

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Thomas P. Keller
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jennifer Anwarzai
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jorge M. Navarro,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

December 29, 2023

Court of Appeals Case No.
23A-CR-1440

Appeal from the St. Joseph
Superior Court

The Honorable Stephanie E.
Steele, Judge

Trial Court Cause No.
71D01-2210-F6-865

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

- [1] Jorge Navarro (“Navarro”) appeals, following a jury trial, his conviction for Level 6 felony possession of methamphetamine.¹ Navarro argues that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether there was sufficient evidence to support Navarro’s conviction.

Facts

- [3] On October 11, 2022, around 3:00 a.m., South Bend Police Department Officer Emanuel Garcia (“Officer Garcia”) responded to a call about gunshots fired. When Officer Garcia arrived at the scene, he did not hear any gunshots. Instead, he saw two people fighting in an alley. Officer Garcia also heard yelling, but he could not make out what was being said. When Officer Garcia approached the fighting individuals, the two people separated. One of those individuals was Navarro, who Officer Garcia found on the ground with no pants, underwear, or shoes on. The other two individuals in the alley were fully clothed. Navarro looked “very disheveled[,]” “very upset[,]” “angry[,]” and “very animated.” (Tr. Vol. 2 at 47). Navarro was sweating profusely while

¹ IND. CODE § 35-48-4-6.1.

sitting on the ground in the alley and wearing no clothing from the waist down. Officer Garcia saw Navarro holding out a cross necklace to one of the other individuals in the alley while speaking partly in Spanish and partly in English. Navarro also made erratic movements such as moving his knees in and out rapidly.

[4] Officer Garcia also noticed that Navarro was trying to say something but “it was really just noises.” (Tr. Vol. 2 at 49). Navarro also said “very vulgar and profanity laden things” when Officer Garcia tried to talk to him. (Tr. Vol. 2 at 49).

[5] Officer Garcia ordered Navarro to get on his stomach, but Navarro ignored the commands. Officer Garcia drew his taser and ordered Navarro onto his stomach again, but Navarro still did not comply. Instead, Navarro continued to “scoot around” on his butt. (Tr. Vol. 2 at 51). Navarro also clenched his fists, used profanities, tensed up so hard that veins were popping out on his neck and head, breathed very hard, and gritted his teeth.

[6] Around eight officers arrived on the scene. Officer Garcia and another officer attempted to roll Navarro onto his stomach. When Officer Garcia got on top of Navarro to restrain him, Navarro scratched Officer Garcia’s arm. Officer Garcia, with the assistance of multiple responding officers, was able to handcuff Navarro. After taking a short break to catch their breath, the officers attempted to get Navarro into Officer Garcia’s car. Navarro fought the officers and refused to get into Officer Garcia’s car. Navarro locked his legs while lying in

the back seat of the car to prevent officers from shutting the car's door.

Additionally, Navarro kicked Officer Garcia in the shin and kicked Officer Conor Redden ("Officer Redden") multiple times while they tried to get Navarro's legs into the car.

[7] Officers searched around the area of the alley where they had arrested Navarro and found a pair of shorts and a pair of boots about ten to fifteen feet from where Navarro had been arrested. Officers saw other trash in the alley but no other articles of clothing. Officer Garcia took the shorts and boots with him back to his car.

[8] Navarro continued thrashing around in the backseat of Officer Garcia's car. Navarro managed to turn himself upside down in the seat, so that his head was where his feet should have been and his legs were in the seat. Additionally, Navarro ejaculated in Officer Garcia's car. Navarro continued to say vulgar phrases like "black p****" and "f***[.]" (Tr. Vol. 2 at 63). Officers moved Navarro from Officer Garcia's car to Officer Niall O'Regan's ("Officer O'Regan") car. When officers drove Navarro to the jail, they searched the shorts that had been found near the area where Navarro had been arrested. In those shorts, the officers found a crystal-like substance that they believed to be methamphetamine. Officers field-tested the substance, and it tested positive for methamphetamine.

