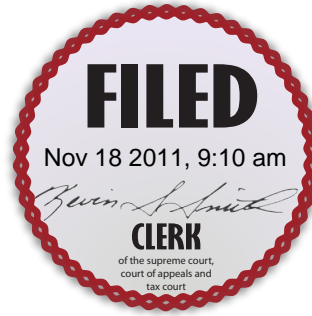


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BECKY JAYNE WELLS,)

Appellant-Defendant,)

vs.)

No. 65A04-1012-CR-798

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE POSEY CIRCUIT COURT

The Honorable James M. Redwine, Judge

Cause No. 65C01-0909-FA-84

November 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Becky Jayne Wells appeals her convictions after a jury trial for dealing in methamphetamine, as a Class A felony, and possession of methamphetamine, as a Class C felony. Wells does not make separate arguments regarding the sufficiency of evidence supporting each of her convictions. Instead, her sole argument is that the evidence is insufficient to tie her to either the manufacture or the possession of methamphetamine.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 21, 2009, Officers Jeremy Fortune and Kenneth Rose of the Posey County Narcotics Task Force went to Wells' home to inform her and her boyfriend, Donald Bunting, that subpoenas issued to them earlier in the day in an unrelated matter had been cancelled. The mobile home was titled solely in Wells' name and was located on a rural, secluded parcel. Bunting and Wells lived there "off and on," and her adult daughter and grandchild resided there as well. Transcript at 114.

As the officers approached the mobile home, they smelled odors consistent with a methamphetamine lab. Specifically, they smelled ether, lithium metal, and anhydrous ammonia mixed together. The officers knocked on the front door, and Wells answered. When she opened the door, the officers smelled the odor of ether coming from the home. They asked if Bunting was home, and Wells called out for him. Bunting approached the officers from the end of the trailer where the master bedroom was located. He was sweating profusely and appeared nervous.

The officers informed Wells and Bunting that the subpoenas had been cancelled. They then asked to speak with Wells outside. Wells stepped outside and walked away from the mobile home with the officers. Officer Rose asked Wells if she smelled anything, and she replied in the negative. Officer Rose then asked Wells if there was a meth lab on the property, to which she replied, “ ‘no, not that I know of.’ ” Id. However, she admitted that she used meth about once a week and that she had used meth the previous night. The officers eventually called for backup assistance.

The officers obtained Wells’ permission to search the premises, and Wells and the officers went to the master bedroom. Upon entering the bedroom Wells stopped and said, “ ‘oh Jeremy, I think something’s in there.’ ” Id. at 117. On the bed was a “large amount of white powder on some pie plates and tin plates[.]” Id. When Officer Fortune asked Wells what the substance was, she replied, “ ‘It’s meth, I guess.’ ” Id. At that point, Officer Rose read Wells her Miranda rights. Wells subsequently told Officer Rose that she would occasionally allow others to manufacture methamphetamine on her property in exchange for some of the finished product. And she later conceded that she had been high when the officers had arrived at her mobile home.

Officers performed an inventory search of Wells’ property. They discovered a working meth lab (meth production in a jar), and in the master bedroom they found more than eleven grams of methamphetamine. They also found items required for the production of methamphetamine, namely, sulfuric acid, coffee filters with methamphetamine residue, bone growth supplement (a cutting agent), corner cut baggies with twist ties containing white powder residue, lithium batteries, pseudoephedrine, triple

beam scales, salt, denatured alcohol, acetone, Isopure alcohol, ether, an altered LP tank, a bag of tools used to alter the LP tank, and emptied casings of lithium batteries with the lithium strips removed.

The State charged Wells with dealing in methamphetamine, as a Class A felony, and possession of methamphetamine, as a Class C felony. A jury found her guilty of both counts, and the trial court entered judgment of conviction accordingly. The court then sentenced Wells to twenty years for dealing in methamphetamine and two years for possession of methamphetamine, to be served concurrently. Wells now appeals her convictions.

