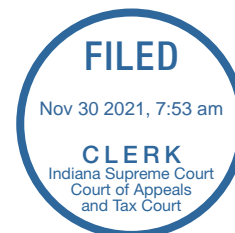


MEMORANDUM DECISION

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.



ATTORNEYS FOR APPELLANT

Jarvis E. Newman
Albion, Indiana

Alexander L. Hoover
Nappanee, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Robert Tyler Boatwright,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 30, 2021

Court of Appeals Case No.
21A-CR-1396

Appeal from the Kosciusko Circuit
Court

The Honorable Michael W. Reed,
Judge

Trial Court Cause No.
43C01-1903-F4-224

Altice, Judge.

Case Summary

- [1] Robert Tyler Boatwright appeals his convictions for Level 4 felony dealing in methamphetamine and Level 6 felony possession of methamphetamine. His sole challenge is to the sufficiency of the evidence. While both convictions are supported by sufficient evidence, we sua sponte reverse Boatwright’s conviction for possession of methamphetamine because it violates double jeopardy.
- [2] We affirm in part, reverse in part, and remand.

Facts & Procedural History

- [3] In December 2018, Detective Sergeant Ryan Moore (Officer Moore) with the Warsaw Police Department was working with a confidential informant named Levi Hall. Hall informed Officer Moore that he could purchase “an 8-ball” of methamphetamine from Boatwright, and they arranged a controlled buy for December 11. *Transcript* at 84. Officer Moore searched Hall and determined that he did not have any contraband on his person. He also provided Hall with \$200 in documented buy money and a video recording device.
- [4] Officer Moore, dressed in street clothes, then drove Hall to Penguin Point, a restaurant in Warsaw, where they waited for Boatwright in Officer Moore’s undercover police vehicle. Boatwright later pulled up next to them in a blue Malibu with a front seat passenger. Officer Moore recognized Boatwright from photographs obtained during his investigation. Hall exited Officer Moore’s vehicle and entered the back seat of the Malibu behind Boatwright. Within a

minute, the Malibu pulled away with the three men inside. Officer Moore then drove to another nearby location as “they” had directed him to do. *Id.* at 56.

[5] Shortly after arriving at the next location, the Malibu pulled up behind Officer Moore. Hall exited the Malibu and returned to Officer Moore’s vehicle with a clear plastic bag that contained a substance later determined to be over three grams of methamphetamine. Inside the Malibu, Boatwright had given the methamphetamine to Hall in exchange for the \$200. The entire transaction inside the Malibu took about five minutes and was video recorded by Hall.

[6] On March 22, 2019, the State charged Boatwright with Level 4 felony dealing in methamphetamine and Level 6 felony possession of methamphetamine. Following a jury trial in May 2021, he was convicted as charged. On June 4, 2021, the trial court sentenced Boatwright to concurrent sentences of six years in prison on the dealing count and one year on the possession count. Boatwright now appeals. Additional information will be provided below as needed.

Discussion & Decision

[7] On appeal, Boatwright contends that there was insufficient evidence to identify him as the individual who delivered the methamphetamine to Hall. He asserts that it is unclear how Officer Moore was able to identify him and argues that Hall’s identification of him should not be believed. Further, regarding the recording of the drug buy, Boatwright states, “the video provided no clear identifying shot of Mr. Boatwright.” *Appellant’s Brief* at 6.

- [8] We reject Boatwright’s blatant request for us to reweigh the evidence and to judge Hall’s credibility, which would violate our well-settled standard of review. “Convictions should be affirmed unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *T.H. v. State*, 92 N.E.3d 624, 626 (Ind. 2018). Thus, when reviewing the sufficiency of the evidence on appeal, we must consider only the probative evidence and reasonable inferences supporting the conviction, and we should not assess witness credibility or weigh the evidence. *See Moore v. State*, 27 N.E.3d 749, 754 (Ind. 2015).
- [9] In this case, Officer Moore identified Boatwright as the individual driving the Malibu who picked up Hall for the drug transaction. Further, Hall testified that Boatwright, whom Hall had known for over a year, directly delivered the methamphetamine to him in exchange for \$200. The jury was also able to view a video of the drug buy, which showed the profile of the driver/dealer. Ample evidence supported Boatwright’s convictions.
- [10] Though both convictions withstand the sufficiency challenge, we sua sponte observe that Boatwright cannot be convicted of dealing and possessing the same methamphetamine from this lone controlled buy. The dual convictions for simultaneously possessing and dealing the exact same methamphetamine constitute a clear violation of double jeopardy. *See Phillips v. State*, 174 N.E.3d 635, 644-47 (Ind. Ct. App. 2021). Accordingly, we reverse Boatwright’s conviction for Level 6 possession of methamphetamine and remand with instructions to vacate that conviction.

[11] Judgment affirmed in part, reversed in part, and remanded.

Bailey, J. and Mathias, J., concur.