[9] The State charged Navarro with Level 6 felony possession of methamphetamine.² In April 2023, the trial court held a jury trial. The jury heard the facts as set forth above. Additionally, Officer Garcia testified that, based on his training and experience, Navarro’s behavior was consistent with someone under the influence of methamphetamine. Officer Garcia also testified that the shorts found near Navarro in the alley looked “propped up” and were not “plastered down[,]” “matted down,” or “wet[.]” (Tr. Vol. 2 at 73). Officer Garcia testified that the shorts being propped up and dry made him believe that they had been placed on the ground recently. Officer Redden testified that Navarro’s words were “incomprehensible” and that Navarro had kicked him multiple times, including in the groin. (Tr. Vol. 2 at 95). The State and Navarro entered into a stipulation agreeing that there were no issues in the chain of custody of the evidence and that the crystal-like substance found in the shorts was methamphetamine.

[10] The State, in its closing arguments, argued that Navarro had constructive possession of the pair of shorts and the methamphetamine found by the officers in the pocket of the shorts. The trial court instructed the jury on constructive possession. At the conclusion of the jury trial, the jury found Navarro guilty on all counts. The trial court sentenced Navarro to an aggregate sentence of thirty

² The State also charged Navarro with two counts of Level 6 felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class B misdemeanor disorderly conduct, and Class B misdemeanor criminal mischief. The State dismissed the criminal mischief charge before Navarro’s jury trial, and Navarro does not challenge his other convictions on appeal.

(30) months, with 448 days executed at the county jail and 464 days suspended to probation.

[11] Navarro now appeals.

Decision

[12] Navarro argues that there was insufficient evidence to support his conviction. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[13] INDIANA CODE § 35-48-4-6.1 provides that “[a] person who . . . knowingly or intentionally possesses methamphetamine . . . commits possession of methamphetamine, a Level 6 felony[.]” It is well-established that possession of an item may be either actual or constructive. *See Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997), *modified on reh’g*, 685 N.E.2d 698 (Ind. 1997). Constructive possession, which is applicable in this case, occurs when a person has: (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it. *Id.*

[14] The intent element of constructive possession is shown if the State demonstrates the defendant’s knowledge of the presence of the contraband. *Goliday v. State*,

708 N.E.2d 4, 6 (Ind. 1999). A defendant's knowledge may be inferred from either the exclusive dominion and control over the premises containing the contraband, or if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of contraband. *Id.* These additional circumstances may include: "(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 v. State*, 957 N.E.2d 171, 175 (Ind. 2011). The State is not required to prove all additional circumstances when showing that a defendant had the intent to maintain dominion and control over contraband. *See Gee v. State*, 810 N.E.2d 338, 344 (Ind. 2004).

[15] Navarro argues that the evidence is insufficient to satisfy the intent element of constructive possession because there were no circumstances pointing to his knowledge of the methamphetamine found in the pair of shorts. We disagree.

[16] Our review of the record reveals that Officer Garcia, who was responding to a call at 3:00 a.m. in October, saw Navarro naked from the waist down in an alley. Ten to fifteen feet away from Navarro were a pair of propped up shorts, with no signs of matting or wetness, along with a pair of boots. Officer Garcia saw no other articles of clothing in the alley. The record also shows that no other individuals on the scene were missing any articles of clothing.

Furthermore, Navarro aggressively resisted arrest, clenched his fists, used profanities, tensed up so hard that veins were popping out on his neck and head, breathed very hard, gritted his teeth, acted sexually excited, and acted erratically. Additionally, Officer Garcia testified that Navarro's behavior was consistent with someone under the influence of methamphetamine. This behavior along with the proximity of the clothing to Navarro, who was in a half-naked state, are additional circumstances that satisfy the intent element of constructive possession. Therefore, we hold that there was sufficient evidence for the jury to infer that Navarro constructively possessed the methamphetamine. Accordingly, we affirm the trial court's judgment.

[17] Affirmed.

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