

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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James L. Weaver,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 2, 2023

Court of Appeals Case No.  
22A-CR-2388

Appeal from the Jay Circuit Court

The Honorable Brian D.  
Hutchison, Judge

Trial Court Cause No.  
38C01-2101-F2-2

**Memorandum Decision by Judge Weissmann**  
Judges Bailey and Brown concur.

**Weissmann, Judge.**

- [1] James Weaver challenges his conviction for dealing in methamphetamine, alleging the State presented insufficient evidence. We disagree and affirm.

**Facts**

- [2] Jay County Sheriff's Deputy Tony Lennartz, alongside Weaver's parole officer, Dwight Albrecht, visited Weaver's home to conduct a compliance check. Upon arrival, the officers saw Weaver through a front window before he quickly ducked out of view. The officers began knocking on the front door and announced the parole check, but Weaver did not answer. Eventually, the officers entered the home through an unlocked door and met Weaver who, visibly out of breath, consented to a search of his property.
- [3] Deputy Lennartz quickly discovered glass smoking pipes of the kind typically used for smoking methamphetamine. He also heard noises coming from the house's attic and saw an open attic vent cover with drywall and dust nearby. Weaver denied the presence of anyone else in the house, but the officers found Jamie Heaps, a felon with an outstanding warrant, hiding in the attic. Also found in the garage were several homemade bombs.
- [4] The search then moved to the three vehicles in the driveway. In one of the vehicles, Deputy Lennartz found a black fanny-pack style bag that contained clean plastic baggies and about 11 grams of methamphetamine. Next to the bag was Weaver's wallet, about 10 gift cards to various stores, and a scale. A backpack labeled "Brink" was also found in the vehicle, later identified as

belonging to Thomas Brinkerhoff. The vehicle did not have a license plate or identifiable VIN number. Eventually, it came to light that Brinkerhoff had purchased the vehicle for \$700 about two months ago. Surveillance video recovered from Weaver's home showed the vehicle being dragged to the property and Weaver pushing it out of camera view the day before. The video also showed Weaver, alongside Brinkerhoff and Heaps, sampling drugs out of a black bag the night before.

- [5] The State charged James Weaver with one count of possession of a destructive device or explosive and one count of possession of methamphetamine with intent to deliver. Following his trial, a jury found Weaver guilty of dealing in methamphetamine, a Level 2 felony, and possession of a destructive device, a Level 5 felony. The trial court sentenced Weaver to 20 years imprisonment. Weaver challenges only his dealing conviction.

## **Discussion and Decision**

- [6] We do not reweigh the evidence or assess the credibility of witnesses in reviewing the sufficiency of the evidence sustaining a conviction. *Cox v. State*, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). Only the evidence most favorable to the judgment, alongside all reasonable and logical inferences, is considered. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id.* at 1028-29. A judgment may be sustained based on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt. *Maul v. State*, 731 N.E.2d 438, 439 (Ind. 2000). If a reasonable trier of fact could have found the defendant

guilty beyond a reasonable doubt, the conviction will be affirmed. *Cox*, 774 N.E.2d at 1029.

[7] Here, the State argued that the circumstances showed Weaver constructively possessed, with the requisite intent to deal, the methamphetamine found inside the vehicle in Weaver’s driveway. A person commits dealing in methamphetamine as a Level 5 felony by possessing with intent to deliver, or finance the delivery of, methamphetamine. Ind. Code § 35-48-4-1.1(a)(2). Possession may be established by either actual possession or “constructive” possession. *Lampkins v. State*, 685 N.E.2d 698, 699 (Ind. 1997). Constructive possession requires “actual knowledge of the presence and illegal character of the contraband” alongside “the intent and capability to maintain dominion and control over it.” *Castillo v. State*, 734 N.E.2d 299, 305 (Ind. Ct. App. 2000). The possession does not have to be exclusive. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). Weaver argues the State presented insufficient evidence of his intent to deal methamphetamine and his possession over it. We address each claim in turn.

[8] Sufficient evidence supports the jury finding that Weaver intended to deal methamphetamine. While Weaver correctly points out that 11 grams of methamphetamine does not by itself support an intent to deal, *see* Ind. Code § 35-48-4-1.1(b)(2) (requiring an amount of methamphetamine greater than 28 grams to independently sustain a finding of an intent to deal), the jury was not required to ignore testimony from law enforcement that 11 grams is significantly more than the typical amount. Tr. Vol. II, p. 93. Additionally, the

drugs were found next to a scale and gift cards. Testimony at Weaver’s trial established that gift cards can be a sign of drug dealing given their use in making anonymous transactions. *Id.* at 93-94. Weaver also argues that, given the “extensive evidence” showing his use of methamphetamine, the jury should have concluded the drugs were for his personal use. Appellant’s Br., p. 11. This, however, is merely a request for the court to reweigh the evidence, which we will not do. *Cox*, 774 N.E.2d at 1028. The jury relied on reasonable inferences from the evidence before it in concluding that Weaver had an intent to deal methamphetamine.

[9] Sufficient evidence also supports the jury finding that Weaver exercised constructive possession over the drugs. There are several recognized indicia of non-exclusive constructive possession, including: “(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). Here, Weaver initially hid from law enforcement when they arrived at his home for a welfare check; Weaver’s wallet was located next to the contraband; and video evidence captured Weaver moving the vehicle in which the drugs later were found in a black bag and seemingly sampling drugs from a similar black bag. These facts presented a sufficient basis for the jury to conclude Weaver exercised constructive possession over the drugs.

[10] In sum, the State presented sufficient evidence for the jury to conclude that Weaver constructively possessed methamphetamine with the intent to deal it. We affirm his conviction.

Bailey, J., and Brown, J., concur.