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IN THE
COURT OF APPEALS OF INDIANA

Zachary Aaron Woodward,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 2, 2022

Court of Appeals Case No. 21A-CR-1229

Appeal from the Decatur Superior Court

The Honorable Matthew D. Bailey, Judge

Trial Court Cause No. 16D01-2103-F4-196

Tavitas, Judge.

Case Summary[1]

[1] Zachary Woodward appeals his convictions for unlawful possession of a firearm by a serious violent felon, a Level 4 felony; possession of methamphetamine, a Level 5 felony; and possession of marijuana, a Class A misdemeanor. We conclude that the trial court did not err in admitting the laboratory report and that there was sufficient evidence to sustain Woodward's conviction for possession of methamphetamine. We further conclude, in accordance with the precedent of our Supreme Court, that the State failed to produce sufficient evidence of Woodward's identity with respect to the prior felony underlying the possession of a firearm by a serious violent felon conviction. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

Issues

[2] Woodward raises several issues, and we address the following:[2]

I. Whether the trial court abused its discretion in admitting a laboratory report concerning methamphetamine.

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[1] The parties participated in oral argument on April 1, 2022, as part of our "Appeals on Wheels" program. The Court extends its warm gratitude to John Adams High School in South Bend for serving as host of the argument.

[2] Given our remand for new sentencing proceedings, we need not address the parties' arguments with respect to the propriety of the previous sentence under Appellate Rule 7(B). Neither is it necessary to visit the parties' arguments about whether Woodward possessed the firearm recovered from his tattoo shop.

II. Whether the State produced sufficient evidence to sustain Woodward's conviction for possession of methamphetamine

III. Whether the State produced sufficient evidence to establish the requisite prior felony for Woodward's conviction for unlawful possession of a firearm by a serious violent felon.

Facts

[3] Woodward failed to appear for a hearing on March 2, 2021. At that time, he was serving a sentence via community corrections in Decatur County. As a result, a warrant was issued for Woodward's arrest. GPS data established that Woodward spent time at his mother's house on March 2 and then moved toward St. Paul, Indiana. Woodward was arrested soon thereafter at a storage unit in St. Paul. At the storage unit, officers noted that Woodward and his associate smelled like marijuana and learned that one or both of them may be in possession of methamphetamine. A dog sniff search revealed the presence of drugs in both the storage unit and a vehicle present at the scene. A search of the vehicle yielded vaping cartridges in packages that suggested the cartridges contained THC.[3] Despite positive alerts from a K-9 officer, no drugs were discovered in the storage unit.

[3] Tetrahydrocannabinol, or "THC" for short, "is the principal psychoactive constituent of cannabis . . . ." https://en.wikipedia.org/wiki/Tetrahydrocannabinol (last accessed April 5, 2022). The record suggests that none of the cartridges or vaping devices were ever sent to the State Laboratory for testing. *See, e.g.*, Tr. Vol. II p. 183.

[4] Officers then obtained a search warrant for Woodward's home. The search yielded a substance appearing to be methamphetamine, marijuana, shotgun shells and casings, a scale, vaping devices, and other paraphernalia. Officers then obtained a search warrant for Woodward's tattoo parlor. That search revealed a disassembled shotgun, shotgun ammunition, rifle ammunition, nine-millimeter ammunition, a digital scale, marijuana "roach" syringes (some of which contained a crystalline substance), rolling papers, a small tube containing what appeared to be marijuana, and a pill bottle that contained what appeared to be methamphetamine. In a magnetic box in the ceiling, officers also found 1.7 grams of a substance that a forensic scientist later determined to be methamphetamine.[4]

[5] On March 3, 2021, Officers subsequently obtained consent from Woodward's mother to search her barn and the surrounding area based on GPS data that showed Woodward had been at the barn for approximately forty-five minutes while the bench warrant was pending. Officers located a modified shotgun with a loaded magazine in the barn. The shotgun was wrapped in a blanket on the backseat of an inoperable vehicle. The record does not reflect the titled owner of the vehicle.

