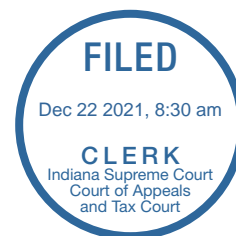


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Joshua Lewis Hartwell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 22, 2021

Court of Appeals Case No.
21A-CR-1334

Appeal from the Jenings Circuit
Court

The Honorable Murielle S. Bright,
Judge

Trial Court Cause No.
40C01-2101-F4-1

Altice, Judge.

Case Summary

[1] Joshua Lewis Hartwell appeals his conviction for possession of methamphetamine, a Level 5 felony, challenging the sufficiency of the evidence. Hartwell argues that his conviction must be set aside because the State failed to prove that he possessed the drugs.

[2] We affirm.

Facts and Procedural History

[3] On January 8, 2021, Jennings County Sheriff's Deputy Doug Brown initiated a traffic stop of an SUV for a headlight violation. As Deputy Brown started to follow the vehicle in his marked police cruiser, the driver—Terry Day—sped away. Day ultimately stopped when another officer, Deputy Garrett Hoppock, blocked a nearby intersection with his police vehicle. As the officers approached the SUV, Deputy Brown ordered Hartwell, the passenger, to exit the vehicle. The deputies learned that Hartwell and his former wife were the registered owners of the SUV.

[4] Deputy Hoppock went to the driver's side and opened the door. At that point, the "entire molding" on the driver's side door came off and a loaded firearm fell to the ground. *Transcript Vol. II* at 114-16. Deputy Hoppock arrested Day, disabled the weapon, and searched the vehicle. Deputy Hoppock immediately noticed a bag containing suspected methamphetamine in plain view on the driver's side floor mat. He also observed a "Marlboro Black" cigarette pack, "stuffed between the driver's seat and the center console," that contained suspected methamphetamine. *Id.* at 117, 121.

- [5] When asked about other contents in the vehicle and whether there was additional contraband that might be found, Hartwell acknowledged that there was \$38 in cash in the console and that his former wife likely had placed another firearm in the SUV's glove box. Upon further inspection, the officers did not locate another gun in the vehicle but noted that there was \$38 in the console as Hartwell stated.
- [6] Hartwell was arrested and charged with possession of methamphetamine as a Level 4 Felony, unlawful possession of a firearm by a serious violent felon, a Level 4 Felony, and use of a false or altered handgun license, a Level 6 felony. Laboratory tests confirmed that the seized baggies contained methamphetamine, weighing a total of 9.37 grams.
- [7] At Hartwell's jury trial that commenced on April 26, 2021, Hartwell's former wife testified for the defense. She indicated that she was the primary driver of the SUV, that the firearm seized was hers, and that Day had placed the gun in the driver's side door panel before leaving with Hartwell.
- [8] Following the presentation of the evidence, Hartwell was found guilty of the lesser included offense of possession of methamphetamine as a Level 5 Felony and acquitted of the firearm charge. The State then dismissed the altered handgun license charge. Hartwell was subsequently sentenced to an aggregate term of five years of incarceration, with four years executed, followed by one year of probation.

[9] Hartwell now appeals. Additional information will be provided below as needed.

Discussion and Decision

[10] Hartwell argues that his conviction must be reversed due to insufficient evidence. 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) (emphasis in original). We do not reweigh the evidence or judge witness credibility. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Drane*, 867 N.E.2d at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[11] Hartwell was charged and convicted of violating Ind. Code § 35-48-4-6.1, which provides that

- (a) A person who, without a valid prescription or order of a practitioner in the course of the practitioner's professional practice, knowingly or intentionally possesses methamphetamine (pure or adulterated) commits possession of methamphetamine, a Level 6 felony, except as provided in subsections (b) through (d).

Relevant here is I.C. § 35-48-4-6.1 (b)(1) that provides:

The offense is a Level 5 felony if . . . the amount of the drug involved is at least five . . . but less than ten . . . grams. . . .