DISCUSSION AND DECISION

Wells contends that the evidence is insufficient to support her convictions for dealing in methamphetamine, as a Class A felony, and possession of methamphetamine, as a Class C felony. When the sufficiency of the evidence to support a conviction is challenged, we neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 905-06 (Ind. 2005). It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. Id. at 906.

To prove that Wells was dealing in methamphetamine, as a Class A felony, the State was required to prove beyond a reasonable doubt that she knowingly or

intentionally manufactured or financed the manufacture of methamphetamine, pure or adulterated, and the amount of methamphetamine weighed in excess of three grams. See Ind. Code § 35-48-4-1.1. Wells contends that the State did not prove that she was the person who manufactured methamphetamine at her mobile home.¹ In support, she alleges that the evidence directly connected her only to a can of acetone. She also points out that she shared the home with Bunting, her adult daughter, and her daughter's child.

But the meth lab and the drug were found in plain view in the master bedroom of Wells' mobile home. Wells had admitted that she had used meth the evening before her arrest and that she had allowed others to manufacture meth on her property in exchange for some of the finished product. And she had admitted that Bunting had manufactured meth there and that she had purchased salt for him, which is one ingredient in production of the drug. It was for the jury to determine whether Wells personally manufactured or financed the manufacture of methamphetamine. Wright, 828 N.E.2d at 905-06. The evidence most favorable to the verdict support's Wells' conviction for dealing in methamphetamine, as a Class A felony.

Wells also contends that the evidence is insufficient to support her conviction for possession of methamphetamine. To prove the offense of possession of methamphetamine, as a Class C felony, the State was required to show beyond a reasonable doubt that Wells, "without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesse[d] methamphetamine (pure or adulterated)" and that the "amount of the drug

¹ The only element of this offense that Wells disputes is her involvement in the manufacture of methamphetamine.

involved (pure or adulterated) weigh[ed] three (3) grams or more[.]” Ind. Code § 35-48-4-6.1(a), (b). A conviction for possession of contraband may rely on either actual or constructive possession. Britt v. State, 810 N.E.2d 1077, 1082 (Ind. Ct. App. 2004). “Actual possession occurs when the defendant has direct physical control over the item, while constructive possession involves the intent and capability to maintain control over the item even though actual physical control is absent.” Id. The proof of a possessory interest in the premises on which illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question. Gee v. State, 810 N.E.2d 338, 340 (Ind. 2004). 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. at 340-41.

To prove the intent element of constructive possession, the State also must demonstrate a defendant’s knowledge of the presence of the contraband. See Armour v. State, 762 N.E.2d 208, 216 (Ind. Ct. App. 2002), trans. denied. “This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband.” Id. (citations omitted). Such additional circumstances include, but are not limited to, the following: (1) incriminating statements 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. Macklin v. State, 701 N.E.2d 1247, 1251 (Ind. Ct. App. 1998). “[A] substance can be possessed jointly by the defendant and another without any showing that the defendant had actual physical control thereof.” Armour, 762 N.E.2d at 216 (citing Godar v. State, 643 N.E.2d 12, 14 (Ind. Ct. App. 1994), trans. denied).

Here, the evidence most favorable to the verdict shows that more than eleven grams of methamphetamine were found lying in plain view in plates on the bed in the master bedroom of Wells’ mobile home. Also, she admitted that she regularly used methamphetamine and had allowed others to manufacture the drug on her property in exchange for some of the finished product. Additionally, Wells said she knew that Bunting had manufactured the drug on her property in the past. And she had bought salt for Bunting, and salt is used in the drug’s manufacturing process. The evidence is sufficient to show that Wells constructively possessed methamphetamine.

Still, Wells argues that her fingerprints were found only on one item, a can of acetone, which is used in the manufacturing process. She also notes that she lived in the mobile home with two other adults. Thus, she contends that there is insufficient evidence to link her to the methamphetamine. But these arguments amount to a request that we reweigh the evidence, which, again, we will not do. Wright, 828 N.E.2d at 906.

We affirm Wells’ convictions for dealing in methamphetamine, as a Class A felony, and for possession of methamphetamine, as a Class C felony.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.