

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Cheryl Johnson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 7, 2023

Court of Appeals Case No.  
23A-CR-1531

Appeal from the Jay Circuit Court

The Honorable Brian D.  
Hutchison, Judge

Trial Court Cause No.  
38C01-2203-F2-5

**Memorandum Decision by Judge Bradford**  
Judges Vaidik and Brown concur.

**Bradford, Judge.**

## Case Summary

- [1] Cheryl Johnson was charged with and convicted of Level 4 felony possession of methamphetamine and now contends that the evidence is insufficient to sustain her conviction. We affirm.

## Facts and Procedural History

- [2] In early March of 2022, Tyler White reported to law enforcement that, for the past several months, he had observed, in short intervals, vehicles pull into the parking lot of the Redkey Apartment Complex and persons approach the window of Apartment A. On occasion, he had also observed a female exit Apartment A and approach the vehicles. White further informed law enforcement that in the weeks leading up to March 3, 2022, he had (1) occasionally smelled the odor of marijuana emanating from Apartment A, (2) noticed an increase in the amount of traffic and visitors to Apartment A, and (3) noticed that, upon leaving Apartment A on dark evenings, drivers would not turn on their headlights until they reached the road.
- [3] Suspecting that drug activity might be occurring at the apartment, Redkey Police Officer Tim Fishbaugh applied for and was granted a search warrant for Apartment A. When Officer Fishbaugh and assisting officers arrived at Apartment A, they were given permission to enter the apartment by one of the apartment's occupants, Rita Charles. Consistent with the information that had been provided by White, officers searched the bedroom with an outward-facing

window. Officers found mail and identifying information belonging to Johnson and women's clothing in the bedroom. Officers subsequently learned that, prior to the search, Johnson had been sharing the bedroom with Hunter Charles, who she dated, and Nathaniel Miller.

[4] Officers also observed white residue, a syringe, and a spoon containing a brownish substance that tested positive for fentanyl on a dresser. In the top dresser drawer, officers found a clear plastic baggie with a rock-like substance that was subsequently determined to be 18.79 grams of methamphetamine; seven blue round pills marked M-30; sandwich baggies; a digital scale with a white powdery substance; ten syringes; a cigarette pack with a burnt, rolled green leaf-like substance inside; a pipe; and an inhaler box with a prescription label with Johnson's name on it. Officers also found hundreds of syringes, some used and some unused; twenty-eight multipurpose drug-test kits; Naloxone spray; torch lighters; and a metal Brillo pad in the bedroom.

[5] While officers were securing evidence, Johnson, Hunter, and Miller "pulled up to the apartment complex, ... slowed down off the highway, turned it back off[,] and then took off at a high rate of speed." Tr. Vol. II p. 81. Officers pursued and eventually stopped the vehicle. Johnson was placed under arrest and advised of her *Miranda*<sup>1</sup> rights.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

[6] While talking to investigating officers, Johnson indicated that she had last been in Apartment A around 11:00 p.m. the night before the search. Johnson admitted that she lived in the apartment and would sleep in the bedroom. Johnson told officers that “it wouldn’t surprise her” if drugs had been dealt out of the bedroom window. State’s Ex. 23, 12:48-13:00. Johnson admitted that she had consumed marijuana and had known that there was marijuana and paraphernalia in the apartment. Johnson indicated that she had known that Miller had been “speedballing” the night before the search and that Hunter had ingested drugs in the bathroom. State’s Ex. 34. She also admitted that she had previously observed syringes “here and there” around the bedroom. State’s Ex. 23, 8:33–8:34. While Hunter subsequently took responsibility for some of the contraband recovered from the bedroom, he denied knowing that there had been methamphetamine in the drawer. Hunter acknowledged that Johnson had had access to the drawer.

[7] On March 8, 2022, the State charged Johnson with Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, two counts of Level 6 felony possession of a narcotic drug, Level 6 felony maintaining a common nuisance, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. On April 21, 2022, the State amended the charging information, eliminating one count of Level 6 felony possession of a narcotic drug and the misdemeanor charges. Following trial, Johnson was found not guilty of the Level 2 felony charge and guilty of the Level 4 felony and Level 6 felony

charges. The trial court subsequently sentenced Johnson to four years of incarceration, with all but eighteen months suspended to home detention and probation.

## Discussion and Decision

[8] Johnson contends that the evidence is insufficient to sustain her conviction for Level 4 felony possession of methamphetamine.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts 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.

*Drane v. State*, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.”

*Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

- [9] In order to prove that Johnson committed Level 4 possession of methamphetamine, the State was required to prove that Johnson, without a valid prescription, knowingly or intentionally possessed at least ten but less than twenty-eight grams of methamphetamine. Ind. Cod § 35-48-4-6.1(a) & - 6.1(c)(1). “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a). “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(b).
- [10] Johnson acknowledges that possession may be either actual or constructive. “Actual possession occurs when a person has direct physical control over the item.” *Sargent v. State*, 27 N.E.3d 729, 733 (Ind. 2015). “When the State cannot show actual possession, it may nonetheless prevail on proof of constructive possession.” *Id.* “A person constructively possesses [an item] when the person has (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it.” *Id.* (quoting *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011)) (brackets in original).
- [11] In challenging the sufficiency of the evidence, Johnson does not argue that she did not have the capability to maintain dominion and control over the methamphetamine, but rather argues that the State failed to prove the requisite intent.

To prove the intent element, the State must demonstrate the defendant’s knowledge of the presence of the contraband. This knowledge may be inferred from either the exclusive dominion

and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. Among the recognized "additional circumstances" are: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) contraband is in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant.

*Jones v. State*, 807 N.E.2d 58, 65 (Ind. Ct. App. 2004) (internal citations omitted), *trans. denied*. The above-listed circumstances are not exhaustive, however, as "[o]ther circumstances could just as reasonably demonstrate the requisite knowledge." *Carnes v. State*, 480 N.E.2d 581, 586 (Ind. Ct. App. 1985), *trans. denied*.

[12] Again, officers found 18.79 grams of methamphetamine during a search of a small bedroom that, at the time, was being shared by Johnson, Hunter, and Miller. It was found intermingled with items belonging to Johnson. Additional drug paraphernalia was intermingled with other items belonging to Johnson. Given the proximity of the methamphetamine and paraphernalia to Johnson's possessions, the jury could have reasonably inferred that Johnson had known of the presence of drugs, including the methamphetamine. In addition, when investigating officers told Johnson about the contraband that they had found in plain sight in the bedroom, Johnson had made the unprompted statement that she does "not get in [Hunter's] drawers." State's Ex. 23, 5:24–5:28. Johnson's unprompted statement relating to the dresser drawers also supports the inference that she had known that the methamphetamine had been in the

drawer. Moreover, Johnson admitted to knowing that syringes were present in the room and that each of the room's occupants had used drugs, with Johnson admitting to having used marijuana.

[13] We conclude that the jury could have reasonably inferred from the evidence that Johnson had constructively possessed the methamphetamine recovered from the dresser drawer. Even though Johnson denied ever getting in the drawer or having knowledge of the methamphetamine in the drawer, the jury was under no obligation to believe her self-serving testimony. *See Fultz v. State*, 849 N.E.2d 616, 623 (Ind. Ct. App. 2006) (“It was entirely within the jury’s province to disregard [defendant’s] self-serving testimony.”), *trans. denied*. Johnson’s challenge to the sufficiency of the evidence to sustain her conviction amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146.

[14] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.