- [12] Possession of contraband may be either actual or constructive. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). For the State to prove constructive possession, it must prove that the defendant had the intent and capability to maintain dominion and control over the contraband. *Parks v. State*, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018). The requisite intent may be inferred from the voluntary commission of the act. *Smith v. State*, 505 N.E.2d 81, 85 (Ind. Ct. App. 1987).
- [13] A substance can be possessed jointly by the defendant and another without any showing that the defendant had actual physical control thereof. *Godar v. State*, 643 N.E.2d 12, 14 (Ind. Ct. App. 1994), *trans. denied*. When an individual's control is nonexclusive, intent to maintain dominion and control may be inferred from additional circumstances indicating that the person knew of the presence of the contraband. *Allen v. State*, 798 N.E.2d 490, 501 (Ind. Ct. App. 2003). Such additional circumstances may include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. *Id.*
- [14] 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, e.g., Gee v. State*, 810 N.E.2d 338, 344 (Ind. 2004) (observing

that the additional circumstances described above are not exclusive). Rather, the State is only required to show that the relevant factors “demonstrate the probability that the defendant was aware of the presence of the contraband and its illegal character.” *Id.* Constructive possession may support a conviction for a drug offense. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

[15] In this case, the evidence established that the cigarette pack containing methamphetamine was wedged between the driver’s seat belt and the center console and was within arm’s reach of Hartwell. It was also shown that Hartwell could easily have leaned over and accessed the bag of methamphetamine on the driver’s side floor. Thus, Hartwell had the capability to maintain dominion and control over the drugs. *See Lampkins v. State*, 685 N.E.2d 698, 699 (Ind. 1997) (holding that the capability to maintain control element was established because the contraband was within the defendant’s reach). Additionally, the officers testified at trial that they immediately observed the methamphetamine on the driver’s side floorboard. A defendant’s proximity to contraband “in plain view” is an additional circumstance that supports the inference of intent. *See, e.g., Tate v. State*, 835 N.E.2d 499, 511 (Ind. Ct. App. 2005) (observing that because firearms in a motel room were in the officers’ plain view, it was reasonable to infer that the guns were also in the defendant’s plain view), *trans. denied*.

[16] To further illustrate, in *Holmes v. State*, 785 N.E.2d 658, 661 (Ind. Ct. App. 2003), this court held that the defendant, a passenger in a vehicle, had the capability to maintain control over a bag of marijuana that was seized on the

floorboard behind the driver's seat. We determined that given the close proximity of the contraband to the defendant, the evidence was sufficient to show that he was "able to reduce the marijuana to his personal possession." *Id.* As in *Holmes*, Hartwell had the ability to reduce the methamphetamine to his personal possession by simply reaching next to him. *See id.* (noting that the defendant could have reached in the back of the vehicle and accessed the bag containing the contraband).

[17] What is more, Day—the driver—failed to stop the SUV when the police activated their overhead lights to conduct the traffic stop and the police had to block the vehicle to stop it. Day's failure to pull over could be considered in establishing Hartwell's knowledge of the methamphetamine in the vehicle. *See Lampkins*, 685 N.E.2d at 700 (the co-defendant's failure to pull over when the police officer activated his lights to stop the car was a consideration in establishing the defendant's knowledge of cocaine in the vehicle); *see also Brown v. State*, 563 N.E.2d 103, 107 (Ind. 1990) (evidence of flight may be considered as circumstantial evidence of consciousness of guilt).

[18] In addition to Hartwell's status as a registered owner of the SUV, other items associated with Hartwell were found in the vehicle. More specifically, Deputy Brown testified that he removed a pack of Marlboro cigarettes from Hartwell's pockets and observed that there were "probably ten" empty Marlboro boxes strewn about the SUV. *Transcript Vol. II* at 151-52. Indeed, the mingling of contraband with other items owned by the defendant is an additional circumstance demonstrating the probability that the defendant knew of the

presence and character of the controlled substance. *See, e.g., Allen, 798 N.E.2d* at 501-02 (noting that location of the drugs in close proximity to items owned by the defendant was an additional circumstance that tended to further support an inference that the defendant intended to maintain dominion and control over the contraband).

[19] The evidence also established that Hartwell was aware of other contents of the vehicle, in that he correctly told the police officers that \$38 was in the console and that another firearm would likely be found in the SUV's glove box. The fact that Hartwell knew that there was a specific amount of cash in the console and that his former wife had the tendency to keep a gun in the glovebox, demonstrated his knowledge of the SUV's contents and contributed to the likelihood that he knew of the contraband.

[20] In sum, the various factors discussed above demonstrate that Hartwell was aware of the methamphetamine in the vehicle, and he had the capability and intent to maintain control and dominion over the contraband. As a result, we conclude that the evidence was sufficient to support Hartwell's conviction for possession of methamphetamine.

[21] Judgment affirmed.

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