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[4] Although two samples were submitted to the Indiana State Laboratory, only one substance was tested. The forensic scientist that performed the testing offered no explanation for that fact and testified that she could not say for certain that the untested substance was methamphetamine. Tr. Vol. III p. 22. The lead detective testified, however, that "[the lab] typically only test[s] one item per case." Tr. Vol. II p. 236.

[6] Later that day police interviewed Woodward. He informed the officers that he went to his mother's house the previous day and that he had been in a "storage shed." Tr. Vol. III pp. 52-53. Woodward admitted that he kept firearms at both his mother's barn and his tattoo shop, as well as the fact that he knew that he was not legally allowed to possess firearms. Woodward expressed that he believed he was allowed to be in possession of pieces of a firearm, so long as the pieces were not assembled, and explained that a friend asked Woodward to artistically embellish the stock of one of the weapons. Woodward relayed details pertaining to the shotgun that police recovered from the barn and directed officers to a pill bottle at his tattoo shop that contained methamphetamine, which Woodward had "messed with." St. Ex. 12 at 16:53.

[7] On March 4, 2021, the State charged Woodward with Count I, possession of a firearm by a serious violent felon, a Level 4 felony; Count II, possession of methamphetamine, a Level 5 felony; and Count III, possession of marijuana, a Class A misdemeanor.[5] The State further alleged that Woodward was an habitual offender. On March 25, 2021, Woodward filed a motion for a speedy

[5] The State amended the charging information on May 14, 2021, for purposes of removing some of the offenses upon which the habitual offender enhancement was initially predicated, thereby avoiding the danger of a charge being enhanced twice for the same predicate offense. On May 20, 2021, the State amended the charging information a second time, re-labelling Counts II and III as Counts IV and V, and adding two counts for possession of methamphetamine as a Level 6 felony and possession of marijuana as a Class B misdemeanor. The Court declined to enter a sentence on the later-added charges, presumably for reasons of double jeopardy. Both amendments to the charging information contained additional changes to rectify minor errors.

trial pursuant to Indiana Criminal Rule (4)(B)(1); the trial court granted the motion on April 11, 2021.

[8] On May 21, 2021, Woodward filed a motion in limine to exclude a "Certificate of Analysis from the Indiana State Police Laboratory Division regarding the testing of alleged illegal substances." Appellant's App. Vol. II p. 48. Woodward argued that he received the laboratory report only five days before his trial and that this constituted impermissible undue delay under Indiana Evidence Rule 403. The trial court denied the motion.

[9] At Woodward's jury trial in May 2021, the State moved to admit the laboratory report. Woodward's counsel stated that he had "No objection to (indiscernible)." Tr. Vol. III p. 18. The jury found Woodward guilty as charged. The jury similarly found that Woodward was an habitual offender.

[10] The trial court sentenced Woodward to ten years for possession of a firearm by a serious violent felon, enhanced by twenty years on the basis of Woodward's status as an habitual offender; six years for possession of methamphetamine; and one year for possession of marijuana. The latter two sentences were ordered to be served concurrently with the sentence for possession of a firearm; thus, Woodward's aggregate sentence is thirty years. This appeal now follows.

Analysis

I. Laboratory Report

[11] Woodward asserts that the laboratory report that positively identified the substance recovered from a magnetic box in the ceiling of Woodward's tattoo shop as methamphetamine was improperly admitted at trial in violation of Evidence Rule 403. He received the laboratory report five days before that trial was set to begin.[6] Consequently, Woodward filed a motion in limine to exclude the report and argued "defendant received [the laboratory report] 5 days prior to the jury trial date. Because of this undue delay, counsel for defendant would not have enough time to properly investigate the findings of the lab results, [and] consult with their own independent expert over the findings of [the laboratory report]." Appellant's App. Vol. II pp. 48-49. The trial court denied the motion in limine, and when the report was submitted during the trial, Woodward's counsel stated: "[n]o objection [ ]." Tr. Vol. III p. 18.

