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IN THE  
COURT OF APPEALS OF INDIANA

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Tariq Fuad Hamdi,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

December 19, 2022

Court of Appeals Case No.  
22A-CR-1324

Appeal from the Cass Superior  
Court

The Honorable Lisa Swaim, Judge

Trial Court Cause No.  
09D02-2010-F5-84

**May, Judge.**

[1] Tariq Fuad Hamdi appeals his conviction of Level 5 felony dealing in hash oil weighing at least 300 grams.<sup>1</sup> He argues the State presented insufficient evidence that he delivered 300 grams of hash oil, which is the requisite amount to elevate his conviction from a Class A misdemeanor to a Level 5 felony. Finding the evidence sufficient, we affirm.

## Facts and Procedural History

[2] On October 20, 2020, Hamdi’s employer instructed him to drive a van containing eight large black trash bags from Chicago, Illinois, to Logansport, Indiana. Hamdi was to deliver the bags to Kye Holcomb, who had arranged days earlier to purchase 2,500 “THC vape”<sup>2</sup> cartridges for \$18,000. (Tr. Vol. 2 at 73.) Hamdi arrived at the designated location around midnight. As Holcomb and Hamdi were carrying the bags from Hamdi’s van to the porch of the house where Holcomb was to store the cartridges, police arrived to investigate a neighbor’s report of a possible burglary in progress.

[3] When Logansport Police Officer Jonathan Flory ordered Hamdi to freeze, Hamdi ran toward the porch, but then tripped and fell. Officer Flory apprehended Hamdi and placed him in handcuffs. Officer Flory noticed through a gap in one of the loosely tied trash bags that the bag appeared to

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<sup>1</sup> Ind. Code § 35-48-4-10.

<sup>2</sup> THC is the component of marijuana that makes marijuana illegal, and “in general, the concentration of the THC in the hash oil is ten-times that of the starting material.” (Tr. Vol. 2 at 101.)

contain boxes of vape pens or cartridges that were labeled with the word “DIME” written in such a way that the letter “M” looked like a “marijuana leaf emblem.” (Tr. Vol. 2 at 91; *see also* State’s Ex. 8, 13.) Police found approximately \$18,000 on Holcomb and arrested both Hamdi and Holcomb.<sup>3</sup>

[4] At the police station, officers inventoried the contents of the eight black garbage bags and found 2,500 boxes containing a liquid cartridge for a vape pen. The boxes indicated each cartridge contained “1000 mg” or one gram of solution. (*See, e.g.*, Ex. Vol. at 18.) The record contains close-up photographs of the front of individual boxes for six separate flavors of vape cartridges, and in the bottom right corner of the front of each of those boxes is a triangle that contains an image of a marijuana leaf and an exclamation point, with the letters “CA” underneath the triangle. (*See* Ex. Vol. at 18, 20, 24, 26, 28, 30.) The boxes were organized by color-coded flavor into sets of forty-five boxes, which were sealed in clear plastic for bulk shipment. The State charged Hamdi with Level 5 felony dealing in hash oil.<sup>4</sup>

[5] The State wished to test some cartridges to confirm the presence of hash oil. The Indiana State Police laboratory informed the Logansport Police that it did not have the equipment required to determine the amount of hash oil in liquid

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<sup>3</sup> Holcomb testified that he pled guilty to dealing in hash oil for his participation in these events.

<sup>4</sup> The State also charged Hamdi with Class A misdemeanor resisting law enforcement because he ran from Officer Flory. However, the jury acquitted Hamdi of this offense after Hamdi, who is a Jordanian national, testified through an interpreter that he did not understand that Officer Flory had told him to stop and that he ran because he was afraid of who had approached him from behind in a dark, unfamiliar location.

solutions. A certified laboratory was found in Mississippi to test the vials to determine how much hash oil they contained. The Evidence Technician for the Evidence Room at the Logansport Police Department randomly selected seven differently-colored boxes, which were labeled as seven different flavors, from amongst the bulk packages, and he sent those seven boxes to Mississippi for testing. The lab report indicated the 1000 mg vial from the box marked “Wedding Cake” with a light blue band contained 28.0 percent THC, the 1000 mg vial from the box marked “Watermelon” with a dark pink band contained 19.4 percent THC, the 1000 mg vial from the box marked “Apple Gelato” with a light green band contained 26.1 percent THC, the 1000 mg vial from the box marked “Bubblegum Kush” with a light pink band contained 26.1 percent THC, the 1000 mg vial from the box marked “Jack Fruit” with a dark yellow band contained 24.3 percent THC, the 1000 mg vial from the box marked “Strawberry Cough” with a red band contained 25.7 percent THC, and the 1000 mg vial from the box marked “Forbidden Fruit” with a purple band contained 30.5 percent THC. (State’s Ex. 14.) The director of the lab, Dr. Mahmoub Elsohly, testified about his qualifications, his lab, the process for testing, and the results.

