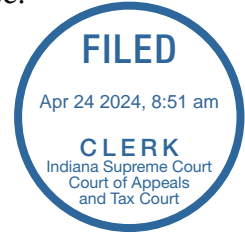


## MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

Joshua H. Field,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

---

April 24, 2024

Court of Appeals Case No.  
23A-CR-1094

Appeal from the Clay Circuit Court  
The Honorable Joseph D. Trout, Judge

Trial Court Cause No.  
11C01-2007-F4-556

---

**Memorandum Decision by Judge May**  
Judges Vaidik and Kenworthy concur.

## **May, Judge.**

- [1] Joshua H. Field appeals his conviction of Level 4 felony dealing in methamphetamine.<sup>1</sup> He argues the State did not present sufficient evidence he committed the crime. We affirm.

## **Facts and Procedural History**

- [2] In June 2020, Field lived in an apartment at 212 South Leavitt Street in Brazil, Indiana (“Leavitt Street Property”). Susan Patterson owned the Leavitt Street Property, along with five other apartments on the same street. She did not have her tenants sign leases and she collected rent in cash. When she collected rent, she would issue a receipt indicating the date, who paid her, and how much they paid her. She did not indicate which apartment the payment was for, and she collected money from whomever was present in the apartment when she went door to door to collect rent. On June 3, 2020, Patterson wrote a receipt indicating Field paid her \$160.00 in cash.
- [3] Around the same time, Deputy Sheriff James Switzer, a narcotics detective with the Clay County Sheriff’s Office, was investigating Field’s involvement with methamphetamine dealing “based on some information [he] had gathered.” (Tr. Vol. IV at 25.) He conducted surveillance “on a few occasions” at the Leavitt Street Property because he believed Field was selling drugs out of the

---

<sup>1</sup> Ind. Code § 35-48-4-1.1(c).

apartment. (*Id.*) While conducting surveillance, Deputy Switzer saw Field at the Leavitt Street Property, and observed “several vehicles” would stop by the Leavitt Street Property “park in front of or even at times on South Leavitt Street, visit for a few moments and then leave the apartment.” (*Id.* at 26.) This activity happened multiple times during Deputy Switzer’s surveillance.

[4] On June 5, 2020, Deputy Switzer discovered Field had an outstanding arrest warrant from a separate proceeding. He went to the Leavitt Street Property to arrest Field, but Field was not there. Deputy Switzer then drove around the area looking for Field’s vehicle. Deputy Switzer observed Field driving a black Ford F-150 truck and initiated a traffic stop. Deputy Switzer arrested Field on the outstanding warrant, transported him to the Clay County Jail, and impounded his vehicle.

[5] Because Field’s vehicle was to be impounded, Deputy Switzer conducted an inventory search. During that search he located a “black iPhone” that was “continually resonat[ing] sounds, notifications, it kept dinging and making all kinds of noises.” (*Id.* at 31.) Under the driver’s seat, Deputy Switzer found a red sock with \$9,060.00 in it. Based thereon, Deputy Switzer applied for and obtained a warrant to search the Leavitt Street Property for evidence related to methamphetamine dealing such as “documents, ledgers, more U.S. currency.” (*Id.* at 38.)

[6] Because he was concerned about the destruction of evidence, Deputy Switzer requested other officers secure the Leavitt Street Property. When they arrived

at the Leavitt Street Property to execute the search warrant, officers knocked on the door and Melissa Harrington answered the door. She told officers she had been asleep because she had been up for four days after taking methamphetamine. She acknowledged that she and Field were friends. When asked where Field was, she told officers that Field took her out to breakfast that morning and then told her that he was going to do laundry. Police arrested Harrington<sup>2</sup> and transported her from the scene.

[7] Deputy Switzer then executed the search warrant of the Leavitt Street Property, which he described as a “studio apartment[.]” (*Id.* at 49.) When walking into the apartment Deputy Switzer observed “a dresser, a bed . . . and a piece of furniture where the T.V. and DVR storage device was located.” (*Id.*) In the dresser drawer he located “several drug related items” but no money. (*Id.*) He stopped the search and applied for and obtained a search warrant for drug related items.