[12] We review challenges to the admission of evidence for an abuse of the trial court's discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018). In those instances, we will reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Id*.

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[6] Though the receipt of the laboratory report five days before trial appears to violate the trial court's order that "[a]ll discovery shall be completed no later than thirty (30) days prior to the trial date[,]" no objection was made on the basis of the case management order below. Appellant's App. Vol. II p. 22. As such, arguments pertaining to timing stipulations set forth in the case management order are waived.

[13] It should be noted that, although Woodward filed a motion in limine to exclude the laboratory report, he did not object when the State sought to admit the report at trial. "It is axiomatic that to preserve a claim of evidentiary error for purposes of appeal, a defendant must make a contemporaneous objection at the time the evidence is introduced." *Shoda v. State*, 132 N.E.3d 454, 460 (Ind. Ct. App. 2019) (citing *Laird v. State*, 103 N.E.3d 1171, 1175 (Ind. Ct. App. 2018), *trans. denied*). "Our supreme court in *Brown* reiterated that '[a] contemporaneous objection at the time the evidence is introduced at trial is required to preserve the issue for appeal, whether or not the appellant has filed a pretrial motion to suppress.'" *Id*. at 460-61 (quoting *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010)). "This rule is no mere procedural technicality; instead, its purpose is to allow the trial judge to consider the issue in light of any fresh developments and also to correct any errors." *Id*. at 461 (citing *Laird*, 103 N.E.3d at 1175). This issue is, therefore, waived.

[14] Ordinarily, the failure to object to the admission of evidence at trial would consign an appellant to the doctrine of fundamental error. No fundamental error exception is available here, however, because Woodward explicitly stated that he had "[n]o objection" to the report. Tr. Vol. III p. 18. "'The appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous.'" *Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013) (quoting *Harrison v. State*, 258 Ind. 359, 281 N.E.2d 98, 100 (1972)).

> Further, the doctrine of fundamental error is inapplicable to the circumstances presented here. The doctrine presupposes the trial judge erred in performing some duty that the law had charged the judge with performing *sua sponte*. Presumably a trial judge is aware of her own *sua sponte* duties. But upon an express declaration of "no objection" a trial judge has no duty to determine which exhibits a party decides, for whatever strategic reasons, to allow into evidence. "[O]nly the interested party himself can really know whether the introduction or exclusion of a particular piece of evidence is in his own best interests." *Winston v. State*, 165 Ind. App. 369, 332 N.E.2d 229, 233 (1975).

Id.; *see also Rolston v. State*, 81 N.E.3d 1097, 1103 (Ind. Ct. App. 2017) ("Rolston's claim of fundamental error is not available to her. She did not merely fail to object to the admission of the now-challenged autopsy photographs; rather, she affirmatively declared that she had 'no objection' to them."), *trans. denied*.

[15] Nevertheless, we consider the merits of Woodward's Evidence Rule 403 claim. By applying Indiana Evidence Rule 403, "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Ind. Evid. R. 403.

[16] Woodward's argument misapprehends Rule 403. The laboratory report did not cause any delay whatsoever in Woodward's trial. The relevant question under Rule 403 is whether the *admission* of the report at trial would cause undue delay. Woodward argues that the submission of the report to him, prior to the trial,

was a result of undue delay, not a cause thereof. As such, his arguments on this issue are inapposite. The trial court did not abuse its discretion by admitting the report.

II. Sufficiency of the Evidence

[17] Woodward next claims that the evidence was insufficient to sustain his convictions. 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)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id*. (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)). "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*. 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)), *trans. denied*.

[18] Woodward claims that the evidence was insufficient to prove: (A) Woodward possessed methamphetamine; and (B) the existence of a prior violent felony

necessary to find that Woodward was a serious violent felon.[7] We address each in turn.

