

Appellant/Defendant Joseph Williams appeals following his conviction for Class B felony Dealing in Cocaine.¹ On appeal, Williams contends that the trial court abused its discretion in admitting certain evidence at trial, that the trial court abused its discretion in ordering that he pay \$260 in restitution to the Whitley County Drug Task Force (“WCDF”), and that his eighteen-year executed sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

In May of 2004, Skyler Roff was serving a sentence in the Whitley County Work Release facility for Class D felony Non-Support. At some point, Roff informed Columbia City Police Detective Robert Stephenson that he could arrange a cocaine purchase from Williams. Roff, who had recently requested modification of his sentence because he had completed his GED, hoped that he could receive a “more lenient decision” if he “worked with” the State. Tr. p. 55. Detective Stephenson did not make any promises to Roff regarding sentence modification, but told Roff that the prosecutor would be made aware that Roff had cooperated with the authorities.

On May 9, 2008, Roff unsuccessfully attempted to contact Williams using a telephone number that had been provided to Roff by Williams. The next day, Roff successfully contacted Williams, and the two men arranged for Williams to sell Roff “two balls of cocaine”² for \$240 and an extra \$20 for gas. Tr. p. 58. Williams and Roff agreed that they

¹ Ind. Code § 35-41-5-1, 35-48-4-1 (2007).

² A “ball” of cocaine is a common street term for three and one-half grams of cocaine.

would meet around four o'clock at the AAA Gas Station located in Columbia City near the intersection of State Road 109 and U.S. 30. Williams and Roff further agreed that Roff would "front" Williams the money, and Williams would obtain the cocaine from his source and return later. Tr. p. 20.

Prior to transporting Roff to meet Williams, Detective Stephenson photocopied the money that Roff was to use to complete the cocaine buy, searched Roff, and placed a transmitting device on Roff's person. Detective Stephenson left Roff at the gas station and parked his unmarked police vehicle in an area from which he could observe Roff and record the transaction. Shortly thereafter, a white Pontiac Transport minivan arrived at the gas station. Roff "got into the passenger side" of the minivan, which was being driven by Williams. Tr. p. 24. Williams then "drove around the parking area, went back behind the Dollar General area—there's a little overhang—they went back around and then it came back out the same way it went in." Tr. p. 24. Before Roff exited the van, Williams "handed [Roff] a little ba[g] of cocaine and said it was [in] good faith." Tr. p. 60. After Roff exited the van, Williams drove away from the gas station, and Roff gave the "little bag of cocaine" to Detective Stephenson. Tr. p. 60.

Later that evening, Roff made repeated calls to Williams to schedule the second part of the transaction. Roff and Williams agreed to meet at the Shell Gas Station near the intersection of U.S. 30 and State Road 13 in Pierceton around midnight to complete the transaction. As Detective Stephenson and Roff arrived at the gas station they observed that a silver Impala had arrived at the gas station moments before they arrived. Williams, who was

a passenger in the Impala, called Roff's mobile phone and instructed Roff to meet him in the bathroom. While in the bathroom, Williams handed Roff two bags of cocaine. Roff left the gas station, "got in the passenger side of [Detective Stephenson's] vehicle," and immediately "handed [Detective Stephenson] the cocaine." Tr. p. 32, 67. Williams emerged from the gas station, got into the driver's seat of the Impala, and, after a few moments, left the gas station parking lot, turning west on U.S. 30. Detective Stephenson contacted several other officers who stopped the Impala, searched Williams, recovered one of the twenty dollar bills that had been used in the earlier transaction, and arrested Williams.

On May 12, 2008, the State charged Williams with Class A felony Dealing in Cocaine and Class D felony Possession of Cocaine. The State subsequently amended the dealing charge to Class B felony Dealing in Cocaine. Williams filed a motion to suppress the twenty dollar bill that was recovered from his person subsequent to his arrest. The trial court denied Williams's motion to suppress on December 4, 2008. Williams was convicted of both dealing in cocaine and possession of cocaine following a jury trial on January 29, 2009. On February 17, 2009, the trial court vacated Williams's Class D felony possession conviction. The trial court sentenced Williams to eighteen years of incarceration and ordered Williams to pay restitution in the amount of \$260 to the WCDTF. Williams now appeals.

