

STATEMENT OF THE CASE

Dewayne Campbell appeals his convictions for conspiracy to commit dealing in methamphetamine as a class B felony;¹ possession of methamphetamine as a class C felony;² possession of drug precursors as a class C felony;³ and visiting a common nuisance, a class B misdemeanor.⁴

We affirm.

ISSUE

Whether there is sufficient evidence to support the convictions.

FACTS

In January of 2009, Marion Police Department Detective John Kauffman began investigating “some pseudoephedrine tracking logs” after he noticed Roger Culley purchasing pseudoephedrine “in a pattern that would be consistent with someone making” methamphetamine. (Tr. 82). At the time, Culley shared a house in Marion with his girlfriend, Lottibelle Boothby. Campbell, Culley’s stepbrother, and Culley made and used methamphetamine at Culley’s house “[e]very other day at least,” (tr. 76), and had an “unspoken” agreement that they would manufacture methamphetamine together. (Tr. 69). Campbell even taught Culley how to make methamphetamine and often provided

¹ Ind. Code §§ 35-48-4-1.1; 35-41-5-2.

² I.C. § 35-48-4-6.1(b)(1)(B).

³ I.C. § 35-48-4-14.5.

⁴ I.C. § 35-48-4-13.

several of the ingredients used to manufacture methamphetamine. He carried these ingredients in a duffel bag, which he “always had with him.” (Tr. 71). The items he carried included batteries, pseudoephedrine tablets, and fertilizer. Culley always got the fertilizer from Campbell because he did not “know how to get it otherwise” or where to obtain it. (Tr. 72).

In the meantime, officers with the Huntington Police Department had received information that Campbell and Culley were using methamphetamine at the Huntington residence Campbell shared with his mother. After reviewing several logs of ephedrine and pseudoephedrine purchases in Huntington City, Detective Sergeant Chad Hacker discovered that from late December of 2008 until early February of 2009, Campbell and his mother had purchased ephedrine or pseudoephedrine approximately ten times. Huntington police officers then conducted two searches of the residence’s trash on February 13 and the early morning of February 14, 2009. The search revealed several empty boxes and blister packs used in the packaging of pseudoephedrine tablets. Officers also discovered aluminum foil “boats,” which are used to hold methamphetamine while it is being smoked. (Tr. 166).

During the evening of February 13, 2009, Culley sent Boothby and two other individuals to Wal-Mart to purchase items for the manufacturing of methamphetamine. While Boothby was at Wal-Mart, Campbell arrived at Culley’s house with his duffel bag. Campbell already had provided fertilizer, which is used in the production of methamphetamine. When Boothby returned home, Culley and Campbell took the items

brought by Campbell, along with those purchased by Boothby, and they went into a bedroom where Culley cooked methamphetamine. Once finished, they brought the methamphetamine to the living room to smoke.

Shortly thereafter, Detective Kauffman and several officers went to Culley's residence to arrest Culley on an outstanding warrant. Upon entering the living room, officers saw Campbell, Culley, Boothby, and another individual sitting at a table, on top of which was .70 grams of methamphetamine. A pat-down of Campbell revealed a .45 caliber semi-automatic handgun in his waistband.

During a search of the residence, Detective Kauffman opened a door to one of the bedrooms. The bedroom had "a strong chemical smell," and there "appeared to be a haze in the room" (Tr. 85). Detective Kauffman observed several items commonly used in the manufacturing of methamphetamine inside the bedroom. He also found Campbell's duffel bag, which contained a plastic bag containing "either salt or fertilizer substance," a glove, paper towels, "glass with white residue in it," coffee filters, plastic bags, "an orange funnel" with "white residue in it," and several pseudoephedrine tablets. (Tr. 95). Officers discovered several other items used to manufacture methamphetamine throughout the residence, including a digital scale and plastic bags with missing corners in the living room.

Regarding the pseudoephedrine tablets he had purchased in Huntington City, Campbell told Detective Kauffman that he "knew what [Culley] was gonna [sic] do with

the pills” (Tr. 133). Campbell also stated that he intended to smoke the methamphetamine.

On February 27, 2009, the State charged Campbell with Count 1, conspiracy to commit dealing in methamphetamine as a class B felony; Count 2, possession of methamphetamine as a class C felony; Count 3, possession of drug precursors as a class C felony; and Count 4, visiting a common nuisance, a class B misdemeanor. The trial court commenced a two-day jury trial on June 21, 2010, after which the jury found Campbell guilty as charged.

