

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Alexander L. Hoover
Walter & Hoover
Plymouth, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kyle Hunter
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David Joseph Nies Rhoades,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 18, 2023

Court of Appeals Case No.
22A-CR-3031

Appeal from the Marshall Superior
Court

The Honorable Matthew E. Sarber,
Judge

Trial Court Cause No.
50D03-2108-F5-44

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

- [1] David Joseph Nies Rhoades appeals his convictions for possession of a narcotic drug, a Level 5 felony; unlawful possession of a syringe, a Level 6 felony; and possession of paraphernalia, a Class C misdemeanor. Rhoades argues that the State presented insufficient evidence to support his convictions. We conclude that the State presented sufficient evidence, and accordingly, we affirm.

Issue

- [2] Rhoades raises one issue which we revise and restate as, whether the State presented sufficient evidence to support Rhoades's convictions for possession of narcotics, syringes, and paraphernalia.

Facts

- [3] Detective Jonathan Bryant of the Marshall County Sheriff's Department and Detective Derek Workman of the Plymouth Police Department were assigned to the Marshall County Drug Task Force. The task force was investigating drug activity at Creekside and Gatewood Trailer Parks located in Marshall County after receiving reports of increased drug activity in the area.
- [4] On July 28, 2021, Detective Bryant and Detective Workman were stationed in undercover vehicles, while a few marked police units were patrolling the surrounding area. Detective Workman sat in a vehicle facing the entrance of Creekside Trailer Park, while Detective Bryant sat across the highway on the east side of Michigan Road observing traffic near Creekside Trailer Park. The detectives communicated with each other about vehicles coming and going

from both Creekside and Gatewood Trailer Parks and identified drivers who were committing traffic infractions.

[5] Detective Bryant and Detective Workman observed a 1992 Chrysler New Yorker drive into Creekside Trailer Park and exit shortly thereafter. As the vehicle passed Detective Bryant, he observed and completed a computer search of the license plate of the 1992 Chrysler New Yorker. The license plate number did not match the registered description of the vehicle.

[6] A short time later, the Chrysler New Yorker returned to Creekside Trailer Park and parked within Detective Workman's view. Detective Workman decided to record a video of the driver of the vehicle. He observed the driver open the hood of the vehicle and "mess[] around underneath the hood of the car." Tr. Vol. II p. 36.¹ Detective Workman noted that "once [the driver] was done underneath the hood of the car, he had something black in his left hand, and then walked between the trailers, appearing to go into a trailer . . ." *Id.* The driver he was observing then accessed underneath the hood once more before shutting the hood and leaving. Detective Workman did not see any other person look underneath the hood of the vehicle during this time and stated that he "maintained visual [contact] on the vehicle [and] didn't leave the area." *Id.* at 41.

¹ All references to transcripts refer to Jury Trial Transcript Volume II, dated November 2, 2022.

- [7] As the Chrysler New Yorker exited Creekside Trailer Park, Detective Bryant recognized the driver and identified him as Rhoades. Detective Bryant followed the vehicle and observed Rhoades fail to signal as he made a turn. Detective Bryant then instructed Marshall County Sheriff's Department Deputy Cullen Smith to stop the vehicle. Deputy Smith then initiated a stop of the vehicle at a nearby gas station. Detective Bryant and Detective Workman appeared on the scene, along with Master Trooper David Caswell and his police dog, Chase. Chase alerted the officers to the presence of drugs in the vehicle, and the officers performed a search of the vehicle.
- [8] The officers checked beneath the hood of the vehicle, where Detective Bryant discovered a black pouch wrapped in rubber bands. The pouch contained an uncapped hypodermic needle, a capped hypodermic needle, a spoon, and a Ziploc-style bag containing a gray substance. The substance later tested positive for heroin and fentanyl.
- [9] The State charged Rhoades with four counts: Count I, possession of a narcotic drug, a Level 5 felony; Count II, unlawful possession of a syringe, a Level 6 felony; Count III, possession of paraphernalia, a Class C misdemeanor; and Count IV, operating a vehicle with a false plate, a Class C infraction.
- [10] On November 2, 2022, the jury found Rhoades guilty on all four counts. The trial court sentenced Rhoades as follows: Count I, five years at the Indiana Department of Corrections ("DOC"); Count II, two and one-half years in the DOC; Count III, sixty days in the DOC. All sentences were ordered to be

served concurrently. Rhoades received a fine for Count IV. Rhoades now appeals.

Discussion and Decision

[11] Rhoades challenges the sufficiency of the evidence to support his convictions for possession of narcotics, syringes, and paraphernalia. Sufficiency of evidence claims, “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). “When there are conflicts in the evidence, the jury must resolve them.” *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). “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.” *Id.* at 263. We affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[12] In order to convict Rhoades for possession of a narcotic drug, unlawful possession of a syringe and possession of paraphernalia, the State must prove that Rhoades knowingly or intentionally possessed the contraband. Ind. Code. § 35-48-4-6(a) (possession of a narcotic drug); Ind. Code. § 16-42-19-18 (possession of a hypodermic syringe); Ind. Code § 35-48-4-8.3(b)(1) (possession of paraphernalia).

