

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Jermon Twuse Gavin,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

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April 19, 2024

Court of Appeals Case No.  
23A-CR-2576

Appeal from the St. Joseph Superior Court  
The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause Nos.  
71D03-2211-F3-38  
71D03-2003-F6-301  
71D03-1801-MR-1

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**Memorandum Decision by Judge Crone**

Judges Bailey and Pyle concur.

**Crone, Judge.**

## **Case Summary**

- [1] Jermon Twuse Gavin appeals his conviction for level 3 felony possession of methamphetamine in cause number 71D03-2211-F3-38 (Cause F3-38), arguing that the evidence is insufficient to prove that he possessed at least twenty-eight grams of methamphetamine. Finding sufficient evidence, we affirm.

## **Facts and Procedural History**

- [2] In October 2019, in cause number 71D03-1801-MR-1 (Cause MR-1), Gavin pled guilty to level 2 felony attempted dealing in methamphetamine and level 4 felony unlawful possession of a firearm by a serious violent felon. The trial court imposed an aggregate term of twenty-five years, suspended, with four years on probation.
- [3] In March 2020, in cause number 71D03-2003-F6-301 (Cause F6-301), the State charged Gavin with level 6 felony domestic battery committed in the presence of a child less than sixteen years old, level 6 felony strangulation, class A misdemeanor domestic battery, and class B misdemeanor criminal mischief. Gavin pled guilty to class A misdemeanor domestic battery in exchange for dismissal of the remaining counts. In September 2021, the trial court sentenced him to 183 days in jail and 182 days on probation, consecutive to his probation

in Cause MR-1. In February 2022, the State filed a violation of probation against Gavin in Causes MR-1 and F6-301 based on a charge filed against him in Elkhart County for level 6 felony possession of cocaine.

[4] In November 2022, the events underlying Cause F3-38 occurred. South Bend Police Department Sergeant Maranda Baker spotted a Jeep that had been reported stolen and initiated her overhead lights to conduct a traffic stop. The Jeep turned into a gas station and parked. A man, later identified as Gavin, exited the driver's side of the vehicle, and a woman exited the passenger's side. Sergeant Baker ordered them to stay by the car, but neither obeyed. Gavin fled on foot, and Sergeant Baker followed in pursuit. Gavin ran down an alley, and Sergeant Baker saw him throw a baggie over a fence. Police found Gavin nearby hiding behind a car and detained him.

[5] South Bend Police Department Officer Jeremiah Hooks, a crime scene technician, found the baggie that Gavin had thrown. The baggie was torn and was lying on leaves. White crystals that had fallen out of the baggie were lying on leaves near the baggie. Officer Hooks took photographs of the baggie and the crystals lying on the leaves. Officer Hooks collected the loose crystals lying on top of the leaves and placed them in the baggie, but some leaf remnants clung to the crystals. Officer Hooks took a photograph of the baggie and the collected crystals.

[6] Richard Myers, a forensic scientist with the Indiana State Police Laboratory, tested and weighed the crystalline substance in the baggie. Myers has a bachelor

of science degree in chemistry and completed graduate course work in forensic science. He also received “extensive” training in drug analysis when he was hired by the State Police. Tr. Vol. 2 at 72. He has testified as an expert witness in approximately 100 cases. Myers’s laboratory testing indicated that the crystalline substance in the baggie was methamphetamine. Prior to weighing the methamphetamine, Myers removed “the majority of [leaf debris] that was there.” *Id.* at 78. The net weight of the methamphetamine, that is, the weight excluding the baggie, was 33.95 grams. Ex. Vol. 3A at 19 (State’s Ex. 21).

[7] In Cause F3-38, the State charged Gavin with level 3 felony possession of methamphetamine and class A misdemeanor resisting law enforcement. Based on these new offenses, the State amended its probation violation petition in Causes MR-1 and F6-301. In May 2023, the State filed a habitual offender enhancement in Cause F3-38, which was subsequently amended in September 2023.