A. Possession of Methamphetamine

[19] Woodward argues that the State failed to submit sufficient evidence to establish his possession of methamphetamine.[8] Indiana Code Section 35-48-4-6.1 provides:

> (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses methamphetamine (pure or adulterated) commits possession of methamphetamine, a Level 6 felony, except as provided in subsections (b) through (d).
>
> (b) The offense is a Level 5 felony if:
>
> > (1) the amount of the drug involved is at least five (5) but less than ten (10) grams; or
> >
> > (2) the amount of the drug involved is less than five (5) grams and an enhancing circumstance applies.

[7] In his appellant's brief, Woodward also challenged the sufficiency of evidence with respect to possession of the shotgun in his mother's barn. At oral argument, however, Woodward conceded possession of that shotgun.

[8] Despite the fact that officers recovered substances suspected to be methamphetamine from at least four different sources, only one of those substances—the one in the magnetic box concealed in the ceiling—was tested by the State laboratory.

[20] Possession can be either actual or constructive. *See, e.g.*, *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011) (citing *Goodner v. State*, 685 N.E.2d 1058 (Ind. 1997)). We consider the matter here to be one of constructive possession. "For the State to prove constructive possession, it must prove the defendant had the intent and capability to maintain dominion and control over the contraband." *Parks v. State*, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018) (citing *Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997), *modified on reh'g on other grounds*, 685 N.E.2d 698 (Ind. 1997)).

[21] At oral argument, Woodward conceded the capability prong.[9] Thus, we consider only whether the State provided sufficient evidence to establish that Woodward had the intent to maintain dominion and control over the contraband. "To prove intent to maintain dominion and control, there must be additional circumstances supporting the inference of intent." *Parks*, 113 N.E.3d at 273.

> Proof of dominion and control, and therefore knowledge, of contraband has been found through a variety of means: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant. *Henderson v. State*, 715

[9] In order to prove capability, the State must demonstrate that the defendant is able to reduce the controlled substance to the defendant's personal possession. *B.R. v. State*, 162 N.E.3d 1173, 1177 (Ind. Ct. App. 2021) (citing *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)).

> N.E.2d 833, 836 (Ind. 1999) . . . . "When constructive possession is alleged, the State must demonstrate the defendant's knowledge of the contraband." *Bradshaw v. State*, 818 N.E.2d 59, 63 (Ind. Ct. App. 2004).

Parks, 113 N.E.3d at 273.

[22] Woodward argues that the State presented no evidence of his knowledge of the magnetic box hidden in the ceiling. Rather, he suggests that an associate of his—a methamphetamine user—could have stored the drugs there without his knowledge. Additionally, Woodward suggests that the State failed to present evidence regarding the length of time the methamphetamine had been there. Woodward's arguments are a request that we reweigh the evidence, which we cannot do.

[23] We note that:

> A trier of fact may infer that a defendant had the capability to maintain dominion and control over contraband from the simple fact that the defendant had a possessory interest in the premises on which an officer found the item. *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004) (citing *Davenport v. State*, 464 N.E.2d 1302, 1307 (Ind. 1984)). We allow this inference even when that possessory interest is not exclusive. *Id*. at 341. A trier of fact may likewise infer that a defendant had the intent to maintain dominion and control over contraband from the defendant's possessory interest in the premises, even when that possessory interest is not exclusive. *Id*. When that possessory interest is not exclusive, however, the State must support this second inference with additional circumstances pointing to the defendant's knowledge of the presence and the nature of the item. *Id*.

Gray v. State, 957 N.E.2d 171, 174-75 (Ind. 2011).