Following a sentencing hearing on January 28, 2011, the trial court sentenced Campbell to concurrent sentences of twelve years, with eight years executed, on Count 1; five years on Count 2; five years on Count 3; and ninety days on Count 4. The trial court ordered that the balance of the sentence on Count 1 be suspended to probation.

DECISION

Campbell asserts that there is insufficient evidence to support his convictions.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court’s ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

1. Conspiracy to Commit Dealing in Methamphetamine

Campbell argues that the State failed to present sufficient evidence to convict him of conspiracy to commit dealing in methamphetamine. He argues that “[f]rom all the evidence, it appeared that [Campbell] had just gotten there and did not participate in making the meth[amphetamine] on the night in question.” Campbell’s Br. at 19.

Indiana Code section 35-48-4-1.1(a) provides that a person who knowingly or intentionally 1) manufactures; 2) finances the manufacture of; 3) delivers; or 4) finances the delivery of methamphetamine commits dealing in methamphetamine. “Manufacture” is defined, in part, as “the production, preparation, propagation, compounding, conversion, or processing of a controlled substance . . .” or “the organizing or supervising of” the production, preparation, propagation, compounding, conversion, or processing of a controlled substance. I.C. § 35-48-1-18.

Indiana Code section 35-41-5-2(a) provides that a “person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony.” The three elements needed to prove conspiracy are: (1) the defendant intended to commit the felony; (2) the defendant agreed with another person to commit the felony; and (3) either the defendant or the other person performed an overt act in furtherance of the conspiracy. I.C. § 35-41-5-2.

[T]he State is not required to establish the existence of a formal express agreement to prove a conspiracy. “It is sufficient if the minds of the parties meet understandingly to bring about an intelligent and deliberate

agreement to commit the offense.”” An agreement can be inferred from circumstantial evidence, which may include the overt acts of the parties in furtherance of the criminal act. Likewise, to determine whether the defendant had the requisite intent to commit the crime alleged, “[t]he trier of fact must usually resort to circumstantial evidence or reasonable inferences drawn from examination of the circumstances surrounding the crime.””

Dickenson v. State, 835 N.E.2d 542, 552 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*.

Here, Culley testified that Campbell taught him how to manufacture methamphetamine and that he and Campbell had an agreement that they would manufacture methamphetamine together almost every day. Culley further testified that Campbell provided many of the supplies and ingredients necessary to manufacture the methamphetamine and was the sole source for one of the ingredients. According to Culley, Campbell kept the items in a duffel bag, which Campbell used as a “[p]ortable meth lab.” (Tr. 65). Testimony from both Culley and Boothby revealed that on February 13, 2009, Campbell and Culley took the ingredients provided by Campbell into a bedroom where Culley, under Campbell’s tutelage, made methamphetamine.

Given the evidence, the jury could reasonably infer that Campbell agreed to manufacture methamphetamine with Culley. Campbell’s argument to the contrary amounts to an invitation to reweigh the evidence and the credibility of the witnesses, which we will not do.⁵

⁵ Within this sufficiency argument, Campbell also poses the issue of “whether making meth for personal use rises to the level of a dealing offense.” Campbell’s Br. at 20. While recognizing that Indiana Code section 35-48-1-18 does exclude “self use” and that this court has held that by amending the statutory

2. Possession of Methamphetamine

Campbell also asserts that the State failed to present sufficient evidence to convict him of possession of methamphetamine. He contends that the “missing element is possession itself,” and “[t]here is no evidence that the methamphetamine was closer to one person than another.” Campbell’s Br. at 23.

To convict Campbell of class C felony possession of methamphetamine as charged, the State was required to prove that he knowingly possessed methamphetamine while in possession of a firearm. *See* I.C. § 35-48-4-6.1.

This court has long recognized that a conviction for possession of contraband may be founded upon actual or constructive possession. Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband.

In cases where the accused has exclusive possession of the premises on which the contraband is found, an inference is permitted that he or she knew of the presence of contraband and was capable of controlling it. However, when possession of the premises is non-exclusive, the inference is not permitted absent some additional circumstances indicating knowledge of the presence of the contraband and the ability to control it. Among the recognized “additional circumstances” are: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the

definition of “manufacture,” effective July 1, 2001, to delete the exclusion for preparing or compounding a controlled substance by an individual for his or her own use, the legislature clearly intended that one could be held criminally liable for manufacturing methamphetamine for one’s personal use, *see Hatcher v. State*, 762 N.E.2d 170, 173 (Ind. Ct. App. 2002), *trans. denied*, Campbell nonetheless asks this court to “revisit that issue in light of the dealing terminology.” Campbell’s Br. at 20. We decline to address this argument, however, as the State presented sufficient evidence that Campbell manufactured the methamphetamine for others. Detective Kauffman testified that the search of the residence revealed several plastic baggies with missing corners; plastic baggies in Campbell’s duffel bag; and a scale with white residue on it. Detective Kauffman testified that scales are used to weigh drugs and baggies “are used to package the meth that’s going to be sold or delivered.” (Tr. 136). Thus, the jury could infer that Campbell conspired to manufacture the methamphetamine for others.

contraband; (5) contraband is in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant.

