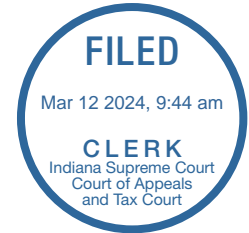


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Roosevelt Carlos Walter Easler,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 12, 2024

Court of Appeals Case No.
23A-CR-2046

Appeal from the Hendricks Superior Court
The Honorable Stephenie LeMay-Luken, Judge

Trial Court Cause No.
32D05-2210-F5-137

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

- [1] Following a jury trial, Roosevelt Carlos Walter Easler (Easler) was convicted of Class B misdemeanor possession of marijuana. Easler asserts that the State failed to present sufficient evidence to convict him, as it presented no evidence that the discovered substance contained the requisite amount of THC to qualify as marijuana.
- [2] We reverse.

Facts & Procedural History

- [3] One morning in October 2022, police were dispatched to Easler's residence after his girlfriend called police following a physical altercation with Easler. In the course of being arrested, and in response to officers' questions, Easler said that he had a "blunt" in his stocking cap. *State's Exhibit 9*. When an officer took the hat, an object that appeared to the officer to be a marijuana cigarette fell to the ground. The officer instructed Easler to crush it with his foot, which Easler did. Neither the object nor the residue on the ground was recovered or tested.
- [4] The State charged Easler with Level 5 felony criminal confinement, Level 6 felony domestic battery, and Class B misdemeanor possession of marijuana. At trial, the arresting officer testified that, in his training and experience, the blunt looked and smelled like marijuana, but that it was not collected into evidence or

sent to a lab for testing. Easler moved under Ind. Trial Rule 50(A) for judgment on the evidence on all counts, which the court denied.

- [5] The jury found Easler guilty of possession of marijuana, but not guilty of criminal confinement and domestic battery. The trial court entered judgment of conviction on the marijuana possession, and Easler filed a motion to correct error, arguing that the trial court erred when it denied his T.R. 50(A) motion on the marijuana charge and, further, there was no physical evidence presented at trial that the substance was marijuana and not hemp. The court denied the motion and later sentenced Easler to sixty days in jail. He now appeals.

Discussion & Decision

- [6] When reviewing the sufficiency of the evidence supporting a conviction, we consider only the probative evidence and reasonable inferences that support the judgment. *Lakes v. State*, 224 N.E.3d 373, 374 (Ind. Ct. App. 2024). A conviction will be affirmed unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.* We do not reweigh the evidence or judge the credibility of the witnesses. *Id.*
- [7] To convict Easler of possession of marijuana as charged, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally possessed “(pure or adulterated) marijuana[.]” Ind. Code § 35-48-4-11(a)(1). Easler asserts, and the State concedes, that the State’s evidence was not sufficient to prove that the substance he possessed was marijuana as defined by statute.

[8] In Indiana, marijuana is generally “any part” of the Cannabis plant and includes seeds or resin of the plant. *See* Ind. Code § 35-48-1-19(a). However, hemp is exempted from the definition of marijuana. I.C. § 35-48-1-19(b)(6). “Hemp” is defined as any part of the Cannabis plant “with a delta-9-tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.” Ind. Code § 15-15-13-6. We have thus recognized that “the difference between a legal substance, such as hemp, and illegal marijuana is determined by the concentration of delta-9-THC in a particular substance: to be illegal, the concentration of delta-9-THC must be more than 0.3%.” *Toledo Rojo v. State*, 202 N.E.3d 1085, 1088 (Ind. Ct. App. 2022), *trans. denied*. Because our legislature has established a clear distinction between legal hemp and illegal marijuana based on the THC concentration present in the plant material, the State is “now require[d] [] to prove beyond a reasonable doubt that a substance is marijuana by proving that the substance’s delta-9-THC concentration exceeds 0.3% on a dry weight basis.” *Fritz v. State*, 223 N.E.3d 265, 277 (Ind. Ct. App. 2023).

[9] Here, the State presented no evidence of the percent concentration of THC in the alleged marijuana cigarette that was in Roosevelt’s hat. While the officer testified that it looked and smelled like marijuana, the opinion of a police officer, without more, is no longer enough to prove that a substance is marijuana. *See Lakes*, 224 N.E.3d at 375 (recognizing that, with the legalization of hemp, officer’s statements he detected the odor of marijuana and that the substance field-tested positive for the presence of marijuana no longer satisfies

the State's burden of proof). Furthermore, we agree with Easler that his use of the term “blunt” to refer to the object was not determinative of whether the material had a THC concentration exceeding 0.3% on a dry weight basis. *See id.* (rejecting State’s argument that defendant, by referring to the substance as “weed,” admitted it was marijuana because, “given the legalization of some forms of the cannabis plant, it is no longer clear beyond a reasonable doubt whether ‘weed’ excludes legal products”).

[10] Finding insufficient evidence to support it, we reverse Easler’s Class B misdemeanor possession of marijuana conviction.

[11] Judgment reversed.

Bradford, J. and Felix, J., concur.

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