[8] In September 2023, a jury trial was held. Sergeant Baker, Officer Hooks, and Myers testified for the State. The photographs that Officer Hooks had taken of the baggie and the crystals lying on the leaves and the one he had taken of the baggie and the collected crystals were admitted. The baggie of crystalline material that had been tested by Myers was admitted as State’s Exhibit 12. Myers testified that the net weight of the methamphetamine in the baggie was 33.95 grams, and his certificate of analysis was admitted. The prosecutor asked Myers, “Would the amount of the leaf fragments that may or may not still be present in State’s [Exhibit] 12 have a large or small impact on the net weight of

State's [Exhibit] 12." Tr. Vol. 2 at 78. Myers answered, "I do not believe that the amount of leaf fragments that were contained in there and especially after I had removed some of them--removed as many of them as I could--would have a substantial impact on the weight of the sample." *Id.* The prosecutor then asked, "Is it your opinion based on your training and experience and your analysis that the amount of methamphetamine contained in State's [Exhibit] 12 is still over 28 grams?" *Id.* Myers replied, "Yes, I believe that to be correct." *Id.*

[9] The jury found Gavin guilty as charged, and he admitted to being a habitual offender. The trial court determined that Gavin violated his probation in Causes MR-1 and F6-301.

[10] In October 2023, the trial court held a sentencing hearing in all three causes. In Cause F3-38, the trial court sentenced Gavin to nine years for his possession of methamphetamine conviction, plus six years for the habitual offender enhancement, and a concurrent term of 365 days for his class A misdemeanor resisting law enforcement conviction, for an aggregate executed sentence of fifteen years. The court recommended Gavin for the Recovery While Incarcerated program but required him to complete his fifteen-year sentence and successfully complete the program before filing a petition to modify his sentence. In Cause MR-1, the court revoked Gavin's probation and ordered him to serve his twenty-five-year sentence in the Department of Correction, to be served consecutive to his sentence in Cause F3-38. In Cause F6-301, the court continued Gavin on probation. Gavin appeals.

## Discussion and Decision

- [11] Gavin challenges the sufficiency of the evidence to support his level 3 felony possession of methamphetamine conviction. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied*. “This Court respects the jury’s exclusive province to weigh conflicting evidence[,]” and we consider “only the evidence most favorable to the verdict.” *Id.* On appeal, it is “not necessary that the evidence overcome every reasonable hypothesis of innocence.” *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn therefrom “could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.” *Anderson*, 37 N.E.3d at 974.
- [12] A person who knowingly or intentionally possesses any amount of methamphetamine without a valid prescription commits a level 6 felony. Ind. Code § 35-48-4-6.1(a). To sustain a conviction for level 3 felony possession of methamphetamine as charged, the State was required to prove beyond a reasonable doubt that Gavin possessed at least twenty-eight grams of methamphetamine. Appellant’s App. Vol. 2 at 11; Ind. Code § 35-48-4-6.1(d)(1). Gavin concedes that the State proved that he committed level 6 felony possession and argues only that the State failed to prove that he possessed at least twenty-eight grams of methamphetamine.

[13] The evidence most favorable to the verdict shows that Myers testified regarding his training and expertise in drug analysis, as well as the standard practices and procedures he used to determine the chemical composition and weight of the crystalline substance. When Myers weighed the methamphetamine, he removed as many leaf fragments as he could, and he determined that the net weight of the methamphetamine was 33.95 grams. That is well over the minimum amount of twenty-eight grams required to sustain a conviction for level 3 felony possession of methamphetamine. Even accounting for the weight of the remaining leaf fragments, Myers opined that he believed that the amount of the methamphetamine was still over twenty-eight grams. Pursuant to Indiana Evidence Rule 702(a), an expert may testify in the form of an opinion.

[14] Significantly, the baggie of methamphetamine weighed by Myers was admitted in evidence, as well as the photographs of the baggie and crystals lying on the ground and the photograph of the baggie and crystals after they had been collected. State's Exhibit 10, which is the photograph of the baggie and crystals after collection, shows minute flecks of leaf fragments. Ex. Vol. 3a at 10. The jury was free to assess Myers's credibility and weigh his testimony against the actual baggie in evidence and the photographs to decide whether the State had proven beyond a reasonable doubt that Gavin possessed at least twenty-eight grams of methamphetamine. Gavin's argument is merely a request to reweigh the evidence, which we must decline. We conclude that the evidence and reasonable inferences to be drawn therefrom could have allowed a reasonable trier of fact to find that Gavin possessed at least twenty-eight grams of

methamphetamine beyond a reasonable doubt, and therefore we affirm his conviction for level 3 felony possession of methamphetamine.<sup>1</sup>

[15] Affirmed.

Bailey, J., and Pyle, J., concur.

ATTORNEY FOR APPELLANT

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<sup>1</sup> Gavin also argues that should this Court find that the evidence is insufficient, then the trial court abused its discretion by revoking his probation in Cause MR -1. Because we find sufficient evidence, we need not address his probation revocation argument.