[8] In a drawer in the dresser Deputy Switzer found “clear plastic baggies” and “a blue glass smoking device” that Deputy Switzer identified, based on his training and experience, as a device “commonly associated with the ingestion of methamphetamine.” (*Id.* at 52.) He also found multiple sets of scales and “two card board boxes containing . . . a black zipper bag, like a shaving kit kind of bag, that contained several clear- clear plastic baggies.” (*Id.* at 54.) He

---

<sup>2</sup> The Record does not reveal why Harrington was arrested.

observed “another digital weighing scale[.]” (*Id.*) In a wooden box he found “a clear plastic baggie containing [an] off-white crystallized substance.” (*Id.*) The substance was tested and discovered to be 4.1 grams of methamphetamine.

Deputy Switzer testified, based on his training and experience, that these items were involved in dealing in methamphetamine.

[9] Deputy Switzer observed video surveillance cameras outside the residence. The cameras were attached to a “DVR unit, like a recording . . . which was attached to [a] viewing television.” (*Id.* at 49.) The viewing television provided a live feed of the camera views outside. Deputy Switzer applied for and obtained a third search warrant for the recorded video footage but discovered the storage unit was damaged.

[10] Deputy Switzer also found a black leather duffle bag in the apartment. Therein, he found Field’s social security card, a vehicle registration for the black Ford F-150 truck that listed Field as the owner, and an envelope containing Field’s certificate of completion for a work training course.

[11] On June 8, 2020, Deputy Switzer interviewed Field. During the interview, Field told Deputy Switzer about the money found in his vehicle and he identified approximately how much was there. Field also told Deputy Switzer he wasn’t a “big player” in drug dealing but he sold drugs “here and there . . . [to] support [his] own habit, you know, maybe making [a] little bit of money back.” (Ex. Vol. 23 at 2:59-3:08.)

[12] On July 2, 2020, the State charged Field with Level 4 felony dealing in methamphetamine, Level 6 felony possession of methamphetamine,<sup>3</sup> and Class C misdemeanor possession of paraphernalia.<sup>4</sup> On June 24, 2021, the State also alleged Field was a habitual offender.<sup>5</sup> The trial court held a bifurcated jury trial on February 20-22, 2023. During phase one of the jury trial, the jury returned a guilty verdict on the Level 4 felony dealing in methamphetamine charge. During phase two, the jury determined Field was a habitual offender. The trial court subsequently sentenced Field to nine years for Level 4 felony dealing in methamphetamine and enhanced that sentence by six years based on his adjudication as a habitual offender, for an aggregate sentence of fifteen years.

## Discussion and Decision

[13] Field argues the evidence was insufficient to prove that he committed Level 4 felony dealing in methamphetamine. “Sufficiency-of-the-evidence arguments trigger a deferential standard of appellate review, in which we ‘neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the jury.’” *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)), *reh’g denied*. “In reviewing the record, we examine ‘all the evidence and reasonable inferences supporting the

---

<sup>3</sup> Ind. Code § 35-48-4-6.1(a).

<sup>4</sup> Ind. Code § 35-48-4-8.3(b).

<sup>5</sup> Ind. Code § 35-50-2-8.

verdict,’ and thus ‘will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt.’” *Carmack v. State*, 200 N.E.3d 452, 459 (Ind. 2023) (quoting *Brantley*, 91 N.E.3d at 570).

- [14] To prove Field committed Level 4 felony dealing in methamphetamine, the State had to prove he knowingly or intentionally possessed at least one gram but less than five grams of methamphetamine with intent to deliver or finance the delivery thereof. *See* Ind. Code § 35-48-1-1.1(a) & Ind. Code § 35-48-4-1.1(c)(1) (elements of crime). Field contends the State did not prove he had constructive possession of the methamphetamine found at the Leavitt Street Property and thus it did not prove he committed Level 4 felony dealing in methamphetamine.
- [15] Convictions for possession of illegal items can be based on either actual or constructive possession. Actual possession occurs when a person “has direct physical control over” an item. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). Here, Deputy Switzer did not find the methamphetamine and related items directly in Field’s possession. Thus, we must consider whether he constructively possessed items used to deal methamphetamine.
- [16] Constructive possession requires the individual to have both the intent and the capability to maintain dominion and control over the illegal substance. *Tigner v. State*, 142 N.E.3d 1064, 1070 (Ind. Ct. App. 2020). A person’s “mere presence where drugs are located or his association with persons who possess drugs is not alone sufficient to support a finding of constructive possession.” *Id.*

(quoting *Matter of J.L.*, 599 N.E.2d 208, 212 (Ind. Ct. App. 1992), *trans. denied*).