[24] Here, the following factors are indicative of Woodward's intent to maintain dominion and control: (1) trial testimony that the magnetic box did not have any dust on it, suggesting it had not been there very long; (2) a lack of evidence demonstrating that Woodward had any employees or co-workers at the time of the search;[10] (3) a lack of evidence that any other persons had access to—or a possessory interest in—the back of his tattoo shop; (4) Woodward owned the tattoo shop; (5) the magnetic box was hidden in a workshop area, rather than an area where Woodward might serve customers; (6) the ceiling tiles concealing the box "appeared to have been messed with[,]" which is what attracted the attention of the police in the first place, Tr. Vol. II p. 228; and (7) Woodward admitted to police that a pill bottle in the tattoo shop contained methamphetamine. We conclude that the State presented sufficient evidence for the jury to conclude that Woodward constructively possessed the methamphetamine located in the ceiling.

B. Serious Violent Felon

[25] Woodward argues that the State failed to submit sufficient evidence to demonstrate that he is a serious violent felon. The State did submit documents evidencing that a person named Zachary Woodward was convicted for dealing

[10] An associate of Woodward's testified that she previously used space in the tattoo shop to cut hair prior to Christmas of 2020; however, the search occurred in March of 2021.

in a controlled substance in 2008.[11] Those records included a date of birth and a social security number. But the State did not introduce evidence of the defendant Woodward's social security number nor any other evidence linking defendant Woodward to the previous conviction. Woodward contends that the State did not prove that he was the same Zachary Woodward listed in those documents.

[26] Indiana Code Section 35-47-4-5 provides in pertinent part:

> (a) As used in this section, "serious violent felon" means a person who has been convicted of committing a serious violent felony.
>
> (b) As used in this section, "serious violent felony" means . . . dealing in a schedule IV controlled substance (IC 35-48-4-3) . . . .
>
> (c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Level 4 felony.

[27] Woodward argues that the only evidence of the requisite prior conviction that the State introduced were certified records of the 2008 conviction. Those records are insufficient, Woodward contends, because "[o]ur appellate courts have held that a matching name and date of birth, absent other identifying evidence, are not sufficient to prove identity" when comparing a prior offense

[11] The 2008 conviction was from neighboring Shelby County.

with a present defendant. Appellant's Br. p.10. We agree with Woodward's assessment of this aspect of our jurisprudence.

[28] With respect to proving the existence of a prior conviction, our Supreme Court has held:

> In regard to the use of documents to establish the existence of prior convictions we have stated: Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of prior felonies. *Schlomer v. State*, 580 N.E.2d 950, 958 (Ind. 1991) (citing *Andrews v. State*, 536 N.E.2d 507 (Ind. 1989)). While there *must be supporting evidence* to identify the defendant as the person named in the documents, the evidence may be circumstantial. *Id.*; *see also Coker v. State*, 455 N.E.2d 319, 322 (Ind. 1983). If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown. *Pointer v. State*, 499 N.E.2d 1087, 1089 (Ind. 1986)[;] *Hernandez v. State*, 716 N.E.2d 948, 953 (Ind. 1999). To prove the defendant was previously convicted of operating while intoxicated the State offered into evidence the information, plea agreement, and the minutes of the court for the guilty plea. Record at 495-96, 501, 504. The documents carry a consistent cause number for this offense, [ ] and the name the offender and *other identifying information match the defendant*. There was sufficient evidence from which a fact-finder could find beyond a reasonable doubt that the defendant was convicted of two separate and unrelated felonies.

Tyson v. State, 766 N.E.2d 715, 718 (Ind. 2002) (emphases added); *see also Payne v. State*, 96 N.E.3d 606, 613 (Ind. Ct. App. 2018) ("the *only* evidence the State

introduced to prove Payne's identity as the defendant in the robbery cause was the evidence of the robbery defendant's name and birth date. As this Court has already held that a defendant's name and birth date, *alone*, are not sufficient to prove identity, we conclude that there was not sufficient evidence to prove that Payne had previously committed the robbery and, therefore, qualified as an SVF." (emphases added)).[12]

[29] The State—without objection—submitted exhibits 1-A through 1-G. Those exhibits included: (1) the charging information from a 2007 incident for which "Zachary A. Woodward . . . DOB: 10-26-1988" was charged with, among other things, dealing in a Schedule IV controlled substance, then a Class C felony (Ex. 1-A; Ex. Vol. I p. 6); (2) the probable cause affidavit underlying that charge, complete with police incident reports; (3) the attendant guilty plea, dated November 20, 2008; (4) the trial court's order on the guilty plea; (5) the pertinent sentencing order; (6) the abstract of judgment; and (7) the bond record. Furthermore, the police incident reports included the 2007 offender's height, weight, ethnicity, eye color, hair color, and social security number. Ex. Vol. I p. 11.

