



ATTORNEY FOR APPELLANT

Christopher C. Crawford
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tyler Banks
Supervising Deputy Attorney
General

Tiffany A. McCoy
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Latieka Q. Page,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 6, 2021

Court of Appeals Case No.
21A-CR-90

Appeal from the Elkhart Superior
Court

The Honorable David C.
Bonfiglio, Judge

Trial Court Cause No.
20D06-1907-F6-953

Altice, Judge.

Case Summary

- [1] Latieka Page was found guilty after a bench trial of Level 6 felony possession of a narcotic drug after an Indiana State Police (ISP) trooper found Oxycodone in her vehicle during a traffic stop. She appeals, arguing that she established that the pills were obtained by a valid prescription.
- [2] We reverse.

Facts & Procedural History

- [3] On the afternoon of July 10, 2019, ISP Trooper Nikolos Anderson stopped Page after observing her car make unsafe lane movement on an exit ramp off Interstate 80. Trooper Anderson approached the driver's side window and smelled raw marijuana. Page exited the vehicle as requested, and, after back-up assistance arrived, Trooper Anderson searched the vehicle. He located a bag in the trunk that contained an unlabeled pill bottle with forty-three Oxycodone-Acetaminophen (also known as Percocet) pills. Also in the bag were THC cartridges, edibles, and a glass jar that contained approximately three grams of marijuana. Page told Trooper Anderson that she had a prescription for the Oxycodone and that she used both it and marijuana to treat chronic, frequent back pain.
- [4] On July 12, 2019, the State charged Page with Level 6 felony possession of a narcotic drug and Class B misdemeanor possession of marijuana. The matter proceeded to bench trial on October 26, 2020. Trooper Anderson testified that, at the time of the search, he recognized the pills, which were white and had 10-

325 engraved on them, as being Oxycodone. When he asked Page about the pills and what they were, she responded “that she had messed up” and then told him they were Oxycodone. *Transcript Vol. 2* at 22. As Trooper Anderson was transporting Page to jail, she told him that she had a larger bottle of the Oxycodone pills at home and that she used the unmarked pill bottle when she was traveling. Trooper Anderson asked Page who prescribed the medication, and she did not provide him with a name.

[5] Dr. Ajit Pai, an anesthesiologist and pain specialist with Pain Management Group in Mishawaka, Indiana, who had treated Page for several years, testified for the State. Dr. Pai testified that prescriptions for controlled substances include limitations both as to quantity and length of use of the drug. Records¹ were admitted, by stipulation, that indicated that Dr. Pai’s practice last prescribed Oxycodone-Acetaminophen to Page on December 6, 2017. Specifically, Dr. Pai wrote three prescriptions that date, each for 120 pills for thirty days with zero refills. The records showed that Page filled one of the three prescriptions on December 6, 2017, another on January 4, 2018, and the third on February 2, 2018. Page filled another prescription from Dr. Pai on March 1, 2018 – again 120 pills for thirty days – that he had written for her on March 29, 2017, eleven months prior. Dr. Pai agreed that when the

¹ State’s Exhibit 2 was an “INSPECT” report generated under the Indiana Scheduled Prescription Electronic Collection and Tracking program, which is a database of the prescription of controlled substances that is administered by the Indiana Board of Pharmacy. *See Williams v. State*, 959 N.E.2d 360, 363 (Ind. Ct. App. 2012); *Exhibit Vol.* at 6. State’s Exhibit 3 was a CVS Pharmacy patient prescription profile.

prescription was filled in March 2018, the prescription was “out of date” and stated that most pharmacies “do not fill the medication that late” and, instead, would “usually call us.” *Transcript Vol. 2* at 61, 68. He did not know whether in that case the pharmacy had called his office for approval.

[6] The records also reflected that, on September 15, 2018, Page received a three-day prescription from another provider for twelve Oxycodone that she filled the same date. On November 26, 2018, she received a seven-day prescription from a different provider for twenty-eight Oxycodone-Acetaminophen pills and filled it the same date. And on December 28, 2018, she received a three-day prescription from another provider for twelve Oxycodone-Acetaminophen pills² and filled it that same date.

[7] Page testified in her defense. Page lived in Indianapolis, and when Trooper Anderson stopped her near Elkhart, she was traveling to visit her ill mother. She had no dispute about what was found in her car. With regard to the pills, she explained that she had various prescriptions for “120 Percocet” from Dr. Pai “over [a] three year time[,]” which were prescribed to her for pain caused by herniated discs and fractures in her back, and “even though [she] was prescribed to take four a day, sometimes [she] would take two,” either because she was feeling better or “didn’t want to get addicted to it.” *Id.* at 74-76. Page testified that, to address her pain, she tried to rely more on marijuana and less

² Unlike the other Oxycodone-Acetaminophen pills, which were dosage 10-325, the December 28, 2018 prescription was 5-325, which reflected “a little bit smaller dosage[.]” *Transcript Vol. 2* at 69.

on Oxycodone, as marijuana had fewer side effects, resulting in her accumulating “extra pills.” *Id.* at 79. As to why she used the unlabeled pill bottle, she explained that when she was in South Bend, it was “a very, very hectic environment” and she knew the Oxycodone was considered “one of the hottest []” items on the streets, so she feared getting robbed if someone knew what type of pill she had. *Id.* at 81, 84.

[8] Page admitted to possession of marijuana but asked the court to find her not guilty of possession of narcotic drug because she possessed a valid prescription from a practitioner for the Oxycodone that was found in her car. The State argued that, while she had prior prescriptions for Oxycodone, none was valid at the time she was stopped in July 2019.