The intent to maintain dominion and control over an illegal substance can be inferred from “proof of a possessory interest in the premises on which illegal drugs are found” because “the law infers that the party in possession of the premises is capable of exercising dominion and control over all items on the premises.” *Id.* (quoting *Gee v. State*, 810 N.E.2d 338, 340-41 (Ind. 2004)).

However, when a defendant’s possession of premises was not exclusive,

then the inference of intent to maintain dominion and control over the drugs ‘must be supported by additional circumstances pointing to the defendant’s knowledge of the nature of the controlled substances and their presence.’ The ‘additional circumstances’ have been shown by various means: (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant’s plain view, and (6) the mingling of the contraband with other items owned by the defendant.

*Id.* (quoting *Gee*, 810 N.E.2d at 341) (internal citations omitted).

[17] In support of his argument that the State did not prove he had constructive possession of the items used to prove he dealt methamphetamine, Field likens the facts here to those in *Robinson v. State*, in which we held the evidence was insufficient to prove Robinson possessed drugs found in a dresser in his apartment. 454 N.E.2d 873, 875 (Ind. Ct. App. 1983). In that case, police conducted surveillance of an apartment in Gary, Indiana, based on a report that someone was selling drugs at that location. *Id.* at 874. During that



surveillance, police saw Robinson enter the apartment once. *Id.* Additionally, police observed several people visit the apartment, blow their car horns, call for Robinson or his brother, and then be admitted to the building. *Id.*

[18] Based thereon, the police obtained and executed a search warrant for the apartment. *Id.* Robinson was in the apartment at the time of the search. *Id.* Police found a brown bottle containing heroin and over \$1,000.00 in Robinson's pants pockets. *Id.* at 874-5. In a dresser drawer in the apartment's front bedroom, officers found several packets of white powder that was later determined to be heroin and cocaine. *Id.* at 875. In the same bedroom, police discovered clothes that could fit Robinson and were too big for his brother. *Id.* Finally, police found a phone bill in the apartment with Robinson's name on it. *Id.* Based thereon, the State charged Robinson with possession of a narcotic drug – heroin – and possession of a controlled substance – cocaine. *Id.*

[19] After his conviction of both counts, Robinson appealed his conviction of possession of the cocaine<sup>6</sup> found in the apartment. *Id.* He argued the items found in the apartment were not sufficient to prove that he had intent to possess the cocaine found in the dresser in the front bedroom of the apartment. *Id.* We noted the evidence presented at trial, but ultimately found the evidence insufficient. We explained:

---

<sup>6</sup> Robinson also appealed his conviction for the heroin-related offense, but he did not make a constructive possession argument.

There was no proof, however, that the phone bill found was for service to the apartment in question. Nor was there any proof that the clothes found actually belonged to Robinson, rather than some other person of approximately the same size. Further, although visitors called out Robinson's name, only his brother was ever seen admitting people to the building. The remaining evidence, that Robinson once entered the apartment, simply does not prove he had a possessory interest in the apartment. The jury could just as reasonably have concluded that the apartment belonged to Robinson's brother and that Robinson visited him there, bringing his phone bill along by chance.

*Id.* Based thereon, we reversed Robinson's conviction of possession of a controlled substance. *Id.*

[20] The facts here are distinguishable from those in *Robinson*. In *Robinson*, the officer surveilling the residence saw Robinson leave once from that location. Here, in contrast, Deputy Switzer saw Field at the Leavitt Street Property multiple times. Additionally, Field paid the owner of the property \$160.00 in cash to be applied toward the rent for the Leavitt Street Property, which could suggest he lived there. Moreover, in *Robinson*, there was no evidence that the clothes found in the bedroom with the drugs belonged to Robinson or that the phone bill in Robinson's name was for a phone in that apartment. In contrast, Field's social security card and vehicle registration were found in a black bag near the dresser where scales, small baggies, and methamphetamine were found. While Deputy Switzer could not remember the proximity of Field's possessions to the dresser where the dealing-related items were found, the Leavitt Street Property was a small one room apartment. Thus, the black bag

with Field's possessions in it could not have been far from the dresser.