DISCUSSION AND DECISION

I. Admissibility of Evidence

Williams contends that the trial court abused its discretion in admitting certain evidence at trial. Specifically, Williams claims that the trial court abused its discretion in

admitting a Bureau of Motor Vehicles (“BMV”) printout and a \$20 bill recovered from Williams’s person during the search immediately following his arrest.

Our standard of review of a trial court’s findings as to the admissibility of evidence is an abuse of discretion. A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court’s ruling and any unrefuted evidence in the defendant’s favor.

Williams v. State, 891 N.E.2d 621, 629 (Ind. Ct. App. 2008) (citations omitted). When reviewing a trial court’s decision under an abuse of discretion standard, this court will affirm if there is any evidence supporting the trial court’s decision. *Bennett v. State*, 883 N.E.2d 888, 891 (Ind. Ct. App. 2008).

A. BMV Record

Williams claims that the trial court abused its discretion in admitting a BMV printout indicating that the white minivan allegedly driven by Williams during the first portion of the transaction was registered to Williams’s father, Adessa Williams. Detective Stephenson testified that he obtained the printout after he ran a license plate check of the van. The trial court admitted the printout into evidence over Williams’s objection. Williams asserts on appeal that the record was hearsay that was improperly admitted because the document was uncertified, and the keeper of the record, a representative of the BMV, was not present to testify as to its creation. The State concedes that the uncertified document amounted to hearsay which did not fall under any of the exceptions to the hearsay rule but claims that the admission of the record into evidence was harmless and did not constitute reversible error.

Errors in the admission of evidence, including hearsay, are to be disregarded as harmless unless they affect the substantial rights of a party. *Robertson v. State*, 877 N.E.2d 507, 514 (Ind. Ct. App. 2007), *reh'g denied*.

In determining whether error in the introduction of evidence affected a defendant's substantial rights, we must assess the probable impact of the improperly admitted evidence upon the jury. When there is substantial independent evidence of guilt such that it is unlikely that the erroneously admitted evidence played a role in the conviction or where the offending evidence is merely cumulative of other properly admitted evidence, the substantial rights of the party have not been affected, and we deem the error harmless.

Id. (citations omitted).

Here, the State presented substantial independent evidence indicating that Williams was the driver of the white minivan. Roff identified Williams as the driver of the white minivan. Likewise, Detective Stephenson testified that Williams matched the general description of the transaction participant. The State presented a video recording of the first portion of the transaction which indicated that Williams was one of the transaction participants. The State also presented voice recordings from both portions of the transaction which indicated that the same individuals, *i.e.* Roff and Williams, were involved during both portions of the transaction. Additionally, Williams was positively identified by Jill Skeans, the owner of the silver Impala who was in the car with Williams immediately prior to and following the completion of the second part of the transaction, as the passenger in the Impala prior to their stop at the gas station in Pierceton. Skeans further identified Williams as the driver of the Impala at the time Williams was pulled over by police upon leaving the gas

station. In light of the substantial independent direct evidence identifying Williams as the driver of the white minivan during the earlier portion of the drug transaction, we conclude that the admission of the BMV record did not affect Williams's substantial rights, and therefore, was harmless.

B. \$20 Bill

Williams also claims that the trial court abused its discretion in admitting a \$20 bill recovered from his person during a search incident to his arrest.³ Specifically, Williams claims that the search leading to the discovery of the \$20 bill violated his rights under the Fourth Amendment to the United States Constitution. “The Fourth Amendment to the United States Constitution protect[s] against unreasonable searches and seizures and, as a general rule, require[s] ‘a judicially issued search warrant [as] a condition precedent to a lawful search.’” *Wilson v. State*, 754 N.E.2d 950, 954 (Ind. Ct. App. 2001) (quoting *Culpepper v. State*, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996)). “Thus, searches conducted ‘outside the judicial process’ are per se unreasonable under the Fourth Amendment, subject to a few well delineated exceptions.” *Id.* (quoting *Thompson v. Louisiana*, 469 U.S. 17, 19-21 (1984)).

The fundamental purpose of the Fourth Amendment of the United States Constitution is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes, and their belongings. For a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies. The State bears the burden of proving that a warrantless search falls within an exception to the warrant

³ The issue presented in this direct appeal is properly framed as an evidentiary claim and will be reviewed for an abuse of discretion. *See Washington v. State*, 784 N.E.2d 584, 586 (Ind. Ct. App. 2003) (providing that when a defendant challenges a ruling relating to the admission of evidence on direct appeal following trial, the issue on appeal is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial).

requirement.