[6] A jury found Hamdi guilty of Level 5 felony dealing more than 300 grams of hash oil. The trial court imposed a sentence of 1,095 days, suspended all but the one day that Hamdi had already served, and ordered Hamdi to serve 1,094 days on probation.

## Discussion and Decision

[7] Hamdi asserts the State did not present sufficient evidence to support his conviction. Claims of insufficient evidence

warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

*Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[8] Hamdi was convicted of Level 5 felony dealing in hash oil weighing over 300 grams. A person who knowingly or intentionally delivers hash oil, “pure or adulterated” commits dealing in hash oil as a Class A misdemeanor. Ind. Code § 35-48-4-10(a)(1)(c). That crime becomes a Level 5 felony if the amount of drug involved is “at least three hundred (300) grams of hash oil[.]” Ind. Code § 35-48-4-10(d)(2)(A)(ii). The amount of hash oil being dealt is determined by the “weight of the entire substance delivered by the dealer”—in other words, its adulterated form.” *Adams v. State*, 968 N.E.2d 281, 286 (Ind. Ct. App. 2012) (discussing marijuana plant material containing stems) (quoting *Lawhorn v. State*, 452 N.E.2d 915, 917 (Ind. 1983)), *trans. denied*.

[9] Hamdi does not challenge the elements that constitute Class A misdemeanor delivery of hash oil; instead, he challenges only the enhancement of his conviction to a Level 5 felony. Where the weight of drugs increases the Level

of the offense, “the weight of the drugs is an essential element of the offense.” *Halsema v. State*, 823 N.E.2d 668, 673 (Ind. 2005). As such, “it must be proven by the State beyond a reasonable doubt.” *Id.* When determining whether the State has proven an element beyond a reasonable doubt, “the jury may rely on its collective common sense and knowledge acquired through everyday experiences.” *Id.* “However, a juror’s ability to determine the existence of a fact in issue based on his or her common sense and experience is not unlimited.” *Id.* at 674. For example, a jury cannot determine the weight of drugs from simply looking at the drugs in court because, as our Indiana Supreme Court explained: “we are not persuaded that the weight of a given quantity of drugs, especially when expressed in a metric unit of measurement, is a matter of general knowledge and expertise.” *Id.* Thus,

in order to prove the element of weight of drugs or controlled substances, the State must either offer evidence of its actual, measured weight or demonstrate that the quantity of the drugs or controlled substances is so large as to permit a reasonable inference that the element of weight has been established.

*Id.*

[10] Hamdi first asserts there “was no measured weight for the vape pens in this case[.]” (Appellant’s Br. at 14.) In support, he notes there was no testimony that each pen truly contained one gram of liquid or that the representations on the packaging were trustworthy. Hamdi’s argument might give us pause if police had not seized 2,500 cartridges represented to weigh one gram each, for a total seizure of 2,500 grams of adulterated hash oil, when only 300 grams were

necessary to elevate his conviction to the Level 5 felony. *See* Ind. Code § 35-48-4-10(d)(2)(A)(ii) (setting amount at 300 grams). Even had some, or even all of the 2,500 cartridges, not contained the full one-gram solution, the fact that Hamdi delivered more than eight times the number of cartridges necessary to reach 300 grams leads us to conclude “the quantity of the drugs or controlled substances is so large as to permit a reasonable inference that the element of weight has been established.” *Halsema*, 823 N.E.2d at 674. As for the representations of weight on the packaging, the jury was free to consider the credibility of the representations on the boxes, and we cannot second-guess the jury’s determination. *See Woodford v. State*, 752 N.E.2d 1278, 1283 (Ind. 2001) (“Because it is within the jury’s province to assess the credibility of all witnesses and weigh the evidence, we will not reassess or reweigh on review the evidence it heard.”), *reh’g denied, cert. denied*, 535 U.S. 999 (2002), *reh’g on cert. denied*, 526 U.S. 973 (2002).