Holmes v. State, 785 N.E.2d 658, 660-61 (Ind. Ct. App. 2003) (citations omitted).

“These circumstances apply to show constructive possession even where the defendant is only a visitor to the premises where the contraband is found.” *Collins v. State*, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005) (citing *Ledcke v. State*, 260 Ind. 382, 296 N.E.2d 412, 416 (1973)), *trans. denied*.

Campbell did not exercise exclusive control of the premises where the methamphetamine was found. Thus, the State was required to present evidence of additional circumstances indicating his knowledge of the presence of the methamphetamine and his ability to control it.

The record shows that upon entering the residence, officers discovered Campbell sitting at a table, in the middle of which was .70 grams of methamphetamine. The evidence therefore shows that Campbell was in close proximity to the methamphetamine, which was in plain view.

Officers also discovered a digital scale and a torn plastic bag near Campbell. Officer Kauffman testified that scales are used to weigh methamphetamine while baggies are used to package it. In addition, officers discovered evidence that methamphetamine had been recently cooked. Such evidence was sufficient to demonstrate a drug manufacturing setting. *See* I.C. § 35-48-1-18 (defining “manufacture” as the “compounding, conversion, or processing of a controlled substance . . . and includes any

packaging or repackaging of the substance or labeling or relabeling of its container”). Finally, Campbell made incriminating statements to Detective Kauffman regarding both the making and using of methamphetamine.

Given the drug manufacturing setting, Campbell’s close proximity to the drugs, and Campbell’s statements, the jury could have reasonably inferred that Campbell knew of the methamphetamine and had the intent and capability to maintain and control it. Accordingly, there was sufficient evidence to support his conviction for class C felony possession of methamphetamine.⁶

3. Possession of Drug Precursors

Campbell argues that the State failed to present sufficient evidence to support his conviction for possession of drug precursors. Indiana Code section 35-48-4-14.5 provides that a person who “possesses two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance,” while in possession of a firearm, commits possession of drug precursors as a class C felony.

Here, the State charged Campbell with possession of pseudoephedrine, salts “and/or organic solvents” (App. 16). Culley and Boothby testified that the duffel bag found in the residence belonged to Campbell and that he used it to transport the ingredients for the manufacturing of methamphetamine. Officers found a “salt or fertilizer substance” and pseudoephedrine tablets in the duffel bag. (Tr. 95). Campbell admitted that he had purchased the pseudoephedrine tablets for the purpose of making

⁶ Campbell concedes that he possessed a gun.

methamphetamine. Moreover, the State presented evidence of a drug manufacturing setting. Accordingly, the jury could have reasonably inferred that Campbell knew of the precursors and was capable of controlling them.

4. Visiting a Common Nuisance

Campbell maintains that the State failed to present sufficient evidence to support his conviction for visiting a common nuisance as there was no proof “of a continuous or recurrent violation.” Campbell’s Br. at 24. We cannot agree.

Indiana Code section 35-48-4-13(a) provides that a “person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance[.]” “[T]he term ‘common nuisance’ as used in the statute requires proof of a continuous or recurrent violation.” *Zuniga v. State*, 815 N.E.2d 197, 200 (Ind. Ct. App. 2004). Thus, the State must show that the place visited by the defendant was used on more than one occasion for the unlawful use of a controlled substance. *Id.* (citing *Hale v. State*, 785 N.E.2d 641, 643 (Ind. Ct. App. 2003)).

Boothby testified that she and Culley maintained their residence primarily as a place to manufacture methamphetamine. Culley testified that he and Campbell made and used methamphetamine “every day,” (tr. 68), and admitted that “all” they did at his residence was “get[] high.” (Tr. 75). Specifically, Culley testified that during the “last couple months” that he had lived at the residence, he had used methamphetamine every day and that Campbell came to the house “[e]very other day at least.” (Tr. 76).

The evidence clearly shows that Culley's residence was used on more than occasion for both the manufacturing and using of methamphetamine. Accordingly, there was sufficient evidence to support Campbell's conviction for visiting a common nuisance.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.