

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Anthony Brantley,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 2, 2021

Court of Appeals Case No.  
21A-CR-582

Appeal from the Marion Superior  
Court

The Honorable Clark Rogers,  
Judge

Trial Court Cause No.  
49D25-1907-F6-26649

**Bailey, Judge.**

## Case Summary

[1] Anthony Brantley (“Brantley”) appeals his conviction, following a bench trial, of possession of paraphernalia, as a Class C misdemeanor.<sup>1</sup> The only issue he raises on appeal is whether the State provided sufficient evidence to support his conviction.

[2] We affirm.

## Facts and Procedural History

[3] On July 2, 2019, Brantley was a passenger in a vehicle that was speeding in Indianapolis. Officers stopped the vehicle, and Officer Dustin Danai (“Officer Danai”) of the Indianapolis Metropolitan Police Department (“IMPD”) approached the passenger-side door of the stopped vehicle. Officer Danai illuminated the inside of the vehicle with his flashlight and observed a “green leafy vegetation substance covering [Brantley’s] outer clothing.” Tr. at 13. Because Officer Danai believed the leafy substance to be marijuana, he instructed Brantley to exit the vehicle and he placed Brantley in handcuffs. The subsequent search of Brantley’s person revealed a baggie in Brantley’s left hand and a pipe in his right pants pocket. Officer Danai then searched the vehicle

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<sup>1</sup> Ind. Code § 35-48-4-8.3(b)(1).

and discovered “what was [sic] commonly known as a blunt in between the passenger seat and the center console.” *Id.* at 14.

[4] The State initially brought several charges against Brantley but ultimately sought and obtained a dismissal of all charges except one count of possession of paraphernalia, as a Class C misdemeanor.<sup>2</sup> At Brantley’s January 11, 2021, bench trial, Officer Danai testified that he had been employed by the IMPD for twelve years and that he had attended a twenty-six-week-long training that included narcotics training. He testified that the pipe he found in Brantley’s pocket was made of glass, had burn marks on both sides of it, and had a “chore boy” inside of it acting as a makeshift filter. *Id.* at 15. Officer Danai recognized the pipe as drug paraphernalia that could be used to smoke crack cocaine or other drugs, “such as THC or marijuana.” *Id.* at 20.

[5] Officer Danai further testified as follows:

Q. (Prosecutor): The -- the leafy substance that was found in the car is synthetic marijuana, correct?

A. (Officer Danai): It was later -- not officially by any lab.

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<sup>2</sup> Specifically, the State charged that Brantley “did knowingly or intentionally possess an instrument, device, or object, to wit: a glass pipe; that the defendant intended to use for introducing into the defendant’s body a controlled substance, to wit: Tetrahydrocannabinols.” App. at 23.

A.: Officially, no. It is not confirmed to be anything, marijuana or synthetic. However, *upon my experience after observing the blunt and the items and the baggie, it appeared to me to be synthetic upon observation.*

Q.: You didn't think the substance was marijuana?

A.: Initially did. Later on, determined and found out that -- or determined that it was probably, most likely synthetic.

*Id.* at 20-21 (emphasis added).

[6] The trial court found Brantley guilty as charged and sentenced him accordingly. This appeal ensued.

## Discussion and Decision

[7] Brantley alleges the State failed to provide sufficient evidence to support his conviction.

When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the fact-finder's decision. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when we are confronted with conflicting evidence, we consider it most favorably to the fact-finder's decision. *Id.* We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is

sufficient if an inference reasonably may be drawn from it to support the fact-finder's decision. *Id.* at 147.

*Dowell v. State*, 155 N.E.3d 1284, 1286 (Ind. Ct. App. 2020). Moreover, a conviction may be sustained on circumstantial evidence alone. *Sallee v. State*, 51 N.E.3d 130, 134 (Ind. 2016).