Id. (citations omitted).

One recognized exception to the warrant requirement is a search conducted incident to a lawful arrest. *Id.* at 956.

Incident to lawful arrest, the arresting officer may conduct a warrantless search of the arrestee's person and the area within his or her immediate control. Evidence resulting from a search incident to a lawful arrest is admissible at trial. Two historical rationales for the search incident to arrest exception to the warrant requirement are: (1) the need to disarm the suspect in order to take him into custody; and (2) the need to preserve evidence for later use at trial. Furthermore, we do not require that a search incident to an arrest be made immediately following the arrest of the person involved.

Id. (citations and quotations omitted).

We must first determine whether Williams's arrest itself was lawful. *Id.* Indiana Code section 35-33-1-5 (2007) defines an arrest as "the taking of a person into custody, that he may be held to answer for a crime."

A police officer may arrest a suspect without a warrant where the officer has probable cause to believe that the suspect has committed a felony. Probable cause adequate to support a warrantless arrest exists when, at the time of the arrest, the officer has knowledge of the facts and circumstances that could warrant a person of reasonable caution to believe that the suspect committed a criminal act. The amount of evidence necessary to meet the probable cause requirement for a warrantless arrest is determined on a case-by-case basis, and is less than the level of proof necessary to establish guilt beyond a reasonable doubt.

Ross v. State, 844 N.E.2d 537, 542 (Ind. Ct. App. 2006) (citations omitted). "Probable cause requires only a fair probability of criminal activity, not a prima facie showing, and may be established by evidence that would not be admissible at trial. *Lamagna v. State*, 776 N.E.2d

955, 958 (Ind. Ct. App. 2002). Moreover, “probable cause can rest on collective information known to the law enforcement as a whole, and not solely on the personal knowledge of the arresting officer.” *Wessling v. State*, 798 N.E.2d 929, 935 (Ind. Ct. App. 2003). “Where there is a police-channel communication to the arresting officer, he acts in good faith thereon, and such knowledge and information exists within the department, then the arrest is based on probable cause.” *Id.*

Williams concedes that the police had probable cause to arrest him, but argues that the police did not have probable cause to stop the Impala that he was driving at the time of his arrest. However, contrary to Williams’s argument, we conclude that the arresting officer did have probable cause to stop the Impala. Detective Stephenson was present during Roff’s phone conversation with Williams as both the Impala and Detective Stephenson’s vehicle pulled into the gas station. Detective Stephenson observed a dark-skinned male exit the passenger side of the Impala, enter the gas station, and meet with Roff. Additionally, after Roff returned to Detective Stephenson’s vehicle and handed him the two bags of cocaine, Detective Stephenson observed the same dark skinned male enter the driver’s side of the Impala. Detective Stephenson then notified additional Whitley County police officers and sheriff’s deputies via police radio to stop the Impala and arrest Williams. In light of the collective information known to Detective Stephenson and the additional officers involved in Williams’s arrest, we conclude that the officers had probable cause to stop the Impala and arrest Williams. Williams’s arrest was therefore lawful.

Having concluded that Williams’s arrest was lawful, we must now determine whether

the search of Williams's person exceeded the scope of a search incident to an arrest. "The scope of a search incident to a valid arrest is generally limited to a search of the person of the arrestee and the area within his immediate control to which he could reach for weapons or to destroy evidence." *Wilson*, 754 N.E.2d at 957. Here, the \$20 bill was recovered from a search of Williams's person after he was placed under arrest. Therefore, the scope of the search was not impermissible. Accordingly, we conclude that the trial court did not abuse its discretion in admitting the \$20 bill into evidence at trial.

II. Restitution

Williams next contends that the trial court abused its discretion in ordering him to pay \$260 in restitution to the WCDTF. Specifically, Williams claims that because the WCDTF knowingly and voluntarily expended the money in order to acquire evidence, it was not entitled to restitution. Williams additionally claims that because only a portion of the money was recovered on his person subsequent to his arrest, there is no evidence that he was unjustly enriched in the amount of \$260. We disagree.