[13] On appeal, Rhoades contends that the State failed to present evidence from which a reasonable jury could conclude that he knowingly or intentionally possessed the drugs, syringes, or paraphernalia located under the hood of the vehicle. Rhoades argues that he did not own the vehicle and that the State relied on one officer's testimony and the fact that Rhodes was the driver of the vehicle.

Whether Rhoades had constructive possession of contraband

[14] The State does not argue that Rhoades had actual possession of the contraband, as the narcotics, syringe and paraphernalia were not found on Rhoades's person. The issue is whether the State presented sufficient evidence to establish that Rhoades had constructive possession of the items found.

[15] Possession may be either actual or constructive. *Sargent v. State*, 27 N.E.3d 729, 732-33 (Ind. 2015). Actual possession occurs when a person has "direct physical control" over the item. *Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999). "When the State cannot show actual possession, a conviction for possessing contraband may rest instead on proof of constructive possession."

Gray v. State, 957 N.E.2d 171, 174 (Ind. 2011) (citing *Goodner v. State*, 685 N.E.2d 1058 (Ind. 1997)).

[16] Constructive possession may support a conviction for a drug offense when actual possession is absent. *Lampkins v. State*, 685 N.E.2d 698, 699 (Ind. 1997). “[A] conviction for a possessory offense does not depend on catching a defendant red-handed.” *Gray*, 957 N.E.2d at 174. A defendant is in constructive possession of drugs when the State shows that the defendant has “both (i) the intent to maintain dominion and control and (ii) the capability to maintain dominion and control over the contraband.” *Lampkins*, 685 N.E.2d at 699.

[17] Rhoades does not challenge his capability to maintain dominion and control over the contraband.² Rhoades argues that the State did not “demonstrate that [he] had knowledge of the drugs, syringe, or paraphernalia located under the hood of the vehicle.” Appellant Br. p. 8. Rhoades also argues that he did not own the vehicle, and that the State’s reliance on Officer Workman’s testimony and the fact that Rhoades was driving the vehicle, is insufficient to prove knowledge.

² “Capability to maintain dominion and control” is met when the State can show that the defendant is able to “reduce the controlled substance to the defendant’s personal possession.” *Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997), *opinion modified on reh’g*, 685 N.E.2d 698 (Ind. 1997).

- [18] In order to establish intent to maintain dominion and control, the State must demonstrate the defendant's knowledge of the presence of contraband. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). Such knowledge "may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband." *Id.* Ownership of the premises where the contraband is located is not required to demonstrate possession. *Id.*
- [19] Our Supreme Court has identified fact scenarios demonstrating a defendant's knowledge of illegal items where the defendant had a non-exclusive possessory interest in the premises: "(1) a defendant's incriminating statements; (2) a defendant's attempting to leave or making furtive gestures; (3) the location of contraband like drugs in settings suggesting manufacturing; (4) the item's proximity to the defendant; (5) the location of contraband within the defendant's plain view; and (6) the mingling of contraband with other items the defendant owns." *Gray*, 957 N.E.2d (citing *Gee v. State*, 810 N.E.2d 338, 341 (Ind. 2004)).
- [20] The proximity of the contraband to Rhoades and the location of the contraband point to Rhoades's knowledge of the items. Rhoades was seen and videotaped by Detective Workman "messaging around underneath the hood of the car" and then walking into one of the trailer homes with "something black" in his hands. Tr. Vol. II p. 36. Detective Workman also testified that he did not observe any other person access underneath the hood of the vehicle during this time and that

he “maintained visual [contact] on the vehicle [and] didn’t leave the area.” Tr. Vol. II p. 40-41. Shortly thereafter, Rhoades exited the trailer, accessed underneath the hood again, and proceeded to drive for a few minutes before being stopped by Officer Smith. Once stopped, the contraband was found by Detective Workman in plain view located in a black pouch underneath the hood of the vehicle.

[21] We conclude that, based on the evidence provided and the surrounding circumstances, the State demonstrated that Rhoades did have the requisite knowledge and intent needed for constructive possession of the contraband. Rhoades’s challenge to the State’s reliance on Detective Workman’s testimony is a request to reweigh the evidence and reassess the credibility of witnesses, which we will not entertain. Furthermore, Rhoades’s argument that his mother is the true owner of the vehicle lacks merit. Ownership of a vehicle and exclusive control of the vehicle is not necessary to prove constructive possession of contraband seized therein. We conclude that sufficient evidence was presented for the jury to find beyond a reasonable doubt that Rhoades constructively possessed the contraband.

Conclusion

[22] The State presented sufficient evidence to support Rhoades’s convictions for possession of narcotic drug, a Level 5 felony; unlawful possession of a syringe, a Level 6 felony, and possession of paraphernalia, a Class C misdemeanor. Accordingly, we affirm.

[23] Affirmed.

Bailey, J., and Kenworthy, J., concur.