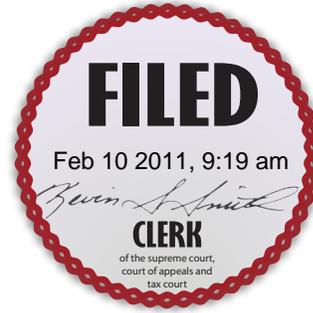


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DOUGLAS ALAN BAKER, JR., )

Appellant-Defendant, )

vs. )

No. 42A01-1006-CR-320

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE KNOX SUPERIOR COURT  
The Honorable W. Timothy Crowley, Judge  
Cause No. 42D01-0904-FB-33

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**February 10, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Douglas Alan Baker, Jr. appeals his conviction for maintaining a common nuisance as a class D felony.<sup>1</sup>

We affirm.

### ISSUE

Whether there is sufficient evidence to support the conviction.

### FACTS

On April 5, 2009, Freda Burkes, the owner of an unoccupied house at 100 West 15<sup>th</sup> Street, located in the Bunker Hill neighborhood of Vincennes, reported finding the front door kicked in and what appeared to be illegal substances in the house. Upon entering the house, Knox County Sheriff's Deputy Dean Schingeck observed "coffee filters that were not used, plastic bags with white powder residue, glass jars with . . . white powder residue," and empty lithium battery packs. (Tr. 443). Based on his experience, he knew these to be items commonly used in the manufacturing of methamphetamine. Burkes secured the front door with a padlock.

On April 7, 2009, Deputy Schingeck received a telephone call from Matthew Hitt, a resident of Bunker Hill. Hitt reported that Baker was inside Burkes' house. When Deputy Schingeck arrived at the house "a couple of minutes" later, he detected a strong chemical odor emanating from the house. (Tr. 501). He recognized the odor as that of chemicals used in the production of methamphetamine. Finding that the back door had

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<sup>1</sup> Ind. Code § 35-48-4-13.

been kicked in, Deputy Schingeck entered the house. He again observed “[g]lass jars with residue, plastic baggies with residue, coffee filters with nothing in them,” and empty lithium battery packs. (Tr. 448). He did not find anyone in the house.

Being familiar with Baker, Deputy Schingeck proceeded to a trailer located at 242 West 16<sup>th</sup> Street. He went to that location because he knew it to be “where . . . Baker lived.” (Tr. 448). Deputy Schingeck had been to that location “on other occasions,” “over a span of months.” (Tr. 469).

When Deputy Schingeck arrived at the trailer, he recognized Baker’s moped, which was parked near the trailer. He also observed a blue Blazer, which he later discovered belonged to Darlene Clemons. Deputy Schingeck parked in the driveway, approximately forty feet from the trailer. When he exited his vehicle, he detected a “pungent chemical odor.” (Tr. 453). The odor emanated from the trailer and became stronger as he got closer to the trailer.

Baker answered Deputy Schingeck’s knock at the trailer’s door. Baker denied smelling a chemical odor. Roger Coy, Baker’s uncle, came to the door shortly thereafter and denied smelling an odor. When Coy became agitated, Deputy Schingeck requested assistance. Officers from several departments, including the Indiana State Police clandestine lab team, responded. Eventually, Clemons, Coy’s ex-wife, exited the trailer. Officers secured the trailer’s occupants and obtained a search warrant for the trailer.

The lab team discovered several precursors for the manufacturing of methamphetamine throughout the trailer and in plain view. Outside the trailer, officers discovered precursors inside burn barrels.

Upon searching a compartment under the seat of Baker's moped, officers discovered two plastic soda bottles. One of the bottles contained a solvent. The other bottle contained "a cloudy liquid and white flakes." (Tr. 632). The white flakes indicated the "very end," or last stage, of the methamphetamine manufacturing process. (Tr. 624; 633). Residue collected from items in the trailer and one of the soda bottles found in the moped tested positive for methamphetamine.