Restitution orders are within the trial court's discretion and will be reversed only upon a finding of an abuse of that discretion. *Green v. State*, 811 N.E.2d 874, 877 (Ind. Ct. App. 2004). An abuse of discretion occurs when the trial court misinterprets or misapplies the law. *Id.* We will affirm the trial court's order if sufficient evidence exists to support the trial court's decision. *Rich v. State*, 890 N.E.2d 44, 49 (Ind. Ct. App. 2008), *trans. denied*. However, where a restitution issue involves a question of law as to whether the State

constitutes a “victim” under Indiana Code section 35-50-5-3(a) (2007)⁴ which governs restitution, we will review the restitution order *de novo*. *Green*, 811 N.E.2d at 877. A state entity may properly be considered a “victim” under the restitution statute. *Hendrickson v. State*, 690 N.E.2d 765, 768 (Ind. Ct. App. 1998).

This court has previously concluded that a trial court may properly order a defendant to reimburse a state entity for funds expended during the course of an investigation into the defendant’s drug dealing/trafficking offenses. *See id.* (providing that the trial court properly ordered the defendant to reimburse the county entity for the funds used in the drug operation). In *Hendrickson*, a police drug task force arranged for a confidential informant to make a series of drug buys from the defendant. *Id.* at 766. As a result of these drug buys, the task force lost “several hundred dollars which were used by the confidential informant to execute the drug purchases.” *Id.* at 768. In sentencing the defendant, the trial court ordered the defendant to repay the funds used by the task force in the controlled buys involving the defendant. *Id.* at 767. The defendant challenged the trial court’s restitution order, and this court concluded that to allow the criminal defendant to retain the money would have resulted in unjust enrichment. *Id.* at 768. In particular, this court concluded that requiring the defendant to pay the task force “for the buy money expended during the sting operation advances Indiana’s public policy of ensuring that victims are reimbursed and defendants are prevented from being unjustly enriched by their criminal acts.” *Id.* at 768.

⁴ Indiana Code section 35-50-5-3(a) provides, in relevant part, that “[i]n addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime.”

The relevant facts of the instant matter are essentially the same as those presented in *Hendrickson*. Here, the WCDTF arranged for Roff to buy drugs from Williams, and the WCDTF lost \$260 which was used by Roff to execute the drug purchase. Williams, however, argues that this court's conclusion in *Hendrickson* should not be applied to the instant matter because he, unlike the defendant in *Hendrickson*, was not unjustly enriched by his criminal actions. Williams asserts that he "only received the benefit of twenty dollars for his delivery of drugs," as he claims was evidenced by the fact that the police only received one of the \$20 bills used in the buy on his person following his arrest. Appellant's Br. p. 11, 12. Although Williams asserts that the record supports his claim, we conclude that the record actually demonstrates that Williams was paid \$240 for the drugs and an additional \$20 for gas. We believe that the mere fact that Williams no longer had the full \$260 on his person some seven or eight hours after the initial transaction does not rebut the presumption that he was unjustly enriched in the amount of \$260 by his criminal behavior. Therefore, we conclude that the trial court's restitution order was proper and that it did not abuse its discretion in ordering Williams to pay restitution in the amount of \$260.⁵

III. Sentence

Williams last contends that the trial court abused its discretion in sentencing him and that his sentence is inappropriate.

⁵ To the extent that Williams claims that his situation "is more akin" to the situation presented in *Green* and *Kopas v. State*, 699 N.E.2d 1193 (Ind. Ct. App. 1998), we observe that *Green* and *Kopas* are readily distinguishable from the instant matter because neither *Green* nor *Kopas* involve a restitution order for funds expended during the course of an investigation into a defendant's drug dealing/trafficking offenses and because unlike the defendants in *Green* and *Kopas*, Williams was unjustly enriched by his criminal conduct.

A. Abuse of Discretion

To the extent that Williams claims that the trial court abused its discretion by considering an improper aggravator in determining his sentence, we observe that sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable probable, and actual deductions to be drawn therefrom.” *Id.* (quotation omitted).

Williams asserts on appeal that the trial court abused its discretion in considering his juvenile record to be an aggravating factor at sentencing because his juvenile record was neither sufficiently similar to the instant offense nor weighty enough to warrant consideration as an aggravating factor in enhancing his Class B felony dealing in cocaine conviction. However, we need not determine whether the trial court abused its discretion in considering this factor if we can say with confidence that the trial court “would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Id.* at 491; *see also Williams*, 891 N.E.2d at 632. A single valid aggravator is sufficient to support an enhanced sentence. *Williams*, 891 N.E.2d at 633; *Mead v. State*, 875 N.E.2d 304, 310 (Ind. Ct. App. 2007).

