

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Kristin A. Mulholland
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Isaac Maldonado,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

January 18, 2024

Court of Appeals Case No.
23A-CR-1316

Appeal from the Lake Superior
Court

The Honorable Natalie Bokota,
Judge

Trial Court Cause No.
45G02-2205-F3-59

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

- [1] Isaac Maldonado (“Maldonado”) appeals his conviction by jury of Level 4 felony possession of methamphetamine.¹ He argues that there is insufficient evidence to support his conviction. Concluding that there is sufficient evidence to support Maldonado’s conviction, we affirm the trial court’s judgment.

Issue

Whether there is sufficient evidence to support Maldonado’s conviction for Level 4 felony possession of methamphetamine.

Facts

- [2] Just after midnight on May 10, 2022, Crown Point Police Officer Eric Seip (“Officer Seip”) was on a routine patrol when he noticed a vehicle parked at a gas pump at Family Express Gas Station. No one was pumping gas. When Officer Seip drove back past the gas station twenty minutes later, he noticed that the car was still parked at the gas pump, and no one was pumping gas.
- [3] Officer Seip stopped at the gas station and went into the gas station’s convenience store to purchase a cup of coffee. While in the convenience store, Office Seip noticed Maldonado and a female companion, Morgan Sheldon

¹ IND. CODE § 35-48-4-6.1. The State also charged Maldonado with Level 3 felony possession of methamphetamine and Level 4 felony possession of a firearm by a serious violent felon. The jury acquitted Maldonado of the possession of methamphetamine count, and the State dismissed the possession of a firearm count.

(“Sheldon”). Officer Seip further noticed that both Maldonado and Sheldon seemed to be avoiding him.

[4] Officer Seip returned to his police car and ran a computer check on the license plate of the car that was still parked at the gas pump. The computer check revealed that the car belonged to Maldonado and that there was an outstanding warrant for his arrest.

[5] Thereafter, Officer Seip radioed for assistance, approached the car, and spoke with John Hagle (“Hagle”), who was sitting in the car’s passenger seat. While talking to Hagle, Officer Seip saw Maldonado and Sheldon exit the convenience store. Both Maldonado and Sheldon then walked around the side of the convenience store. Sheldon subsequently came back around the corner of the convenience store, but Maldonado did not.

[6] After Crown Point Police Department Officers, including Officer James Poling (“Officer Poling”), had arrived at the scene, Officer Seip went looking for Maldonado in a nearby wooded area. Officer Seip found Maldonado lying on the ground under some bushes.

[7] While Officer Seip was looking for Maldonado, Officer Poling noticed a handgun in Maldonado’s car. The handgun was located between the driver’s seat and the center console. When Officer Poling retrieved the gun, he saw two glass smoking devices on the driver’s side floorboard. Officer Poling also saw baggies containing a white crystal substance, which were located in the center console and in the map pocket of the driver’s door. A forensic scientist at the

Indiana State Police Lab determined that the baggies contained 13.51 grams of methamphetamine.

[8] The State charged Maldonado with Level 4 possession of methamphetamine, Level 3 felony possession of methamphetamine, and Level 4 felony possession of a firearm by a serious violent felon. While incarcerated at the Lake County Jail following his arrest, Maldonado made a telephone call, which the jail recorded. During the call, Maldonado acknowledged that he had fled into the woods. Maldonado further stated that he and the man in his car had come to an agreement that the man would say that “it was his shit.” (State’s Exhibit 8).

[9] At Maldonado’s 2023 trial, the jury heard the facts as set forth above, including the recording of the telephone call that Maldonado made while incarcerated. The jury convicted Maldonado of Level 4 felony possession of methamphetamine, and the trial court sentenced him to six years in the Department of Correction, with one year suspended to probation.

[10] Maldonado now appeals.

Decision

[11] Maldonado argues that there is insufficient evidence to support his conviction for Level 4 felony possession of methamphetamine. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no

reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[12] INDIANA CODE § 35-48-4-6.1(a) provides, in relevant part, that “[a] person who . . . knowingly or intentionally possesses methamphetamine . . . commits possession of methamphetamine, a Level 6 felony[.]” However, “[t]he offense is a Level 4 felony if the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams[.]” I.C. § 35-48-4-6.1(c).

[13] It is well-established that possession of an item may be either actual or constructive. *Canfield v. State*, 128 N.E.3d 563, 572 (Ind. Ct. App. 2019), *trans. denied*. Constructive possession, which is applicable in this case, occurs when a person has: (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it. *See id.*

[14] Here, Maldonado challenges only the intent element of constructive possession. He specifically argues that the State failed to prove beyond a reasonable doubt that he had knowledge of the methamphetamine that Officer Poling found in his car. The intent element of constructive possession is shown if the State demonstrates the defendant’s knowledge of the presence of the contraband. *Id.* A defendant’s 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 contraband. *Id.* “These additional circumstances

may include: (1) a defendant's incriminating statements; (2) a defendant's attempting to leave or making furtive gestures; (3) the location of contraband[] like drugs in settings suggesting manufacturing; (4) the item's proximity to the defendant; (5) the location of contraband within the defendant's plain view; and (6) the mingling of contraband with other items the defendant owns." *Id.* at 572-73. (cleaned up).

[15] We further note that the State is not required to prove all additional circumstances when showing that a defendant had the intent to maintain dominion and control over contraband. *See Gee v. State*, 810 N.E.2d 338, 344 (Ind. 2004) (explaining that the additional circumstances "are not exclusive" and that "the State is required to show that whatever factor or set of factors it relies upon in support of the intent prong of constructive possession, those factors or set of factors must demonstrate the probability that the defendant was aware of the presence of the contraband and its illegal character").

[16] Here, our review of the evidence reveals that when Officer Seip encountered Maldonado in the gas station's convenience store, Officer Seip noticed that Maldonado seemed to be avoiding him. When Maldonado exited the convenience store and saw Officer Seip standing near Maldonado's car talking to Hagle, Maldonado did not return to his car. Rather, he ran into the woods, where he was later found lying on the ground and hiding under some bushes. Further, Officer Poling found several baggies of methamphetamine in Maldonado's car. Specifically, Officer Poling found baggies of methamphetamine in the console and in the map-pocket of the driver's door.

Officer Poling further found two glass smoking devices on the driver's side floorboard. In addition, while incarcerated in the county jail following his arrest, Maldonado made a telephone call, wherein he stated that he and the man who had been in his car had come to an agreement that the man would say that "it was his shit." (State's Ex. 8). Based on this evidence, the jury could have reasonably determined that Maldonado had knowledge of the methamphetamine that Officer Poling found in Maldonado's car. Accordingly, there is sufficient evidence that Maldonado constructively possessed the methamphetamine, and we affirm his conviction for Level 4 felony possession of methamphetamine.

[17] Affirmed.

Tavitas, J., and Foley, J., concur.