

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rebecca Irene McVey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 19, 2022

Court of Appeals Case No.
22A-CR-1140

Appeal from the
Tippecanoe Superior Court

The Honorable
Laura W. Zeman, Senior Judge

Trial Court Cause No.
79D04-2109-F6-817

Vaidik, Judge.

Case Summary

- [1] Rebecca Irene McVey was convicted of Level 6 felony possession of methamphetamine. She now appeals, arguing the evidence is insufficient to support her conviction. We affirm.

Facts and Procedural History

- [2] One night in March 2021, Officer Grant Leroux with the Lafayette Police Department was on patrol with his canine partner Cezar when he noticed a car with expired plates. Officer Leroux initiated a traffic stop and spoke with the driver and passenger. McVey was the passenger, and Brandi Houser was the driver. Officer Leroux asked McVey and Houser to step out of the car, and they complied. Officer Leroux then deployed Cezar around the car to perform a canine sniff, and Cezar alerted to the presence of narcotics.
- [3] Officer Leroux searched the car and found a pink bag in the backseat behind the driver's seat. The bag contained multiple baggies of methamphetamine, "pill bottles with the name Rebecca McVey as well as another document with her name on it." Tr. p. 12. Officer Leroux read McVey and Houser their *Miranda* warnings and then spoke with them about the meth he found in the car. McVey said she had recently purchased the car but denied the meth belonged to her.
- [4] The State charged McVey with Level 6 felony possession of methamphetamine, and a bench trial was held. McVey testified that neither the bag nor the meth belonged to her. She claimed she didn't know how her items got in the bag with

the meth. McVey said she hadn't purchased the car but had been using it (both as a driver and passenger) over the past month because she was "test driving" it. *Id.* at 35. She said that during that time, multiple people had access to the car.

[5] The trial court said it was a "close case." *Id.* at 50. However, the court found that because McVey's items were found in the bag with the meth, the State had "met it[s] burden of proof beyond a reasonable doubt." *Id.* at 51.

[6] McVey now appeals.

Discussion and Decision

[7] McVey contends the evidence is insufficient to support her conviction for possession of methamphetamine. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We only consider the evidence supporting the judgment and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[8] McVey argues the evidence is insufficient to prove she constructively possessed the meth. Constructive possession requires proof that "the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband." *Goliday v. State*, 708

N.E.2d 4, 6 (Ind. 1999). McVey doesn't dispute she was capable of maintaining dominion and control over the meth; she only disputes whether the State proved she had the intent to do so. *See* Appellant's Br. p. 8.

[9] "To prove the intent element, the State must demonstrate the defendant's knowledge of the presence of the contraband." *Goliday*, 708 N.E.2d at 6. When the defendant has exclusive possession of the premises where the contraband is found, an inference is permitted that she knew of its presence. *Collins v. State*, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005), *trans. denied*. But where possession of the premises is non-exclusive, the inference is not permitted absent some additional circumstances indicating knowledge of the presence of the contraband. *Id.* The "additional circumstances" have been shown by various means: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) a drug-manufacturing setting, (4) proximity of the contraband to the defendant, (5) contraband in plain view, and (6) the mingling of the contraband with other items owned by the defendant. *Id.* These "additional circumstances" are non-exhaustive; ultimately, the question is whether a reasonable factfinder could conclude from the evidence that the defendant had knowledge of the contraband. *Johnson v. State*, 59 N.E.3d 1071, 1074 (Ind. Ct. App. 2016).

[10] Here, the evidence shows McVey was a passenger in a car that she had been test driving as both a driver and passenger over the past month. Officer Leroux found a bag behind the driver's seat. In that bag, he found meth and "pill bottles with the name Rebecca McVey as well as another document with her name on

it.” A reasonable factfinder could conclude from this evidence that McVey had knowledge of the meth. The evidence is sufficient to support McVey’s conviction for possession of methamphetamine.

[11] Affirmed.

Riley, J., and Bailey, J., concur.