MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shellie R. Peltier,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 9, 2021

Court of Appeals Case No. 21A-CR-607

Appeal from the Greene Superior Court

The Honorable Dena A. Martin, Judge

Trial Court Cause No. 28D01-2001-F6-16

Tavitas, Judge.

Case Summary

[1] Shellie Peltier appeals her conviction for possession of methamphetamine, a Level 6 felony. Peltier and her husband were pulled over for speeding in Linton, Indiana. During the traffic stop, a canine officer sniffed the vehicle and alerted to the presence of illegal drugs. Police officers then searched the vehicle and located two small plastic bags in Peltier's purse and billfold. The bags contained residue, which field tested positive for methamphetamine. Lab results subsequently confirmed the finding. The State charged Peltier with possession of methamphetamine, a Level 6 felony. The trial court held a bench trial and found Peltier guilty of possession of methamphetamine. Peltier now appeals, arguing that there was insufficient evidence to find that she "knowingly" possessed methamphetamine. Peltier—a fifty-four-year-old grandmother riding in a car that she did not own—has maintained that she was not aware that the bags, which she found in the car and placed in her purse, contained methamphetamine residue. We conclude that the trial court was not required to find Peltier credible, and sufficient evidence exists to support finding of guilty. Accordingly, we affirm.

Issue

[2] Peltier raises a single issue: whether there is sufficient evidence to sustain her conviction for possession of methamphetamine.

Facts

[3] Shortly after midnight on January 14, 2020, Officer John Agan of the Linton Police Department was working the stationary radar in a CVS parking lot. Officer Agan clocked the Peltiers in a truck driving approximately forty-one miles per hour in a thirty-five-mile-per-hour zone and effectuated a traffic stop. Officer Joseph Riley of the Linton Police Department arrived at the scene shortly thereafter and, as Officer Agan was speaking with the vehicle's occupants, walked his canine partner around the car. The canine officer—Kona—alerted to the presence of narcotics at both the driver's side door and on the passenger side. As a result, Officer Agan and a third officer, Officer Yingling, began to search the car.

[4] Officers discovered two plastic bags in Peltier's purse—one loose in the purse and one in her billfold located inside her purse.[1] The purse was on Peltier's seat. A field test was performed on the residue in the bags, and the result was positive for methamphetamine. Officer Agan then read Peltier her *Miranda* rights, and Peltier agreed to waive those rights. Peltier relayed her version of the events; she indicated that she discovered the plastic bags in the vehicle and, not knowing what they were, placed them in her purse so that children would

[1] Peltier testified that there were three plastic bags rather than two.

not be able to find them. Peltier was then arrested.[2] On January 15, 2020, the State charged Peltier with Count I, possession of methamphetamine, a Level 6 felony; and Count II, maintaining a common nuisance, a Level 6 felony.

[5] On March 11, 2021, the trial court held a bench trial. The State dismissed Count II. Peltier testified that she and her husband were borrowing the truck from a neighbor and that, earlier in the day, her husband braked abruptly, which caused a tin container to slide out from under Peltier's seat. Peltier testified that she opened the tin and discovered the plastic bags but did not know what they were. She and her husband argued about the bags; he told Peltier to throw the bags out the window, but she feared that some animal or unsuspecting child might happen upon them, so she put them in her purse. Peltier further explained:

> No, it was my intent to research [the potential legal consequences for turning the plastic bags over to the police], but I had forgotten about taking them out of my purse and sitting them somewhere. I mean, they were still in my purse because I just really didn't think about the possibility of getting stopped or even, you know, that there was really something in [them] and it was illegal. I mean they were just empty baggies.

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[2] Two other occupants of the vehicle—passengers—were also arrested for possession of methamphetamine, though on the basis of items other than the plastic bags found in Peltier's purse. According to Peltier, she and her husband were transporting the passengers for purposes of an errand. One passenger was the niece of the neighbor who owned the truck.

Tr. Vol. II p. 64. The trial court found Peltier guilty and sentenced her to 180 days executed in the Department of Correction ("DOC"). This appeal ensued.

Analysis[3]

[6] Peltier argues that there was insufficient evidence to sustain a finding that she "knowingly" possessed methamphetamine because she claims she did not know what the contents of the plastic bags were. 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

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[3] We first note significant deficiencies in the trial court's handling of this case. First, the chronological case summary reflects that the trial court found that the State proved guilt by "a preponderance of the evidence." Appellant's App. Vol. II p. 11. Neither the trial court's oral statements nor its order and judgment of conviction mention the correct standard of proof, which is "beyond a reasonable doubt."

The trial court further did not conduct a presentence hearing as is required by Indiana Code Section 35-38-1-3; nor does the record reflect that Peltier was advised of her right to such a hearing, her right to subpoena and call witnesses at such a hearing, or her right to present information on her own behalf. The trial court did not offer Peltier allocution, in violation of Indiana Code Section 35-38-1-5. Finally, the advisory sentence for a Level 6 felony is one year, with a sentencing range between six months and two-and-a-half years. I.C. § 35-50-2-7. The trial court sentenced Peltier to 180 days. "After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes unless the court imposes the advisory sentence for the felony." I.C. § 35-38-1-1.3.

Peltier's trial counsel inexplicably objected to none of these failures or omissions. Neither does her appellate counsel make any arguments related to the failures and omissions.

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*).

[7] Conviction for possession of illegal items "can be based on either actual or constructive possession. Actual possession occurs when a person 'has direct physical control over' an item. Constructive possession can be inferred when a person had the capability and intent to maintain dominion and control over the item." *Grubbs v. State*, 132 N.E.3d 451, 453 (Ind. Ct. App. 2019), *reh'g denied* (citing *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011)).

[8] Peltier admits that she owned the purse from which the methamphetamine was recovered. The purse was on her lap prior to the search, and it contained her identification. She maintained actual possession. Thus, there was substantial evidence of probative value that could lead a trier of fact to convict Peltier of the crime.

[9] As in *Grubbs*, we find that:

> The trial court was not required to believe [the defendant's] testimony or to give it more weight than [the police officer's] testimony. *See Edgecomb v. State*, 673 N.E.2d 1185, 1194 (Ind.

> 1996) ("The jury is not required to believe every part of a defendant's testimony."), *reh'g denied*. Grubbs argues the State failed to prove she knew the methamphetamine and pipe were in the purse, such that she could have knowingly possessed those illegal items; however, when we have already concluded the evidence supports a reasonable inference that Grubbs was holding her own purse, such evidence also supports the inference that Grubbs knew what was inside her own purse. *See Halsema v. State*, 823 N.E.2d 668, 673 (Ind. 2005) ("[W]hen determining whether an element exists, the [trier of fact] may rely on its . . . common sense and knowledge acquired through everyday experiences.").

132 N.E.3d at 453. Here Peltier concedes that: (1) she knew that the bags were in her purse and billfold; (2) she put them there; (3) she was suspicious of their contents; and (4) she recognized that they might be dangerous to children or animals. Further, she pondered whether she should turn the bags over to the police.

[10] The trial court was under no obligation to credit Peltier's self-serving testimony. *See, e.g., McCullough v. State,* 985 N.E.2d 1135, 1139 (Ind. Ct. App. 2013), *trans. denied*. Peltier now asks us to re-weigh the evidence and to re-evaluate witness credibility. This we will not do. Sufficient evidence exists to sustain the conviction for possession of methamphetamine.

Conclusion

[11] Sufficient evidence exists to sustain Peltier's conviction for possession of methamphetamine. We affirm.

[12] Affirmed.

Mathias, J., and Weissmann, J. concur.