MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cheryl McCollum,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 9, 2023

Court of Appeals Case No. 22A-CR-3024

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2012-F5-207

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Cheryl McCollum appeals her conviction of Level 6 felony obstruction of justice.[1] She argues the State did not present sufficient evidence to prove she committed the crime. We affirm.

Facts and Procedural History

[2] On June 26, 2020, McCollum was staying at the Fairfield Inn in Lafayette, Indiana. Officer Matthew Pate was dispatched to the Fairfield Inn after hotel staff reported a suspicious incident. When Officer Pate arrived, he spoke with the hotel clerk, who directed him to room 200. McCollum answered the door of room 200, identified herself, and explained the disturbance occurred because an unwanted guest had shown up at the room. McCollum also informed Officer Pate that she was serving a sentence on house arrest. Officer Pate contacted Community Corrections to notify them that McCollum was staying at the Fairfield Inn. Community Corrections notified Officer Pate that McCollum had moved to a different room without informing them, so he returned to the door of room 200 to wait for Community Corrections to arrive. As he waited at the door, he overheard McCollum argue with another occupant of the room, Phillip Certain, about a syringe that was somewhere in the room.

[3] Officer Marc Grupe, a surveillance officer for Tippecanoe County Community Corrections, arrived on the scene about fifteen minutes after Officer Pate called

[1] Ind. Code § 35-44.1-2-2(a)(3).

Community Corrections. After Officer Pate explained the argument he overheard, Officer Grupe knocked on the door and Certain answered. Officer Grupe requested to speak with McCollum, and he observed her exiting the bathroom. After Officer Grupe obtained consent to search the room, McCollum went outside and spoke with Officer Pate. Officer Pate asked McCollum about the argument he overheard, specifically where the syringe was in the room. McCollum eventually admitted she flushed it down the toilet. Officer Pate also asked McCollum if she had recently consumed drugs, to which McCollum stated she relapsed the previous night. During the search of the room, officers found a container with methamphetamine residue, a bag of methamphetamine, a syringe, and two guns.

[4] On December 15, 2020, the State charged McCollum with Level 5 felony possession of methamphetamine,[2] Level 6 felony possession of a controlled substance,[3] and Level 6 felony unlawful possession of a syringe.[4] On October 22, 2021, the State requested permission to add a charge of Level 6 felony obstruction of justice, which the trial court granted. The trial court held McCollum's jury trial on September 13 through September 14, 2022. The jury returned guilty verdicts of Level 6 felony possession of methamphetamine,

[2] Ind. Code § 35-48-4-6.1(a) & (b)(2).

[3] Ind. Code § 35-48-4-7(a) & (b).

[4] Ind. Code § 16-42-19-18(a) & (b).

Class A misdemeanor possession of a controlled substance,[5] Level 6 felony unlawful possession of a syringe, and Level 6 felony obstruction of justice. The trial court entered the four convictions and imposed a total sentence of four years.

Discussion and Decision

[5] McCollum contends the State did not present sufficient evidence that she committed Level 6 felony obstruction of justice.[6] When reviewing sufficiency of evidence claims, this court will

> 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.

Dowell v. State, 206 N.E.3d 1167, 1170 (Ind. Ct. App. 2023) (quoting *Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted)).

[6] To be convicted of Level 6 felony obstruction of justice, the State must prove beyond a reasonable doubt that the defendant "alter[ed], damage[d], or remove[d] any record, document, or thing with the intent to prevent it from

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[5] Ind. Code § 35-48-4-7(a).

[6] McCollum does not challenge any of her other convictions.

being produced or used as evidence in any official proceeding or investigation." Ind. Code § 35-44.1-2-2(a)(3). McCollum contends she flushed the syringe prior to the officers' arrival, thus she did not obstruct justice. Her contention stems from a clarification that defense counsel made during Officer Grupe's testimony, wherein Officer Grupe stated McCollum said she had flushed the syringe prior to his arrival.

[7] In *Mullins v. State*, 717 N.E.2d. 902, 903 (Ind. Ct. App. 1999), Mullins appealed his conviction of Class D felony obstruction of justice[7] on the grounds that the State provided insufficient evidence. There, a police officer observed Mullins sitting in his car while a female leaned into the passenger side window. *Id.* The officer decided to approach the car, and as he walked up, he witnessed Mullins put a "white and powdery hard substance" in his mouth. *Id.* The officer ordered Mullins to spit it out, which Mullins refused to do. *Id*. When the officer tried to remove the material from Mullin's mouth, Mullins resisted and hit the officer. *Id.* Mullins successfully swallowed the material, but the officer still observed white residue in his mouth. *Id.* Mullins contended he did not obstruct justice when he swallowed the material because he was not under arrest at the time of the incident, and he did not know the officer was about to start an investigation. *Id.* at 904. We rejected Mullins's contentions and

[7] Ind. Code § 35-44-3-4(a)(3) (1998) (language substantially the same for the purpose of this appeal).

affirmed his conviction because when Mullins saw the officer approaching his car he should have known he was under investigation, and he took action to prevent the officer from obtaining the substance "which otherwise would have been used as evidence in a possession charge." *Id.*

[8] Here, Officer Pate responded to the suspicious activity call and talked with McCollum. After learning of McCollum's house arrest, he called Community Corrections to confirm McCollum's location. Once Officer Pate learned McCollum had moved rooms without proper notice and Community Corrections would be arriving to confirm her location, he waited outside her door. While waiting, Officer Pate overheard an argument between McCollum and Certain about a syringe in the room. When Officer Grupe from Community Corrections arrived and conducted a search, McCollum admitted to Officer Pate that she had flushed the syringe. Furthermore, when Certain opened the door to Officer Grupe, Officer Grupe observed McCollum exiting the bathroom.

[9] Like in *Mullins*, 717 N.E.2d 903, where the defendant swallowed drugs as an officer approached his car, here a reasonable trier of fact could reasonably conclude McCollum flushed the syringe after speaking with Officer Pate because she believed officers from Community Corrections would be on the way to investigate, especially because Officer Pate was standing outside her door. "[W]hen determining whether the elements of an offense are proven

beyond a reasonable doubt, a fact-finder may consider both the evidence *and the resulting reasonable inferences.*" *Thang v. State*, 10 N.E.3d 1256, 1260 (Ind. 2014) (italics in original). Here, a jury could reasonably infer that Officer Pate speaking with McCollum, and then remaining outside her door, put her on notice that Community Corrections would be arriving shortly thereafter to conduct a room search because she moved rooms. As McCollum flushed the syringe to prevent a piece of evidence from being discovered, there was sufficient evidence for a reasonable trier of fact to find her guilty beyond a reasonable doubt. *See id.* (holding evidence sufficient when defendant destroyed evidence upon officer's approach).

Conclusion

[10] The State presented sufficient evidence to prove McCollum committed Level 6 felony obstruction of justice. Therefore, we affirm her conviction.

[11] Affirmed.

Altice, C.J., and Foley, J., concur.