

## 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

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Desiree B. Welborn,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 31, 2022

Court of Appeals Case No.  
21A-CR-2297

Appeal from the Marion Superior  
Court

The Honorable Sheila Carlisle,  
Judge  
The Honorable Stanley Kroh,  
Magistrate

Trial Court Cause No.  
49D29-2006-F5-17878

**Pyle, Judge.**

## Statement of the Case

- [1] Desiree Welborn (“Welborn”) appeals her conviction, following a bench trial, of Class C misdemeanor possession of paraphernalia.<sup>1</sup> She argues that there is insufficient evidence to support her conviction. Concluding that there is sufficient evidence to support Welborn’s conviction, we affirm the trial court’s judgment.
- [2] We affirm.

## Issue

Whether there is sufficient evidence to support Welborn’s conviction.

## Facts

- [1] The facts most favorable to the verdict reveal that at approximately 12:00 a.m. on April 8, 2020, State Police Trooper Cameron Botteman (“Trooper Botteman”) was sitting at a stoplight in his marked police car when Welborn’s car rear-ended his car. The collision caused extensive damage to both cars. Trooper Botteman advised dispatch that he had been involved in a car accident and approached Welborn’s car to check on her well-being. Welborn did not

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<sup>1</sup> IND. CODE § 35-48-4-8.3. The trial court also convicted Welborn of Level 5 felony causing serious bodily injury when operating a vehicle with a Schedule I or II controlled substance in the blood, Class A misdemeanor carrying a handgun without a license, and Class B misdemeanor possession of marijuana. However, Welborn does not appeal those convictions.

appear to be injured; however, she was “fidgety” and could not sit still. (Tr. Vol. 2 at 33).

[2] Shortly thereafter, State Police Trooper Jacob Wildauer (“Trooper Wildauer”) and other troopers arrived at the scene to investigate the crash. Trooper Wildauer noticed that Welborn was exhibiting signs of possible intoxication, including rapid speech, watery and bloodshot eyes, and constricted pupils. In addition, Welborn was “fidgeting around[,]” picking at her fingernails and fingertips, and grinding her teeth. (Tr. Vol. 2 at 55).

[3] While Welborn was looking for her insurance information, Trooper Wildauer noticed a plastic grinder containing plant material on the floorboard in front of the front passenger’s seat. Subsequent testing revealed that the plant material was marijuana.

[4] A search of the vehicle revealed a laundry basket with folded clothes in the car’s back seat. Trooper Wildauer discovered in the laundry basket a 9 mm handgun, which Welborn did not have a license to carry. Another trooper found in the laundry basket a glass pipe with electrical tape wrapped around it. The pipe appeared to have burn marks, and Trooper Wildauer “believed it to be a crack pipe, or . . . commonly used” to smoke crack cocaine. (Tr. Vol. 2 at 79; Ex. Vol. at 28). A third trooper “found four roaches, which are commonly the ends of either blunts or joints of plant material, usually marijuana.” (Tr. Vol. 2 at 78). Trooper Wildauer transported Welborn to the hospital for a drug test,

which revealed the presence of amphetamine and methamphetamine in Welborn's blood.

[5] The State charged Welborn with several offenses, including Class C misdemeanor possession of paraphernalia. At a bench trial, the trial court heard the evidence as set forth above and convicted Welborn of all the charged offenses, including Class C misdemeanor possession of paraphernalia.

[6] Welborn now appeals.

### **Decision**

[7] Welborn argues that there is insufficient evidence to support her conviction for Class C misdemeanor possession of paraphernalia. 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.

[8] In order to convict Welborn of Class C misdemeanor possession of paraphernalia, the State had the burden to prove beyond a reasonable doubt that Welborn knowingly or intentionally possessed an instrument, a

device, or another object with the intent to introduce a controlled substance into her body. *See* I.C. § 35-48-4-8.3. Welborn’s sole contention is that the State failed to prove beyond a reasonable doubt that she intended to use the glass pipe to introduce a controlled substance into her body.

[9] “Intent is a mental function and, absent a confession, usually must be proved by circumstantial evidence.” *Merriweather v. State*, 128 N.E.3d 503, 515 (Ind. Ct. App. 2019), *trans. denied*. The intent to introduce a controlled substance into one’s body may be inferred from circumstantial evidence. *Sluder v. State*, 997 N.E.2d 1178, 1181 (Ind. Ct. App. 2013). Examples of evidence used to establish intent include evidence of or admission to prior drug use as well as prior drug-related convictions. *Perkins v. State*, 57 N.E.3d 861, 865, 866 (Ind. Ct. App. 2016).

[10] We further note that the statute requires only an intent to use the paraphernalia to introduce a controlled substance into the person’s body, not actual use of the paraphernalia. *Id.* at 867. In addition, the statute does not require that the intended use be immediate or occur within any set time frame. *Id.*

[11] In the *Sluder* case, a police officer arrested Sluder on an outstanding warrant. After another officer found a syringe in Sluder’s pocket, the State charged Sluder with possession of paraphernalia. At trial, the officer

testified that she did not recall whether the syringe had a needle attached to it. The police officer had found no drugs on Sluder. Also at trial, Sluder's sister testified that the syringe found in Sluder's pocket was a medicine dropper that the hospital had given her to feed her premature baby. The sister further testified that she had given Sluder the dropper to feed puppies after their mother had been hit and killed by a car. Sluder testified that the syringe was in his pocket because he had fed the puppies earlier that day. The trial court convicted Sluder of Class A misdemeanor possession of paraphernalia.

[12] On appeal, this Court concluded that the State had presented no evidence that Sluder had intended to use the syringe to inject a controlled substance into his body. *Sluder*, 997 N.E.2d at 1181. We specifically noted that “[t]here was no evidence of track marks on Sluder’s arms, past drug use, previous drug convictions, or the presence of drugs that would circumstantially establish Sluder’s intent to use drugs.” *Id.* Although we agreed with the State that this was not an exclusive list of the type of evidence necessary to establish intent, we further noted that the State had not pointed to any other evidence in the record that circumstantially established Sluder’s intent to use the syringe to introduce a controlled substance into his body. *Id.* Concluding that the evidence was insufficient to support Sluder’s conviction, we reversed the trial court’s judgment. *Id.*

[13] However, the facts before us are distinguishable from those in *Sluder*. Here, the State presented evidence that circumstantially established Welborn's intent to use the glass pipe to introduce a controlled substance into her body. Specifically, our review of the evidence reveals that Welborn's blood tested positive for methamphetamine and amphetamine and that state troopers found a grinder with marijuana in Welborn's car. Welborn's use and possession of these drugs supports a reasonable inference that Welborn possessed the glass pipe with an intent to use it to introduce a controlled substance into her body. Accordingly, we affirm Welborn's conviction for Class C misdemeanor possession of paraphernalia.

[14] Affirmed.

Bradford, C.J., and Crone, J., concur.