Officers discovered an extension cord running from an outlet in the trailer into a nearby trailer occupied by Mark Sprinkles. The extension cord provided electricity for the trailer, which had no working utilities. Records from the Knox County Assessor's office listed Timothy and Stephanie Sprinkle as the owners of the property on which Baker's trailer was located.

On April 20, 2009, the State charged Baker with Count I, conspiracy to commit dealing in methamphetamine as a class B felony; Count II, dealing in methamphetamine as a class B felony; and Count III, maintaining a common nuisance, a class D felony. The State filed identical charges against Coy and Clemons

The trial court commenced a four-day joint trial on April 20, 2010. At the conclusion of the State's case-in-chief, Baker moved for a directed verdict. The trial

court granted Baker's motion as to Count I but denied it as to Counts II and III. The jury found Baker guilty on both counts.<sup>2</sup>

The trial court held a sentencing hearing on May 12, 2010. On Count II, the trial court sentenced Baker to ten years, with three years suspended to probation. On Count III, the trial court sentenced Baker to a concurrent sentence of one and one-half years.

### DECISION

Baker asserts that there is insufficient evidence to support his conviction for maintaining a common nuisance.<sup>3</sup> He argues that "there is at best evidence that [he] merely used the property to manufacture methamphetamine, but did not maintain the property as that word is used in the statute." Baker's Br. at 3.

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) (quotations and citations omitted).

We will sustain a judgment based on circumstantial evidence alone if the circumstantial

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<sup>2</sup> Coy and Clemons also moved for directed verdicts. The trial court granted their motions as to Counts I and III but denied the motions as to Count II, dealing in methamphetamine. The jury returned verdicts of not guilty for both Coy and Clemons.

<sup>3</sup> Baker does not appeal his conviction for dealing in methamphetamine.

evidence supports a reasonable inference of guilt. *Pelley v. State*, 901 N.E.2d 494, 500 (Ind. 2009), *reh'g denied*.

Indiana Code section 35-48-4-13(b) provides that a “person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times” for unlawfully manufacturing controlled substances commits maintaining a common nuisance, a class D felony. Here, the State charged Baker with “knowingly maintain[ing] a place, to-wit: 242 West 16<sup>th</sup> Street,” that was used for manufacturing methamphetamine one or more times. (App. 7).

In order to maintain a place, one must have control over it. *Ross v. State*, 908 N.E.2d 626, 631 (Ind. Ct. App. 2009). The evidence required to establish control over a place is comparable to the evidence required to establish constructive possession over contraband. *Halferty v. State*, 930 N.E.2d 1149, 1152 (Ind. Ct. App. 2010), *reh'g denied*.

In order to prove constructive possession over contraband, “the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband.” *Id.* (quoting *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)). Likewise, the State had to show that Baker had the intent and capability to maintain dominion and control over 242 West 16<sup>th</sup> Street to prove that he maintained it pursuant to Indiana Code section 35-48-4-13(b). *See id.* “Control in this sense concerns the defendant’s relation to the place where the substance is found: whether the defendant has the power, by way of legal authority or in a practical sense, to

control the place where, or the item in which, the substance is found.” *Id.* (quoting *Jones v. State*, 807 N.E.2d 58, 65 (Ind. Ct. App. 2004)).

In this case, Deputy Schingeck testified without objection that he went to a trailer located at 242 West 16<sup>th</sup> Street in Vincennes because he “knew that’d be where Dougie Baker lived.” (Tr. 448). He also testified that he recognized the moped parked near the trailer as Baker’s. Baker was inside the trailer when Deputy Schingeck arrived, and Baker answered Deputy Schingeck’s knock on the trailer’s door. Officers subsequently discovered both methamphetamine and precursors for the manufacturing of methamphetamine inside and outside the trailer, as well as in Baker’s moped.

The State presented sufficient evidence from which the jury could reasonable infer that, at the time of his arrest, Baker maintained the trailer and moped located at 242 West 16<sup>th</sup> Street and that both had been used at least once to unlawfully manufacture methamphetamine. Baker’s argument to the contrary amounts to an invitation to reweigh the evidence, which we will not do.

Affirmed.

NAJAM, J., and BAILEY, J., concur.