MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Brian Keith Dorman,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 19, 2024

Court of Appeals Case No.
23A-CR-2243

Appeal from the Orange Circuit Court

The Honorable Steven L. Owen, Judge

Trial Court Cause No.
59C01-2111-F4-837

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] Brian Dorman appeals his convictions and sentence for two counts of dealing methamphetamine, as Level 4 felonies.[1] We affirm.

Issues

[2] Dorman raises the following two restated issues:

I. Whether the trial court abused its discretion when it admitted into evidence chain of custody documents.

II. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[3] K.F. was a criminal informant who assisted the Indiana State Police in making controlled buys of illegal substances. On August 19, 2021, K.F. met Detective Barry Brown to conduct a controlled buy from Dorman. Detective Brown searched K.F. and his vehicle and then handed him "[b]uy [m]oney." Tr. Vol. II at 54. K.F. then drove straight to Dorman's house in Paoli, and Detective Brown and other officers followed him. K.F. entered Dorman's house at 6:56

[1] Ind. Code § 35-48-4-1.1(a), (c).

p.m. and wore an audio-recording device. Dorman sold K.F. two grams of what was represented as methamphetamine for $175. K.F. left Dorman's house at 7:22 p.m. and reunited with the detective at the pre-arranged meeting place, where officers again searched K.F. and his vehicle and retrieved the audio recording. K.F. returned the unspent buy money to the detective and also gave him the substance he received from Dorman. Later testing confirmed that K.F. had received 1.92 grams of methamphetamine from Dorman.

[4] On August 26, 2021, K.F. assisted detectives in another controlled buy from Dorman. K.F. met Detective Brown, who again searched him and his vehicle and handed him buy money. K.F. then drove to Dorman's house and walked inside at 4:54 p.m., again wearing an audio-recording device. Dorman sold K.F. two grams of what was represented as methamphetamine for $175. K.F. left Dorman's house at 5:05 p.m. and reunited with the detective at the meeting place, at which officers again searched K.F. and his vehicle and retrieved the audio recording. K.F. gave the detective the unspent buy money and the substance he purchased from Dorman. Later testing confirmed that K.F. had received 1.98 grams of methamphetamine from Dorman.

[5] On November 30, 2021, the State charged Dorman with two counts of Level 4 felony dealing in methamphetamine. A jury trial was held on August 2, 2023, at which Detective Brown testified to, among other things, creating chain of custody documents for the drugs obtained in each controlled buy. Over Dorman's objections, those documents were admitted into evidence as Exhibits 6 and 10. The jury found Dorman guilty as charged, and the trial court

sentenced him to twelve years of incarceration on each of the two counts, with the sentences to run concurrently. This appeal ensued.

Discussion and Decision

Admission of Evidence

[6] Dorman challenges the trial court's decision to admit into evidence State's Exhibits 6 and 10. We review a trial court's decision on the admissibility of evidence for an abuse of discretion. *E.g.*, *McCoy v. State*, 193 N.E.3d 387, 390 (Ind. 2022). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.* However, even when there is an abuse of discretion, we will not reverse the decision if the admission of the evidence constitutes harmless error. *Id.*; Ind. Trial Rule 61.

[7] Dorman contends that the trial court erred in admitting the chain of custody documents contained in Exhibits 6 and 10 under the business records exception to hearsay. Hearsay is an out of court statement offered to prove the truth of the matter asserted and is generally inadmissible. Ind. Evidence Rule 801, 802. There are certain exceptions to the hearsay rule, including the business records exception. Evid. R. 803(6). That exception provides that a "record of an act, event, condition, opinion, or diagnosis" is not excluded as hearsay if:

> (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

> (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
>
> (C) making the record was a regular practice of that activity;
>
> (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
>
> (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

Id.

[8] To admit business records under this exception, the proponent of the exhibit "may authenticate it by calling a witness who has a functional understanding of the record-keeping process of the business with respect to the specific entry, transaction, or declaration contained in the document." *Vaughn v. State*, 13 N.E.3d 873, 881 (Ind. Ct. App. 2014) (quotations and citations omitted), *trans. denied*. Furthermore, "[t]he witness need not have personally made or filed the record or have firsthand knowledge of the transaction represented by it in order to sponsor the exhibit." *Id*. (citation omitted). Thus, in *Vaughn*, a panel of this Court held that an exhibit containing chain of custody reports was admissible under the business records exception to hearsay when the police detective sponsoring the exhibit testified that: (1) the document was made in the ordinary course of police department business; and (2) the entries on the

document were made at or near the time of the transaction by police employees who were authorized to make such entries and had personal knowledge of the transactions. *Id*. at 881-82.