[8] To prove beyond a reasonable doubt that Brantley committed the crime of possession of paraphernalia, the State must have provided evidence that: (1) Brantley, (2) knowingly or intentionally, (3) possessed an instrument, device, or other object, (4) with which he intended to introduce into his body, (5) a controlled substance. I.C. § 35-48-4-8.3(b)(1). Brantley does not dispute that the State proved he knowingly or intentionally possessed the glass pipe. But he asserts that there was insufficient evidence to establish that he intended to use that pipe to introduce Tetrahydrocannabinols (“THC”) (synthetic or otherwise)<sup>3</sup> into his body.

[9] While possession of paraphernalia alone is insufficient to support the intent element of the crime of possession of paraphernalia, *Taylor v. State*, 256 Ind. 170, 173, 267 N.E.2d 383, 385 (1971), evidence of simultaneous possession of an illegal drug and an instrument for administering that particular illegal drug is

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<sup>3</sup> Under Indiana law, a controlled substance for the purpose of the possession of paraphernalia statute is defined as “a drug, substance, or immediate precursor in schedule I, II, III, IV, or V.” I.C. § 35-48-1-9. At all times relevant to this case, Tetrahydrocannabinols (or THC), “including synthetic equivalents,” has been classified as a schedule I drug. I.C. § 35-48-2-4(d)(31). THC is the active ingredient in marijuana. *Oman v. State*, 737 N.E.2d 1131, 1134 n.1 (Ind. 2000).

sufficient evidence of the intent element of that crime, *Berkhardt v. State*, 82 N.E.3d 313, 318 (Ind. Ct. App. 2017) (citing *McConnell v. State*, 540 N.E.2d 100, 103 (Ind. Ct. App. 1989)). Intent to introduce a controlled substance into one’s body may be inferred from circumstantial evidence. *Sluder v. State*, 997 N.E.2d 1178, 1181 (Ind. Ct. App. 2013) (citing *Dabner v. State*, 258 Ind. 179, 279 N.E.2d 797, 798–99 (1972)). The identity of a drug may also be proven by circumstantial evidence. *Clifton v. State*, 499 N.E.2d 256, 258 (Ind. 1986).

[10] Where no chemical test of a drug was done, the identity of the drug may be proven by other circumstantial evidence. *Smalley v. State*, 732 N.E.2d 1231, 1235 (Ind. Ct. App. 2000). For example, the opinion of a non-expert law enforcement officer who has had experience with the drug may be sufficient evidence of the drug’s identity as a controlled substance. *Vasquez v. State*, 741 N.E.2d 1214, 1216 (Ind. 2001); *see also Boggs v. State*, 928 N.E.2d 855, 867 (Ind. Ct. App. 2010) (officer testimony, based on training and experience, that the “green leafy substance ... was consistent with marijuana,” and other circumstantial evidence was sufficient to prove drug’s identity), *trans. denied*; *McConnell*, 540 N.E.2d at 103-04 (officer’s expert testimony that residue found in pipe appeared, based on color and consistency, to be marijuana was sufficient evidence of the substance’s identity as a drug).

[11] Here, Officer Danai, who had experience and training regarding illegal drugs, testified that the “green leafy vegetation substance” on Brantley’s person and

the “blunt” located in the car near Brantley appeared to him to be marijuana,<sup>4</sup> “most likely synthetic.” Tr. at 13, 20-21. He further testified that the glass pipe found on Brantley’s person was the kind used to smoke crack and other drugs, “such as THC or marijuana.” *Id.* at 19-20. That evidence of simultaneous possession of an illegal drug and an instrument for administering that particular illegal drug was sufficient evidence that Brantley intended to use the pipe to deliver Tetrahydrocannabinols (synthetic or otherwise) into his body. *See Berkhardt*, 82 N.E.3d at 318.

[12] The State presented sufficient evidence to support Brantley’s conviction of possession of paraphernalia.

[13] Affirmed.

Crone, J., and Pyle, J., concur.

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<sup>4</sup> Marijuana is a controlled substance, I.C. § 35-48-2-4(d)(22), the active ingredient of which is THC, *see Oman*, 737 N.E.2d at 1134 n.1.