery disclosure. The trial court denied Sisk's request. When the State later tried to admit the document into evidence through Officer Sieg's testimony as Exhibit 5, Sisk objected. He argued that Officer Sieg was not qualified to establish a foundation for a federal court document. As part of the State's foundation for the exhibit, Officer Sieg testified that he accessed the federal court's online docket, called the PACER system, and saw Exhibit 5 "on the PACER system" under Sisk's federal court case. Tr. Vol. II, p. 30. The trial court took judicial notice that the PACER system "is the electronic recordkeeper for federal court documents" and overruled Sisk's objection. *Id.* at 30-31.

[8] At the end of the bench trial, the trial court found Sisk guilty as charged. Sisk received an aggregate sentence of three years, with two years to be served in prison and one year served in community corrections.

Discussion and Decision

[9] Sisk makes three arguments on appeal. The first two concern the propriety of Exhibit 5's admission into evidence while the last challenges the sufficiency of the evidence supporting Sisk's convictions. We address each in turn.

I. The trial court did not err when it denied Sisk's motion to exclude Exhibit 5.

[10] Sisk argues that the trial court erred in denying his motion to exclude Exhibit 5. According to Sisk, the exhibit should have been excluded because its disclosure by the State was untimely under Local Rule 307 and "violate[d] the fundamental fairness demanded in criminal trials." Appellant's Br., p. 10. As to the latter assertion, Sisk more specifically contends that the State's disclosure "less than twenty-four hours before the second trial setting" denied him "the right to a fair trial." *Id.* at 7.

[11] Hamilton County Local Rule 307 says that the State "shall disclose" certain materials "within its possession or control" within 30 days from the filing of charges or the appearance of the State's attorney. LR29-CR00-307, *available at* https://www.hamiltoncounty.in.gov/1819/Criminal-Rules#307. The rule adds that failure to comply "may result in the imposition of sanctions," which in turn "may include . . . the exclusion of evidence . . . ." *Id.*

[12] But a document in the possession and control of the federal government, not the State of Indiana, is not within the materials that must be disclosed by the State during Local Rule 307's initial 30-day window. Thus, Sisk's premise that the State violated Local Rule 307 is incorrect. In any event, exclusion of the evidence is not mandated by the rule. Local Rule 307 leaves imposing a sanction for an untimely disclosure in the trial court's discretion.

[13] Indeed, "[t]he preferred remedy for a discovery violation is a continuance." *Cain v. State*, 955 N.E.2d 714, 718 (Ind. 2011). Exclusion of evidence is appropriate only if the defendant shows "that the State's actions were deliberate or otherwise reprehensible, and this conduct prevented the defendant from receiving a fair trial." *Id.* (quotation marks omitted). Because a continuance is the preferred remedy for a discovery violation, "[a] defendant who fails to alternatively request a continuance upon moving to exclude evidence, where a continuance may be an appropriate remedy, waives any claim of error." *Id.* at 718 n.6 (quotation marks omitted).

[14] Here, Sisk made no alternative request for a continuance when he moved to exclude Exhibit 5. Thus, insofar as his argument is that the trial court erred in denying his motion to exclude that exhibit because he had only 24 hours to assess that evidence prior to his trial, a continuance would have cured the issue.[3] Sisk's failure to request one results in waiver.

[15] Although Sisk argues the timing of the State's disclosure alone should have prompted exclusion, he is incorrect. Again, exclusion is appropriate only when the defendant shows the State's actions "were deliberate or otherwise reprehensible," and Sisk has made no such showing. *See Cain*, 955 N.E.2d at

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[3] In his Reply Brief, Sisk asserts that the State's request for a continuance in June 2023 negated his need to request a continuance following the State's disclosure in July. Yet even if the June continuance was somehow relevant, Sisk supports this argument with neither citations to relevant authority nor reasoning beyond the bare claim itself. Consequently, Sisk has waived this claim. *See* Ind. Appellate Rule 46(A)(8)(a).

718. Thus, the trial court did not err when it denied Sisk's motion to exclude Exhibit 5.

II. The State established a sufficient foundation for the admission of Exhibit 5.

[16] Sisk also argues that the trial court erred when it overruled Sisk's foundation objection to the admission of Exhibit 5. "[A]n abuse-of-discretion standard applies to a trial court's decision on the admissibility of evidence, with reversal warranted only if the trial court's ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *McCoy v. State*, 193 N.E.3d 387, 390 (Ind. 2022).