[9] The trial court took the matter under advisement. On October 28, 2020, the court issued an order finding Page guilty of Level 6 felony possession of a narcotic drug and Class B misdemeanor possession of marijuana. With regard to the narcotic drug offense, the court determined that the pills found in Page’s car “came from . . . three prescriptions” that she filled in December 2018, November 2018, and March 2018 but that those prescriptions were no longer valid because “[t]he length of time she had the drugs indicates she was acting well outside the prescribed method or orders for taking the oxycodone.” *Appellant’s Appendix Vol. II* at 38-39.

[10] Following a December 16, 2020 sentencing hearing, the trial court sentenced Page on the Level 6 felony conviction to one year in the Elkhart County Jail

with all the time suspended to probation, and it set the matter for a review hearing in December 2021 for possible misdemeanor treatment. The trial court sentenced Page to a concurrent 180 days, suspended to probation, for the Class B misdemeanor conviction. Page now appeals her Level 6 felony conviction for possession of a narcotic drug.

Discussion & Decision

- [11] Page asserts that the evidence was not sufficient to convict her. Where, as here, our decision concerns application of the law to undisputed facts, our standard of review is de novo. *Austin v. State*, 997 N.E.2d 1027, 1039 (Ind. 2013).
- [12] Page was charged and convicted under Ind. Code § 35-48-4-6(a), which provides in pertinent part:

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 . . . a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of . . . a narcotic drug, a Level 6 felony[.]

(Emphasis added). “The existence of a valid prescription is an exception to, not an element of, the possession statute.” *Burgin v. State*, 431 N.E.2d 864, 866 (Ind. Ct. App. 1982); *see also* Ind. Code § 16-42-20-6(a) (“The burden of proof of an exemption or exception is on the person claiming the exemption or exception.”). Thus, the existence of a valid prescription is a defense to the crime of possession, and the defendant bears the burden of proving this defense by a preponderance of the evidence. *Lundy v. State*, 26 N.E.3d 656, 658 (Ind.

Ct. App. 2015); *Williams v. State*, 959 N.E.2d 360, 363 (Ind. Ct. App. 2012) (citing *Schuller v. State*, 625 N.E.2d 1243, 1246 (Ind. Ct. App. 1993)).

[13] The legislature has not defined “valid prescription” for purposes of this statute. We are neither bound by, nor do we defer to, a trial court’s legal interpretation of a statute. *Houston v. State*, 898 N.E.2d 358, 361 (Ind. Ct. App. 2008), *trans. denied*. Where the language of a statute is clear and unambiguous, we need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary, and usual sense. *Id.* Where the language is susceptible to more than one reasonable interpretation, the statute must be construed to give effect to the legislature’s intent. *Id.* The legislature is presumed to have intended the language to be applied logically and not to bring about an unjust or absurd result. *Id.* Further, we construe an ambiguous statute most favorably to the accused. *Burgin*, 431 N.E.2d at 866.

[14] Page admits she possessed the Oxycodone but argues she should have not been convicted because she established that she possessed a valid prescription for it. The State, in urging us to affirm, argues that “the trial court could and did reasonably find that the pills Page possessed . . . were not obtained pursuant to a valid prescription.” *Appellant’s Brief* at 8. We agree that the trial court *could* have so found,³ but it did not. To the contrary, the trial court expressly determined that the pills found in Page’s car “came from” one or more

³ See *Fitzgerald v. State*, 26 N.E.3d 105, 110 (Ind. Ct. App. 2015) (trial court not obligated to believe defendant’s version of events).

prescriptions that she filled in 2018. *Appellant's Appendix Vol. II* at 38. In other words, the trial court believed Page. The court found that the question before it was: “[W]hen is that prescription no longer considered valid or . . . [if] the patient is no longer following the instruction or order for the medication[, when] does it become an unlawful act?” *Id.*

[15] The court answered that inquiry with the following determination:

The defense of having a valid prescription or order from a practitioner is meant to protect a person when they are following the prescription so at all times during that period it is lawful to possess the drug and it is also meant to protect a person when they are traveling with the medication or simply transporting it to and from their place of abode. It protects a person only when they are following the prescribed methods of taking the medication for the period of the prescribed time as indicated in the prescription.

Id. at 39. Applying that to Page, the court found, “If [Page] had followed the prescription or order of the practitioner, then she would not have had these medi[c]ations some 7 to 16 months after the prescribed period of use.” *Id.*

Because “[t]he length of time [Page] had the drugs indicates she was acting well outside the prescribed method or orders for taking the oxycodone[,]” the court concluded Page possessed the Oxycodone without a valid prescription. *Id.*

[16] We cannot agree with the trial court’s determination that a validly issued prescription becomes invalid for purposes of I.C. § 35-48-4-6 upon a person’s failure to take the medicine as prescribed. There is nothing in the statute from which to infer that a prescription is no longer valid once the prescribed period

of use elapses. The effect of the trial court’s determination is that every person who retains, that is, possesses, a prescription of a controlled substance for any time after the proscribed number of days commits a possession offense. We do not believe the legislature intended such a harsh result. This court has suggested that the “valid prescription” requirement is intended to assure the prescription was not obtained by fraud, misrepresentation, or deceit. *See Schuller*, 625 N.E.2d at 1246. There is no evidence of such here. Nor is there any evidence for the proposition that Page obtained the prescriptions from anyone other than a practitioner in the scope of the practitioner’s professional practice.

[17] Because Page proved by a preponderance of the evidence – and indeed the court expressly found – that Page had obtained the Oxycodone via one or more prior, validly-issued prescriptions, she successfully established her defense to the offense. Accordingly, we reverse her conviction for Level 6 felony possession of a narcotic drug.

[18] Judgment reversed.

Bradford, C.J. and Robb, J., concur.