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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-23-128

WILLIAM RYAN BRESHEARS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 4, 2023

APPEAL FROM THE CLEVELAND
COUNTY CIRCUIT COURT
[NO. 13CR-21-26]

HONORABLE DAVID W.
TALLEY, JR., JUDGE

AFFIRMED; REMANDED TO
CORRECT SENTENCING
ORDER

KENNETH S. HIXSON, Judge

Appellant William Ryan Breshears was convicted in a jury trial of possession of drug paraphernalia, felon in possession of a firearm, and criminal use of a prohibited weapon. For these offenses, Breshears was sentenced to consecutive prison terms of six, six, and three years. Breshears now appeals, and on appeal he challenges only his conviction for possession of drug paraphernalia, arguing that there was insufficient evidence to support that conviction. We affirm.

Breshears was charged with, and convicted of, Class D felony possession of drug paraphernalia pursuant to Ark. Code Ann. § 5-64-443(a)(2) (Supp. 2019), which provides:

(a) A person who possesses drug paraphernalia with the purpose to use the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter upon conviction is guilty of:

....

(2) A Class D felony if the controlled substance is methamphetamine, heroin, fentanyl, or cocaine.

Specifically, Breshears was charged with, and convicted of, possession of drug paraphernalia with the purpose to use the paraphernalia to inject, ingest, inhale, or otherwise introduce into the body methamphetamine. For purposes of this appeal, “drug paraphernalia” means “any equipment, product, and material of any kind that are used, intended for use, or designed for use in . . . injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this subchapter.” Ark. Code Ann. § 5-64-101(12)(A) (Supp. 2023). Pursuant to Ark. Code Ann. § 5-64-101(12)(B)(xi), “drug paraphernalia” includes “[a] hypodermic syringe . . . used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body.”

In reviewing a sufficiency challenge, we assess the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Armstrong v. State*, 2020 Ark. 309, 607 S.W.3d 491. We will affirm a judgment of conviction if substantial evidence exists to support it. *Id.* Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Id.* Circumstantial evidence may provide a basis to support a conviction, but it must be consistent with the defendant’s guilt and inconsistent with any other reasonable conclusion. *Collins v. State*, 2021 Ark. 35, 617 S.W.3d 701. Whether the evidence excludes every other hypothesis is left to the jury to decide. *Id.*

Further, the credibility of witnesses is an issue for the jury, not the court; the trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Armstrong, supra*.

On April 7, 2021, Officers Brooke Williams and Dustin Parker with the Arkansas Probation and Parole Office conducted a search of Breshears's home.¹ According to Officer Parker's testimony, Breshears consented to the search of his home after he had tested positive for methamphetamine six days prior. Breshears allowed the officers to enter his home and he led them to his bedroom.

During the search of Breshears's bedroom, the officers found a marijuana grinder and digital scales in a file cabinet. The officers also found a trash bag that contained six used syringes with residue and two plastic baggies containing a white powdery substance suspected to be methamphetamine. In a small brown box next to the bed, the police found seven more used syringes. In a black case on the bed, the police found nine syringes and two plastic baggies, one of which had a white crystal-like substance in it. According to the officers' testimony, additional baggies containing a crystal-like substance were found in the bedroom as well as a small glass container with a crystal-like residue.

Multiple weapons were also found in Breshears's bedroom. The police found a loaded sawed-off shotgun, a machete, and a metal police baton next to the bed and also

¹Breshears was on parole at the time, and the search was conducted at the address that Breshears had provided to the agency.

found a compound bow in the corner of the room. An automatic handgun, which was inoperable, was found underneath the dresser drawers.

Officer Parker testified that in his experience as a law enforcement officer, some of the items found in Breshears's bedroom are typically used for methamphetamine use. In particular, he stated that because the used syringes were found along with the white powdery substance, he believed that the syringes were being used to use methamphetamine. Officer Parker indicated that his belief was bolstered by the fact that Breshears had tested positive for methamphetamine just six days prior to the search. Officer Parker also stated that it is very common to find people in possession of drugs and firearms because "you're not dealing with reputable people, and so I suppose they want protection."

Officer Major McClellan also assisted in the search of Breshears's house and observed the contraband found in Breshears's bedroom. Officer McClellan testified that crystal methamphetamine is typically sold in plastic baggies, and he stated that "crystal meth was the white substance that was in the one baggie." Officer McClellan also stated that based on his thirty-nine years' experience in law enforcement, syringes "could be used to liquify crystal meth . . . in a spoon and shoot it up into the veins." Officer McClellan testified that Breshears was in possession of drug paraphernalia.

Appellant's wife, Kaelin Breshears, testified as a defense witness.² Kaelin testified on direct examination that she was not living with Breshears when his house was searched by

²Kaelin did not marry Breshears until more than a year after his arrest on the current charges.

the police but that there were other people living there at the time. Kaelin stated that during that time frame, Breshears was mostly staying with her in Pine Bluff because he worked there. On cross-examination, Kaelin acknowledged that Breshears used methamphetamine recreationally, and she stated that he smoked it when he was at her house.

In this appeal, Breshears argues that his conviction for possession of drug paraphernalia should be reversed because there was insufficient evidence to support his convictions. There are two separate facets to Breshears's sufficiency argument.