Robinson is factually distinguishable and does not control the outcome herein.

[21] Field also argues the facts here are similar to those in *Gee*, specifically as they pertain to the proximity of Field's personal items to the evidence used to support the charge of dealing in methamphetamine. *Gee* was convicted of several drug-related crimes based on constructive possession. *Gee*, 810 N.E.2d at 340. Our Indiana Supreme Court reversed *Gee*'s convictions after holding *Gee* did not constructively possess the drugs in question. The Court explained:

The record shows that several receipts and invoices from various businesses, all of which bore *Gee*'s name, were found in a drawer in the kitchen of the house. However, no drugs or drug paraphernalia were discovered in the kitchen. Other personal items belonging to *Gee*, a social security card, and a birth certificate, were located in an upstairs bedroom that *Gee* occupied, but no drugs or drug paraphernalia were found anywhere in the vicinity. By contrast in a bedroom occupied by *Lewis* [who lived with *Gee*], officers found a lock box under a bed containing \$5000 in \$20 bills. According to Officer *Krider*, this particular dollar denomination is common in illegal drug sales. The record shows that the only personal items found near the contraband were several photographs in which *Gee* appeared with his cousin *Lewis* along with other people. The photographs were located "in the cabinet underneath the shelf." However when asked the question, "You don't know who own [sic] those pictures, whether they were [*Lewis*'] pictures or [*Gee*'s] pictures, you don't know do you?" Officer *Krider* answered, "[C]orrect."

*Id.* at 343-4 (citations to the record omitted).

[22] *Gee* is also distinguishable from the facts before us. Here, the apartment was a one room apartment with a bathroom, so the black bag holding Field’s personal items was in the same room as the items related to drug dealing. This is unlike *Gee*, where the drugs were found in an upstairs bedroom separate from rooms where *Gee*’s possessions were found.

[23] Finally, the State presented evidence of “additional circumstances” to support Field’s conviction of dealing in methamphetamine. During his interview with Deputy Switzer following his arrest, Field told Deputy Switzer that he sold drugs “here and there . . . [to] support [his] own habit, you know, maybe making [a] little bit of money back.” (Ex. Vol. 23 at 2:59-3:08.) While Field did not directly confess to dealing the 4.1 grams of methamphetamine found in the dresser at the Leavitt Street Property, Deputy Switzer testified that, based on his experience, 4.1 grams was not indicative of personal use and instead suggested dealing. *See, e.g., Love v. State*, 741 N.E.2d 789, 792 (Ind. Ct. App. 2001) (“Possessing a large amount of a narcotic substance is circumstantial evidence of intent to deliver. The more narcotics a person possesses, the stronger the inference that he intended to deliver it and not consume it personally.”) (quoting *Berry v. State*, 574 N.E.2d 960, 963 (Ind. Ct. App. 1991), *trans. denied*). Finally, Field admitted there was a large sum of cash in his vehicle, but he could not tell Deputy Switzer how he acquired the cash. Based thereon, we conclude the State presented sufficient evidence to prove Field constructively possessed the methamphetamine and dealing items that Deputy Switzer found in the dresser at the Leavitt Street Property. *See Parks v. State*,

113 N.E.3d 269, 273 (Ind. Ct. App. 2018) (totality of the circumstances supported conviction based on constructive possession); *and see Bailey v. State*, 131 N.E.3d 665, 685 (Ind. Ct. App. 2019) (State proved Bailey constructively possessed drugs based in part on evidence thereof found near Bailey’s personal pictures), *reh’g denied, trans. denied; and compare Tigner*, 142 N.E.3d at 1070 (State did not prove constructive possession of drugs because Tigner did not live at the residence where drugs were found and he was not in proximity to the drugs found in the apartment).

## Conclusion

[24] The State presented sufficient evidence that Field constructively possessed the items that proved he committed Level 4 felony dealing in methamphetamine. Accordingly, we affirm his conviction.

[25] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

### ATTORNEY FOR APPELLANT

Victoria Bailey Casanova  
Casanova Legal Services, LLC  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Indiana Attorney General  
Indianapolis, Indiana

Erica S. Sullivan  
Deputy Attorney General  
Indianapolis, Indiana