

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andre Dewayne Hamilton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 18, 2023

Court of Appeals Case No.
23A-CR-19

Appeal from the
Hamilton Superior Court

The Honorable
Michael A. Casati, Judge

Trial Court Cause No.
29D01-2107-F2-4418

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Andre Dewayne Hamilton was a passenger in an SUV that was stopped and searched by police. The search revealed a large amount of methamphetamine and fentanyl. Hamilton was charged with, and later found guilty of, two dealing-related offenses. Hamilton now appeals, arguing the evidence is insufficient to prove he possessed the drugs. We affirm.

Facts and Procedural History

- [2] On July 26, 2021, Officer Joseph Ryder of the Fishers Police Department stopped an SUV with improper tinting on its windows. Cashia Brown, the driver and owner of the SUV, was the only person visible to Officer Ryder. After asking for Brown's information, Officer Ryder said he could smell marijuana and asked her to exit the SUV so he could search it.¹ Officer Ryder first searched the front passenger side, where he found four cell phones, including a blue iPhone. In a compartment on the dashboard, he found a large plastic bag of brown powder he believed to be heroin.

¹ Brown admitted to Officer Ryder that she smoked marijuana in the SUV earlier that day, but none was found.

- [3] Officer Ryder paused the search and arrested Brown. He then returned to the SUV and opened the rear doors to search the middle and back rows. When he did so, he saw a man, later identified as Hamilton, crouched in the back row. He ordered Hamilton out of the car and arrested him. Officer Ryder then returned to the SUV and continued searching, finding almost four hundred dollars stuffed in the back pocket of the passenger seat.
- [4] The plastic bag contained at least 17.17 grams of methamphetamine and 12.26 grams of fentanyl.² Officers also sought and received warrants to search the cell phones. The blue iPhone's passcode corresponded to Hamilton's birth month and year, and in outgoing text messages from the phone the sender refers to themselves as "Dre" (consistent with Hamilton's first name of Andre). Ex. 17, p. 2. Several messages on the phone sent and received in the days leading up to Hamilton's arrest reference buying and selling marijuana and fentanyl. *See id.* at 6.
- [5] The State charged Hamilton with Level 2 felony dealing in methamphetamine and Level 2 felony dealing in a narcotic drug.³ A jury trial was held in November 2022, and the jury found Hamilton guilty of both counts. The trial

² Not all of the contents of the bag were tested because the statutory weight requirement had already been met.

³ Brown was also charged with the same offenses. *See* Case No. 29D01-2107-F2-4419. Her jury trial is scheduled for next month.

court sentenced him to an aggregate term of eighteen years, with fourteen years executed in the Department of Correction and four years suspended.

[6] Hamilton now appeals.

Discussion and Decision

[7] Hamilton contends the evidence is insufficient to support his convictions. Specifically, he argues the evidence is insufficient to show he possessed the drugs. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We only consider the evidence supporting the verdict and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[8] Possession may be actual or constructive. *Parks v. State*, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018). Because Hamilton did not have actual possession of the contraband, the State had to prove he constructively possessed it. Constructive possession is established by showing that the defendant has both the intent and capability to maintain dominion and control over the contraband. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). In cases where the defendant has exclusive possession of the premises on which the contraband is found, an inference is permitted that he knew of the presence of contraband and was capable of

controlling it. *Id.* However, when possession of the premises is non-exclusive, this inference is permitted only if some additional circumstances indicate the defendant's knowledge of the presence of the contraband and the ability to control it. *Id.* at 174-75. These additional circumstances include but are not limited to: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) the contraband being in plain view; and (6) the location of the contraband near items owned by the defendant. *Id.*

[9] It is well settled that a conviction for a possessory offense does not depend on the accused being caught “red-handed” in the act by the police. *Id.* at 174. Moreover, it is “not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the trial court’s decision.” *Parks*, 113 N.E.3d at 272-73.

[10] Here the contraband was found in a compartment on the dashboard. While it may not have been within Hamilton’s immediate reach when Officer Ryder found him in the third row of the SUV, the circumstances support a reasonable inference that the drugs were his. Hamilton had unrestrained access in the car’s cabin. When Officer Ryder pulled the car over, Hamilton hid in the back row and did not reveal himself until Officer Ryder came upon him. This supports an inference that he was aware of drugs. *Floyd v. State*, 791 N.E.2d 206, 211 (Ind. Ct. App. 2003) (defendant’s attempt to hide from police “supports an inference that he was aware of the items contained in the mobile home, in addition to the

illegal nature of those items”), *trans denied*. Also, found near the drugs was a phone that appears to belong to Hamilton—given that the passcode to the phone is his birthday and outgoing messages identified the sender as “Dre.” Messages on this phone reference buying and selling drugs, and Officer Ryder found a large amount of cash hidden near Hamilton. *See Mitchell v. State*, 745 N.E.2d 775, 789 (Ind. 2001) (that the defendant was found with a large amount of cash is a factor that supports intent-to-deliver conviction).

[11] From this evidence, a reasonable jury could find that Hamilton had the capability and intent to maintain dominion and control over the contraband, and therefore that he constructively possessed it.

[12] Affirmed.

Tavitas, J., and Foley, J., concur.