[9] The instant case accords with *Vaughn*. Detective Brown testified[2] that the chain of custody documents in Exhibits 6 and 10: were created by him when he placed the evidence into "a temporary storage locker," Tr. v. II at 68, 77; are kept in the "normal and ordinary course of business" for the State Police, *id*. at 68; are kept in every case "to keep track of all the evidence," *id*.; and contained entries made at or near the time of the transactions by State Police employees with personal knowledge of the transactions. And Dorman has not asserted that the "source of information [or] the method or circumstances of [the] preparation [of the documents] indicate a lack of trustworthiness." Evid. R. 803(6)(E). Therefore, the trial court did not abuse its discretion when it admitted Exhibits 6 and 10 under the business records exception to hearsay.[3]

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[2] Because the exhibits were sponsored by a "qualified witness," rather than "a certification that complies with Rule 902(11) or (12)," Evid. R. 803(6)(D), Dorman's arguments regarding the "self-authenticating" process are inapposite, Appellant's Br. at 13-15. For the same reason, *Williams v. State*, cited extensively by Dorman, is also inapposite. *See* 64 N.E.3d 221, 224-25 (Ind. Ct. App. 2016) (relating to a chain of custody document admitted through a "Certification of Authenticity" rather than a qualified witness).

[3] Dorman incorrectly states in his Reply Brief that the Indiana Supreme Court "has intimated that records generated by law enforcement agencies fall under the public records exception, not the business records exception," and cites only to *Bacher v. State*, 868 N.E.2d 791, 794 n.4 (Ind. 1997). Reply Br. at 5. However, *Bacher* "intimates" no such thing; footnote 4 merely "observe[s]" that the record at issue in that case is a police investigative report and is, therefore, not admissible under the business records exception. *Id*. *Bacher* says nothing about "records generated by law enforcement agencies" that are *not* investigative records, as we have in the instant case. Reply Br. at 5.

[10] However, like the defendant in *Vaughn*, Dorman argues that the chain of custody documents should not have been admitted because they were police "investigative reports," which are only admissible if offered by the defendant. *See* Evid. R. 803(8). As the Court noted in *Vaughn*, under the public records exception to the hearsay rule, i.e., Rule 803(8),

> a document must contain factual findings to qualify as a public record, but if that public record is a police investigative report, it is inadmissible unless offered by the defense. Evid. R. 803(8)(A)(i)(c), (B)(i). These factual findings required to qualify as a public record must address a materially contested issue in the case, and if they do not, then the document would not be inadmissible as a police investigative report. *Rhone v. State*, 825 N.E.2d 1277, 1283 (Ind. Ct. App. 2005), *trans. denied*.

Vaughn, 13 N.E.3d at 882. Here—as in *Vaughn*—the chain of custody documents do not contain any factual findings that address a material issue in the case. Rather, they merely record the time and location of the evidence, and never refer to the evidence as methamphetamine. *See* Ex. at 9, 14 (describing evidence as bags containing "crystal like substance[s]"). Thus, as in *Vaughn*, the chain of custody documents are "not rendered inadmissible as [] police investigative report[s]." *Vaughn*, 13 N.E.3d at 882.

Appellate Rule 7(B)

[11] Dorman contends that his sentence is inappropriate in light of the nature of the offenses and his character. Article 7, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a

sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[12] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Id.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[13] 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 v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). For each of Dorman's Level 4 felony convictions, the sentencing range is between two and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. While the trial court imposed upon Dorman the maximum twelve-year sentence for each of the two felonies, the court also ordered that the sentences are to run concurrently, thereby reducing Dorman's actual time of incarceration by half.

[14] When considering the nature of the offense, we look at the defendant's actions in comparison to the elements of the offense. *Cannon v. State*, 99 N.E.3d 274, 280 (Ind. Ct. App. 2018), *trans. denied*. Here, Dorman dealt two grams of methamphetamine on two separate occasions, and he has pointed to no evidence of any restraint or regard on his part when he did so. Dorman points out that there is no evidence that he was violent while dealing, or that he dealt in the presence of children. But the lack of violence or children, alone, does not convince us that the nature of Dorman's offenses renders his sentence inappropriate, especially when his actual time served was reduced by half when the court ordered that the two maximum sentences run concurrently.

[15] Nor does Dorman's character warrant a sentence reduction. He has a criminal history that includes two misdemeanor convictions, one felony conviction, and a prior probation revocation, all of which reflects poorly on his character. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citation omitted)

(observing that even a minor criminal history reflects poorly on a defendant's character). In addition, less than a month after he was released on bond in this case, Dorman tested positive for methamphetamine and was reincarcerated. Furthermore, there was no evidence that Dorman has "substantial virtuous traits or persistent examples of good character." *Stephenson*, 29 N.E.3d at 122. Dorman has failed to demonstrate that his sentence is inappropriate in light of his character.

Conclusion

[16] The trial court did not abuse its discretion when it admitted chain of custody documents under the Business Records exception to the rule against hearsay. And Dorman's sentence is not inappropriate in light of the nature of his offenses and his character.

[17] Affirmed.

Crone, J., and Pyle, J., concur.

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