

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Michael Anthony Murray,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

February 2, 2024

Court of Appeals Case No.  
23A-CR-1578

Appeal from the Lake Superior  
Court

The Honorable Salvador Vasquez,  
Judge

Trial Court Cause No.  
45G01-2101-F2-3

**Memorandum Decision by Chief Judge Altice**  
Judges Weissmann and Kenworthy concur.

**Altice, Chief Judge.**

## Case Summary

- [1] Michael Anthony Murray appeals his conviction, following a bench trial, for Level 2 felony dealing in methamphetamine. He contends that the evidence was insufficient to establish that the pills he possessed were in fact methamphetamine.
- [2] We affirm.

## Facts & Procedural History

- [3] On December 14, 2020, Officer Keith Hojnicky of the Griffith Police Department conducted a traffic top on a vehicle being driven by Murray. While obtaining Murray's license and registration, Officer Hojnicky smelled the odor of burnt marijuana and saw a bag of what he believed to be marijuana "sticking out of" Murray's pocket. *Transcript Vol. II* at 91. Murray acknowledged smoking marijuana in the vehicle earlier that day, and he consented to the search of his vehicle. Upon request, Murray handed the bag of suspected marijuana to Officer Hojnicky and then stepped out of the vehicle.
- [4] During a subsequent patdown search of Murray's person, Officer Hojnicky recovered a digital scale and a plastic bag containing approximately sixty pills of different shapes and colors. Based on his training and experience, Officer Hojnicky believed the pills were "likely MDMA." *Id.* at 95. An additional bag of suspected marijuana was found in the center console of Murray's vehicle.

[5] Once back at the police station, Officer Hojnicky field tested the suspected narcotics collected during the traffic stop and then checked them into the evidence room. On the property form for the pills, Officer Hojnicky entered the following comment at the end: “1 heat sealed bag containing several different colored pills similar in style to MDMA. 29.4 gross grams.” *Exhibits* at 18. He also referenced “fentanyl/meth” on the first page of the form. *Id.* at 17.

[6] On January 11, 2021, the State charged Murray with three counts: Count I, Level 2 felony dealing in methamphetamine; Count II, Level 5 felony dealing in a narcotic drug (fentanyl); and Count III, Class B misdemeanor possession of marijuana. Count II was dismissed on the State’s motion about a year later after it was determined that the pills did not contain fentanyl.

[7] At the bench trial on March 2, 2023, in addition to that of Officer Hojnicky and other officers, the State presented the testimony of Giorgi Keppers, a forensic scientist with the Indiana State Police (ISP). Her testimony was consistent with the following results set out in the certificate of analysis:

Item 001: One bag was examined and found to contain Marijuana, a controlled substance....

Item 002 was found to contain Methamphetamine, a controlled substance. The total net weight of item 002 was 28.31 grams.

*Id.* at 5. Item 002 was described in the certificate of analysis as: “Sealed plastic bag containing seventy-six multi-colored, multi-shaped tablets and three partial tablets.” *Id.*

[8] Murray’s defense strategy at trial was to question the number and weight of the pills, not their chemical composition. That is, defense counsel argued in his closing statement that there had been “shenanigans” with regard to “the measuring, weighing and counting of these pills” and that it was “too fine of a line to say ... beyond a reasonable doubt ... that there was more than 28 grams of pills.” *Transcript* at 199.

[9] At the conclusion of the bench trial, the trial court found Murray guilty as charged. With respect to Count I, the trial court found, based on Keppers’s testimony, that “it’s clear and beyond a reasonable doubt that the substance that was recovered was Methamphetamine.” *Id.* at 204. The court noted that the issue was “the intent to deliver” and that the defense was not really challenging whether Murray possessed the drug. *Id.* Intent came down to the weight of the methamphetamine, as possession of at least twenty-eight grams of the drug is “per se dealing.” *Id.* at 205; *see* Ind. Code § 35-48-4-1.1(b)(2) (providing that possession with intent to deliver methamphetamine may be established, without evidence in addition to weight, if “the amount of the drug involved is at least twenty-eight (28) grams”). The trial court found that Keppers “testified clearly and unequivocally” that the methamphetamine weighed 28.31 grams, and the court expressly rejected the defense’s argument that the officers were not credible and that shenanigans took place (such as, adding more pills to what was transferred to the lab).

[10] The trial court subsequently sentenced Murray to concurrent terms of ten years on Count I and ninety days on Count III. Thus, Murray was committed to the Indiana Department of Correction for ten years.

[11] Murray now appeals, challenging only his conviction on Count II. His sole argument is that the evidence was insufficient to establish that the drugs in his possession were methamphetamine.

## Discussion & Decision

[12] Our standard of review is well-settled:

When reviewing the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor assess the credibility of witnesses. *Fix v. State*, 186 N.E.3d 1134, 1138 (Ind. 2022). “When there are conflicts in the evidence, the [trier of fact] must resolve them.” *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). Thus, on appeal, we consider only the probative evidence and the reasonable inferences supporting the conviction and will affirm “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Fix*, 186 N.E.3d at 1138 (quoting *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016)).

*Sorgdrager v. State*, 208 N.E.3d 646, 650 (Ind. Ct. App. 2023), *trans. denied*.

[13] On appeal, Murray asserts “[t]he record is clear that the drugs found on Murray’s person were not methamphetamine, but instead MDMA.” *Appellant’s Brief* at 7. For this proposition, he directs us to testimony Officer Hojnicky indicating that the pills were MDMA (commonly referred to as ecstasy).

[14] Officer Hojnicky did indeed testify that based on his training and experience he thought the pills were MDMA and that at the police department “the marijuana tested positive using a kit and so did MDMA [using] the TruNarc test to test that.” *Transcript* at 93. When questioned by defense counsel as to whether, in retrospect, he should have counted the pills rather than estimated how many there were, Officer Hojnicky responded: “Based on the fact that one tested positive for Methamphetamine, probably not. I probably shouldn’t have counted the pills.” *Id.* at 120. Thus, Officer Hojnicky’s testimony regarding the nature of the pills was not as clear as Murray now suggests. And Officer Hojnicky referenced methamphetamine, fentanyl, and MDMA on the property form when he checked the pills into the evidence room.

[15] More importantly, a critical fact that Murray glosses over is that Keppers identified the pills as methamphetamine through forensic testing. Further, Keppers made absolutely no mention of MDMA during her testimony or in her certificate of analysis, and Murray did not ask her about MDMA on cross-examination.

[16] As Murray recognizes on appeal, “MDMA is a unique substance with a distinct chemical structure, a distinct effect, and a distinct classification under Indiana law.” *Appellant’s Brief* at 7. Murray does not explain how or why a forensic scientist with the ISP would ignore such a distinction and identify a drug as methamphetamine if it really was MDMA.

[17] We find Murray's argument that the pills were MDMA, rather than methamphetamine, to be meritless. Ample evidence supports his conviction for dealing methamphetamine.

[18] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.