[17] The State sought to establish a foundation for the admission of Exhibit 5 under Indiana Evidence Rule 901. That rule provides that, "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Ind. Evidence Rule 901(a). "Absolute proof of authenticity is not required." *Rogers v. State*, 130 N.E.3d 626, 629 (Ind. Ct. App 2019) (quotation marks omitted). The proponent of the evidence need only establish a reasonable probability that the document is what it is claimed to be. *Id.* One way the proponent may establish such a foundation is to present "[t]estimony that an item is what it is claimed to be, by a witness with knowledge." Evid. R. 901(b)(1).

[18] The State established a sufficient foundation to show that Exhibit 5 was, within a reasonable probability, what the State claimed it to be. Officer Sieg testified that he had seen the federal court's online docket for case number 1:19-cr-81 via the PACER system. He testified that he had seen Exhibit 5 on the docket for that case number. And he testified that Exhibit 5 was the same document that he had seen on the federal court's online docket. Further, the federal case number listed in Exhibit 5 matched the federal case number listed in Exhibit 3—the federal judgment of conviction against Sisk—which was admitted into evidence without objection.

[19] Still, Sisk asserts that Officer Sieg was not a "witness with knowledge" about the PACER system, as required by Evidence Rule 901(b)(1). Sisk emphasizes that Officer Sieg accessed the system for the first time the day of his testimony. Sisk also asserts that Officer Sieg's testimony was insufficient because he lacked personal knowledge about the document and failed to reference the web address of the site where he purportedly obtained the document. We disagree.

[20] Officer Sieg was competent to read a document, compare it with information found on an online court docket, and determine whether the contents of the document matched the docket information. Sisk's challenges to Officer Sieg's testimony go to the weight of the evidence, but they do not undermine the admissibility of Exhibit 5 under Evidence Rule 901. Accordingly, the trial court

did not abuse its discretion when it overruled Sisk's objection to the State's foundation for the exhibit.[4]

III. The State presented sufficient evidence to support Sisk's convictions.

[21] Lastly, Sisk asserts that the State did not present sufficient evidence to support his convictions. Our Supreme Court recently described the task of reviewing a sufficiency challenge as follows:

> On a fundamental level, sufficiency-of-the-evidence arguments implicate a "deferential standard of review," in which this Court will "neither reweigh the evidence nor judge witness credibility," but lodge such matters in the special "province" and domain of the jury, which is best positioned to make fact-centric determinations. *See Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018). In reviewing the record, we examine "all the evidence and reasonable inferences supporting the verdict," and thus "will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt." *Id.*

Carmack v. State, 200 N.E.3d 452, 459 (Ind. 2023).

[22] Sisk's challenge to his conviction for Level 5 felony unlawful carrying of a firearm turns on this Court agreeing with his arguments that Exhibit 5 should

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[4] In his brief, Sisk also complains about the trial court taking judicial notice of PACER as an "electronic recordkeeper" of federal court documents within Indiana. *See* Tr. Vol. II, pp. 30-31; Appellant's Br., pp. 16-18. But he acknowledges that the court did not err on this issue so long as it "simply meant to recognize the existence of a federal court document management system," which is all we take from the court's judicial notice of the PACER system. Appellant's Br., p. 16. We therefore need not consider Sisk's further arguments regarding the PACER system and judicial notice.

not have been admitted into evidence. But we have already rejected those arguments. Thus, his derivative argument on the sufficiency of the evidence underlying his Level 5 conviction fails.

[23] As for Sisk's Class A misdemeanor resisting law enforcement conviction, the State was required to prove beyond a reasonable doubt that Sisk "knowingly or intentionally" resisted Officer Sieg when Officer Sieg was lawfully engaged in the execution of his duties. Ind. Code § 35-44.1-3-1(a)(1) (2022). Sisk challenges only the fact that he satisfied the crime's mens rea: acting knowingly or intentionally. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind Code § 35-41-2-2(b) (2022). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind Code § 35-41-2-2(a) (2022).

[24] The State presented sufficient evidence to show that Sisk knowingly or intentionally resisted Officer Sieg. Officer Sieg testified that when he began a pat-down of Sisk, he asked whether Sisk had any weapons in the vehicle. Sisk "pulled away" from Officer Sieg. Tr. Vol. II, p. 21. Officer Sieg then "took [Sisk] to the ground" and detained him. *Id.* This testimony linked Sisk's resistance to Officer Sieg's investigation, thereby establishing Sisk's mens rea. Sisk's argument to the contrary is merely a request for this Court to reweigh the evidence, which we will not do. *Craft v. State*, 187 N.E.3d 340, 345 (Ind. Ct. App. 2022).

Conclusion

[25] In summary, we find no error in the trial court's handling of Exhibit 5 and that sufficient evidence supports Sisk's convictions. We therefore affirm the trial court's judgment.

Altice, C.J., and Kenworthy, J., concur.