[11] Hamdi next asserts there was no “reliable reference point for the jury to even infer the untested vape pens contained illegal hash oil, let alone an aggregate of 300 grams of illegal substance.” (Appellant’s Br. at 14.) However, nearly fifty years ago, we explained:

To require that each and every fragment of a controlled substance be examined, as Dixon argues, would be impossible. It is sufficient and in compliance with accepted procedure that a representative sample of the controlled substance be scientifically tested and that the examining expert give his opinion as to the remainder of the homogeneous substance.

*Dixon v. State*, 357 N.E.2d 908, 910 (Ind. Ct. App. 1976). Hamdi argues 2,500 individually boxed cartridges are not, by definition, “homogenous” (Appellant’s Br. at 15), especially when the State’s own evidence demonstrated the cartridges contained varying levels of THC. Moreover, Hamdi notes, when asked whether the untested cartridges could be considered homogenous, Dr. Elsohly testified that solutions can be considered to have the same content only if they are from the same lot number of production, but the State presented no evidence of lot numbers on any of the cartridges. (*Id.* at 15-16.)

[12] We acknowledge the facts before us are not like *Woodford*, in which our Indiana Supreme Court determined the State presented sufficient evidence that Woodford possessed over three grams of cocaine where the forensic scientist, who tested only two of the nine rocks believed to be cocaine, also testified the nine rocks were “‘consistent in color, dryness, and wetness,’ which generally shows that they are all the same substance.” 752 N.E.2d at 1283 (record citation omitted).

[13] Instead, the facts herein are more akin to those in *Evans v. State*, 566 N.E.2d 1037 (Ind. Ct. App. 1991), in which the police chemist testified the combined weight of the chunks seized was 7.4 grams and the one chunk “representative sample” tested contained high levels of cocaine. *Id.* at 1041. The testimony regarding the homogeneity of the sample came from the arresting officer, who testified that he opened a thirty-five-millimeter film canister possessed by Evans and found “‘several chunks of a greyish white or brownish white material,’ or what appeared to be ‘crack cocaine.’” *Id.* at 1039.



[14] While Dr. Elsohly could testify only to the seven samples that were sent to him,<sup>5</sup> the jury had other evidence before it that demonstrated a form of homogeneity. For example, Holcomb testified he had arranged to buy vape cartridges containing “marijuana” or “THC” (Tr. Vol. 2 at 74), which suggests all cartridges should have contained THC. Officer Flory and Officer Alec Vantuinen both testified they believed, based on their experience as police officers, that the boxes contained THC because a marijuana leaf symbol was on the boxes. In fact, when challenged on cross-examination about whether the marijuana leaf on the box would conclusively prove there is THC in the canister, Officer Vantuinen responded, “I don’t understand why you would put a marijuana leaf on something that you’re going to smoke and not have THC in it.” (*Id.* at 94.) The jury could see from the images presented as evidence and from the bags of boxes present in the courtroom that the boxes were homogeneous in having marijuana symbols on them and in being the same DIME brand. In addition, while the chemical testing may have determined the seven cartridges all contained different levels of THC, they were homogenous in that every one of the cartridges contained THC. The State presented sufficient evidence for the jury to determine whether Hamdi had sold more than 300 grams of hash oil. *See Dixon*, 357 N.E.2d at 473-74 (evidence was sufficient

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<sup>5</sup> Dr. Elsohly testified that his lab charges \$250 for each vial of solution tested. (Tr. Vol. 2 at 107.) That means the State would have needed to pay \$625,000 to test all of the cartridges. Testing 300 cartridges to prove all 300 contained hash oil would have cost the State \$75,000.

to demonstrate defendant possessed twenty-five grams of marijuana when expert opined all the green substance in the bag was marijuana even though expert also testified “he could not conclusively identify the untested substance as marijuana”).

## Conclusion

[15] The State presented sufficient evidence from which a jury could determine Hamdi sold more than 300 grams of hash oil. Therefore, we affirm his conviction of Level 5 felony dealing in more than 300 grams of hash oil.

[16] Affirmed.

Crone, J., and Weissmann, J., concur.