[30] The State called no witnesses to identify defendant Woodward as the person who pleaded guilty to the 2007 charge. Neither did the State provide mugshots

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[12] Our Supreme Court originally granted transfer and vacated our opinion in *Payne*. 102 N.E.3d 287 (Ind. 2018). The Supreme Court, however, vacated its original grant of transfer and restored the opinion of this Court. 99 N.E.3d 624 (Ind. 2018).

or fingerprints from the prior charge, from which an identification could be made or rejected by the jury. Although the records of the prior offense included a social security number, the State did not present evidence of Woodward's social security number to the jury.

[31] The State contends that it also provided additional corroborating circumstantial evidence. At trial, the State submitted a video recording of Woodward's statements to police. Among those statements was an acknowledgement that Woodward was not allowed to possess firearms and that he would be in substantial trouble if caught possessing a firearm. St. Ex. 12 at 7:17. Accordingly, the jury learned of Woodward's subjective awareness that: (1) he was not allowed to possess firearms, and (2) the consequences for violating that prohibition would be severe.

[32] We conclude that neither of the State's arguments is persuasive. Woodward's subjective awareness that he was not allowed to possess firearms does not make it more likely that he is the perpetrator of the 2007 offense. It may make it more likely that he was the perpetrator of *some prior offense*. But the State carried a burden to prove that Woodward committed a *specific* offense, one chosen and presented by the State.

[33] Moreover, given the lack of evidence at trial of Woodward's physical characteristics, we cannot say that the identifiers in the 2007 police incident reports sufficiently identify Woodward as the perpetrator beyond a reasonable doubt. The evidence in the incident reports describes the 2007 offender. The

State was required to link that description to the May 2021 defendant in order to persuade us that it had provided "supporting evidence." *See, e.g. Livingston v. State*, 537 N.E.2d 75, 78 (Ind. Ct. App. 1989) (rejecting State's claim that it provided sufficient evidence when it submitted certified conviction records in addition to BMV records of the defendant containing a matching name and social security number. The State did not provide photographs or fingerprint evidence, and the dates of birth were inconsistent in the documentation.). The State provided no photographs of the 2007 offender, no fingerprint evidence, no witness testimony, and no evidence that any of the identifiers in the prior record, including the social security, matched Woodward.[13]

[34] Our review of the case law leads us to the firm conclusion that both our Supreme Court and this Court require more evidence than a date of birth and same name from the State to prove Woodward's identity as the 2007 offender. This is a requirement that can be satisfied in myriad ways: testimony from a witness who is familiar with both the instant defendant and the prior offense, fingerprint evidence, and photographs are all forms of evidence familiar to the State. *See, e.g.*, *St. Mociers v. State*, 459 N.E.2d 26, 28 (Ind. 1984) (finding sufficient evidence of identity when State provided expert fingerprint testimony in addition to the records of conviction); *Thomas v. State*, 471 N.E.2d 677, 680 (Ind. 1984) ("In this case, we have found the photographs as well as the

[13] It may be true that the trial court had access to information that made clear that Woodward committed the 2007 offense. The question, however, is what evidence the *jury* had access to, and whether that evidence was sufficient.

fingerprints attached to the commitment records for both prior felonies were properly admitted. This was sufficient evidence from which the jury could determine whether the defendant seated before them was the same person who had committed the prior felonies."); *Duncan v. State*, 274 Ind. 144, 151, 409 N.E.2d 597, 601 (1980) ("A mere document, relating to a conviction of one with the same name as the defendant would have been insufficient. Exhibit Number Eleven (11) served to discharge the State's obligation, inasmuch as it contained, *inter alia, a prison photograph of the defendant*." (emphasis added) (citing *Kelley v. State*, (1933) 204 Ind. 612, 185 N.E. 453)).