Breshears first challenges his conviction for Class D felony possession of drug paraphernalia on the basis that the State failed to produce evidence that he had been previously convicted of a drug offense as required by Ark. Code Ann. § 5-64-443(a)(2)(B) (Supp. 2023). This argument, however, is not preserved for review because, although Breshears did make this argument when he moved for a directed-verdict at the close of all the evidence, he did not make this argument in his directed-verdict motion at the close of the State's case. Arkansas Rule of Criminal Procedure 33.1(a) provides:

In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.

Rule 33.1(c) provides that the failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsection (a) will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict. Because Breshears failed to make this particular argument at the close of the evidence offered by the State, this sufficiency challenge is not preserved for review.

Moreover, Breshears's argument under this point is misplaced because he is relying on an amended version of Ark. Code Ann. § 5-64-443 that was not in effect when Breshears committed the offense. The applicable version is Ark. Code Ann. § 5-64-443(a)(2) (Supp. 2019), which provides:

(a) A person who possesses drug paraphernalia with the purpose to use the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter upon conviction is guilty of:

....

(2) A Class D felony if the controlled substance is methamphetamine, heroin, fentanyl, or cocaine.

Breshears cites Ark. Code Ann. § 5-64-443(a)(2) (Supp. 2023), which provides:

(a) A person who possesses drug paraphernalia with the purpose to use the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or to store, contain, conceal, or weigh a controlled substance in violation of this chapter upon conviction is guilty of:

....

(2) A Class D felony if the:

(A) Controlled substance is methamphetamine, heroin, fentanyl, or cocaine;
and

(B) *Person has been previously convicted of a violation of this chapter.*

(Emphasis added.) Breshears committed the offense on April 7, 2021, and the italicized portion of the statute above did not become effective until July 28, 2021.³ Therefore, the

³The amended version was adopted by Act 453 of 2021.

State was not required to show that Breshears had been previously convicted of a drug offense in order to prove the charge.

Breshears's remaining argument is that there was insufficient evidence that he possessed drug paraphernalia with the purpose of using methamphetamine. Because this argument was raised in both of Breshears's directed-verdict motions, the argument is preserved for review. Breshears states that none of the seized items were sent to the crime lab for testing and that he made no incriminating statements to the police. Breshears argues that there was a lack of proof that the items found in the search contained methamphetamine or would assist in the use of methamphetamine. Breshears states further that there was no evidence that any item recovered in the search could solely be used for the purpose of using methamphetamine with no other legitimate purpose. For these reasons, Breshears contends that his conviction for possession of drug paraphernalia with the purpose to inject, ingest, inhale, or otherwise introduce methamphetamine into the human body should be reversed.

A person's intent or state of mind is rarely capable of proof by direct evidence and most often is inferred from the circumstances of the crime. *Jenkins v. State*, 2020 Ark. App. 45, 593 S.W.3d 51. A jury is not required to lay aside common sense and may infer guilt from improbable explanations or incriminating conduct. *Id.* Viewing the evidence presented in the light most favorable to the State, we hold that the jury could reasonably conclude beyond suspicion and conjecture that Breshears possessed drug paraphernalia with the purpose of introducing methamphetamine into the human body.

Breshears tested positive for methamphetamine just six days before the police search, and Breshears's wife testified that Breshears is a recreational methamphetamine user. This established that Breshears had access to methamphetamine. During the search of Breshears's bedroom, the police found used syringes with residue as well as unused syringes in proximity to baggies containing a white powdery substance and a white crystal-like substance. These substances were suspected methamphetamine, and Officer McClellan testified without objection that one of the baggies contained crystal methamphetamine.⁴ Officer McClellan also stated, based on his vast experience in law enforcement, that syringes can be used to liquify crystal methamphetamine and inject it into the veins. Officer Parker testified that because the used syringes were found along with the white powdery substance, he believed that the syringes were being used to use methamphetamine. Multiple weapons, including a sawed-off shotgun, were found in Breshears's bedroom, and Officer Parker stated that it is very common to find people in possession of drugs and firearms. The jury was not required to lay aside common sense, and we conclude that this evidence amounted to substantial evidence to support the jury's conclusion that Breshears possessed drug paraphernalia with the purpose to use the drug paraphernalia to inject, ingest, inhale, or otherwise introduce methamphetamine into the human body. Accordingly, we affirm Breshears's conviction for possession of drug paraphernalia.

⁴We observe that the supreme court has held that testimony may provide substantial evidence of the identity of a controlled substance, even in the absence of chemical testing. See *Kellensworth v. State*, 2021 Ark. 5, 614 S.W.3d 804; *Springston v. State*, 327 Ark. 90, 936 S.W.2d 550 (1997).

Finally, we also remand the case to the trial court for the limited purpose of entering an amended sentencing order to correct two clerical errors. Although the order being appealed states that Palmer was sentenced by the *court* on all three charges, Palmer was sentenced by the *jury* on all three charges. Also, the sentencing order erroneously states that criminal use of a prohibited weapon is a Class B felony when it is only a Class D felony. Therefore, we remand for the trial court to correct the sentencing order in these two respects. See *Palmer v. State*, 2023 Ark. App. 178, 663 S.W.3d 436.

Affirmed; remanded to correct sentencing order.

ABRAMSON and VIRDEN, JJ., agree.

Potts Law Office, by: Gary W. Potts, for appellant.

Tim Griffin, Att’y Gen., by: A. Evangeline Bacon, Ass’t Att’y Gen., for appellee.