Here, the trial court found three additional aggravating factors, none of which Williams challenges on appeal, including Williams’s extensive criminal history, Williams’s

history of violating probation, and the fact that Williams was on bond for unrelated criminal offenses in Kosciusko County at the time he committed the instant offense. The record shows that at the time when Williams was sentenced for the instant offense, Williams was a relatively young man who had amassed an extensive criminal history which included nine prior felony convictions and eighteen prior misdemeanor convictions. The record further shows that three unrelated felony charges and four unrelated misdemeanor charges were pending against Williams at the time he was sentenced for the instant offense. Williams's substantial criminal history and his history of violating probation suggest that Williams has a total disregard for the law. In light of these factors, as well as the fact that Williams was on bond for unrelated charges at the time he committed the instant offense, we can say with confidence that the trial court would have imposed the same sentence regardless of whether it considered Williams's juvenile record. Therefore, the trial court did not abuse its discretion in sentencing Williams.

Furthermore, to the extent that Williams claims that the trial court abused its discretion by failing to consider Williams's alleged role as a "courier between a buyer and a dealer" to be a mitigating circumstance, Williams has failed to present a cogent argument in support of this claim. The failure to make a cogent argument results in waiver, and as such, Williams has waived this claim on appeal. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (providing that failure to make a cogent argument results in waiver), *trans. denied*; *see also* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts

of the record on appeal).

B. Appropriateness

Williams also challenges his eighteen-year sentence by claiming it is inappropriate. Indiana Appellate Rule 7(B) provides that “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of his offense, Williams argues that his sentence is inappropriate because the nature of his crime should be considered to be mitigating. Specifically, Williams claims that he was merely a courier between a drug buyer and drug dealer and that he was encouraged to commit a crime that he may otherwise not have committed. However, the record demonstrates that Williams was an active participant in a drug dealing enterprise. Williams agreed to sell Roff two “balls” of cocaine in exchange for \$240 and an additional \$20 for gas, provided Roff with a small amount of cocaine in “good faith,” and later delivered the two “balls” of cocaine to Roff. Further, although we agree that Williams’s offenses may not be among the most egregious of drug-related offenses, we note that Williams did not receive the maximum sentence possible under Indiana Code section 35-50-2-5 (2007).

With respect to his character, Williams acknowledges that he has a substantial criminal history, but claims that his sentence was nevertheless inappropriate because his

criminal history does not indicate that he was predisposed to deal cocaine. We disagree. Williams's criminal history demonstrates that Williams has a total disregard for the law. At the time he was sentenced for the instant offense, Williams was thirty-one years old and had accumulated nine prior felony convictions and eighteen misdemeanor convictions.⁶ Williams also has a history of violating probation and was on bond from an unrelated criminal matter at the time he committed the instant offense. In light of Williams's extensive criminal history which we believe indicates a total disregard for the law and Williams's history of violating probation and the facts surrounding his offenses, we cannot say that Williams's eighteen-year sentence is inappropriate.

In sum, we conclude that any error resulting from the trial court's admission of the BMV record indicating that the white minivan driven by Williams during the first portion of the transaction was registered to Williams's father was harmless, that the trial court did not abuse its discretion in admitting the \$20 bill recovered from Williams's person during the search incident to his arrest, that the trial court did not abuse its discretion in ordering Williams to pay \$260 in restitution to the WCDTF, that the trial court did not abuse its discretion in sentencing Williams, and that Williams's sentence was appropriate in light of the nature of his offense and his character.

The judgment of the trial court is affirmed.

⁶ Williams's prior felony convictions include convictions for Class D theft, non-support, and fleeing law enforcement. His prior misdemeanor convictions include convictions for Class A resisting law enforcement, driving while suspended, criminal recklessness, criminal trespass, and possession of marijuana; Class B invasion of privacy, disorderly conduct, public intoxication, leaving the scene, and visiting a common nuisance; and Class C operating while intoxicated, leaving the scene, minor consumption of alcohol, and illegal consumption.

BAILEY, J., and VAIDIK, J., concur.