[35] In *Parks v. State*, 921 N.E.2d 826, 834 (Ind. Ct. App. 2010), for example, we held that the State submitted sufficient evidence when it provided the defendant's jail records—including photographs—and multiple exhibits demonstrating that the social security number of the defendant matched that of the prior offender. In *Jackson v. State*, we concluded that there was sufficient evidence of identity where the defendant's name was "unique" and his counsel conceded that he had committed the prior crimes during closing arguments. 33 N.E.3d 1173, 1183 (Ind. Ct. App. 2015), *trans. granted, opinion aff'd in part, vacated in part*, 50 N.E.3d 767 (Ind. 2016). In *Grant v. State*, 870 N.E.2d 1049, 1051 (Ind. Ct. App. 2007), we rejected a sufficiency of evidence claim on the basis of "detailed fingerprint evidence" that demonstrated that Grant must have committed the prior offense. *See also Seeglitz v. State,* 500 N.E.2d 144, 149 (Ind. 1986) (State's submission of fingerprint evidence and photographs was sufficient).

[36] More recent cases—beyond just the *Tyson* and *Payne* cases discussed at oral argument and cited above—have stayed true to our Supreme Court's mandate that commission of a prior felony be proven by more than mere prior conviction records. *See, e.g.*, *Oster v. State*, 992 N.E.2d 871, 877 (Ind. Ct. App. 2013) (finding sufficient evidence of identity where State provided witness testimony of parole officer familiar with defendant and his criminal history in addition to prior records) (citing *Hernandez v. State*, 716 N.E.2d 948, 953 (Ind. 1999)); *Walker v. State*, 988 N.E.2d 1181, 1187 (Ind. Ct. App. 2013) (noting, in a post-conviction review context, our agreement that testimony of the officer who investigated the prior crime, in addition to conviction records, was sufficient).

[37] We conclude, based on the limited evidence of the identity of the prior offender, that there is insufficient evidence to find the identification element of the crime of illegal possession of a firearm by a serious violent felon to have been proven beyond a reasonable doubt. We are hesitant to reverse a jury finding on the basis of sufficiency of evidence. Nevertheless, our precedent is clear. *See Davis v. State*, 493 N.E.2d 167, 169 (Ind. 1986) (reversing jury's habitual offender determination on the basis that the State failed to provide sufficient evidence).

[38] Accordingly, we reverse Woodward's conviction for unlawful possession of a firearm by a serious violent felon. Because the habitual offender finding, which Woodward does not challenge, attached to this reversed conviction, we must remand for resentencing. *See, e.g. Hobbs v. State,* 161 N.E.3d 380, 387 (Ind. Ct. App. 2020) ("In *Greer v. State,* 680 N.E.2d 526 (Ind. 1997), our supreme court reversed Greer's attempted murder conviction to which a habitual offender

enhancement was attached. On resentencing, the trial court attached the habitual offender enhancement to Greer's robbery conviction and resentenced Greer for his robbery conviction. Greer appealed his resentencing. Our supreme court held that the trial court on remand was not prohibited from revising the sentence for the surviving felony conviction to reflect the habitual offender enhancement.") (internal citations omitted), *trans. denied*.

Conclusion

[39] The trial court did not err in admitting the laboratory report, and the State produced sufficient evidence to sustain Woodward's conviction for possession of methamphetamine. The State failed, however, to produce sufficient evidence to sustain Woodward's conviction for unlawful possession of a firearm by a serious violent felon. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

[40] Affirmed in part, reversed in part, and remanded.

Riley, J., and Vaidik, J., concur.