



## **STATEMENT OF THE CASE**

Jerry Ridley appeals his convictions for Dealing in Methamphetamine, as a Class A felony, and Dealing in Methamphetamine, as a Class B felony, following a jury trial.

He presents the following issues for our review:

1. Whether the trial court abused its discretion when it permitted a police officer's testimony regarding Ridley's jacket size.
2. Whether the evidence is sufficient to support his convictions.
3. Whether the Prosecutor committed misconduct during his closing statement.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

In November 2004, Ridley and his wife, Nita, rented a house at 101 Center Street in Inglefield. The Ridleys paid a deposit on the house, and the landlord gave them the keys to the house. There was no written lease. Nita informed the landlord that a man named Scott Johnson would be putting the utilities for the house in his name. The Ridleys purchased money orders to pay rent on the house for the months of December 2004 and January 2005.

During December 2004, the Evansville Police Department Drug Task Force began investigating the house at 101 Center Street based upon neighbors' "complaints." Transcript at 243. On ten occasions over the course of several weeks, officers monitored the house but did not observe anyone entering or leaving. On those occasions, however, officers observed a car registered to Nita parked in front of the house and a black S-10 pickup truck parked under an attached carport.

On February 17, 2005, at 9:00 a.m., an officer saw Ridley exit the home and drive away in the black S-10 pickup truck, and he returned to the house fifteen minutes later. When he returned, he entered the house without knocking or being let in by someone inside. Shortly thereafter, Joseph Barfield, a known methamphetamine dealer, pulled into the driveway and let himself into the house. When that officer ceased monitoring the house sometime in the early afternoon, neither Ridley nor Barfield had exited the house.

On February 18, 2005, at 11:00 a.m., officers smelled a chemical odor “coming from the area” of the house and observed dark smoke coming from a flue in the garage. Id. at 149. Accordingly, officers knocked on the front, rear, and garage doors to the house, but they got no response. During those attempts, one officer found a small “baggie corner” on the grass in between the garage and the house. Id. at 150. At that point, one officer left to obtain a search warrant, and two officers stayed to continue monitoring the house. During that time, Ridley and Nita pulled into the driveway, and the officers arrested them as they exited their vehicles.

When officers searched the house pursuant to a warrant, they discovered a methamphetamine lab in the unfinished attic, as well as items used in the manufacture of methamphetamine located in other parts of the house, including: a set of digital scales, eight glass pipes for smoking methamphetamine, burnt tin foil, a baggie containing a white powdery residue, and a baggie containing sixty pills later identified as pseudoephedrine. In addition, officers found a size extra-large brown leather jacket hanging in a closet with 5.84 grams of methamphetamine inside one of its pockets. Officers found several items belonging to Ridley in the house, including a letter from the

Social Security Administration addressed to Ridley, an invoice for the purchase of tires with Ridley's name and Center Street address on it, and an employment application with his name and personal information on it. The only such item in the house belonging to Scott Johnson was a sewer bill.

The State charged Ridley with two counts of dealing methamphetamine, one for possessing methamphetamine with intent to deliver and the other for manufacturing methamphetamine. A jury found him guilty as charged, and the trial court entered judgment accordingly. The trial court sentenced Ridley to a total term of forty years. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Admission of Testimony**

Ridley first contends that the trial court abused its discretion when it permitted an officer to testify regarding what size jacket Ridley wears. The admission of opinion testimony is within the discretion of the trial court. O'Neal v. State, 716 N.E.2d 82, 89 (Ind. Ct. App. 1999), trans. denied. In order to be admissible under Indiana Evidence Rule 701, opinion testimony of a skilled witness or a lay person must be "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." The requirement that the opinion be "rationally based" on perception "means simply that the opinion must be one that a reasonable person normally could form from the perceived facts." Mariscal v. State, 687 N.E.2d 378, 380 (Ind. Ct. App. 1997) (citation omitted), trans. denied. The

requirement that the opinion be “helpful” means, in part, that the testimony gives substance to facts that were difficult to articulate. Id. (citation omitted).

Again, during their search, officers found a leather jacket hanging in a closet in the house. And officers found 5.84 grams of methamphetamine in one of the jacket pockets. At trial, the State introduced the jacket into evidence, and the following colloquy occurred during Officer Tom Raben’s direct testimony:

Q: Sgt. Raben, at the time, did you note the size of the jacket?

A: Yes, it was an extra large.

Q: And can you see that on the tag?

A: Yes.

\* \* \*

Q: Okay, and let me ask you this. You saw Jerry Ridley that day, didn’t you?

A: Yes.

Q: Okay, what was his height and weight that day?

DEFENSE COUNSEL: To which I will object to this type of question. This particular witness can’t testify as to what size jacket that he would wear. He’s not his tailor.

COURT: I will permit him to answer the question with words, “What did he look like?”

Q: Yes, that day, what did it appear that Jerry Ridley’s height and weight were?

A: He looked like he was six foot one, six foot two, somewhere in that range, 200 pound range as far as weight.

Q: And what is your height and weight?

A: I am six foot one and I . . .

DEFENSE COUNSEL: To which we would object on the basis of relevancy, Your Honor.

COURT: Show it overruled.

Q: I'm sorry, you said six foot one?

A: I'm six foot one and I weigh right at 200 pounds, 198 pounds.

Q: And what size jacket do you wear?

A: An extra large.

Transcript at 213-14.

Ridley contends that Officer Raben's testimony did not meet the requirements of Evidence Rule 701 and that the suggestion that the jacket was Ridley's "is outrageous." Brief of Appellant at 16. We do not agree. The challenged testimony is rationally based on Officer Raben's perceptions and is helpful to a determination of whether the jacket belonged to Ridley. The trial court did not abuse its discretion when it permitted that testimony.

### **Issue Two: Sufficiency of the Evidence**

Ridley next contends that the evidence is insufficient to support his convictions. Specifically, he maintains that there is no evidence connecting him to the methamphetamine lab or methamphetamine found in the house. Ridley does not otherwise challenge the sufficiency of the evidence. In other words, he does not deny that methamphetamine was being manufactured at the house.

In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence or assess the credibility of witnesses. Ferrell v. State, 746 N.E.2d 48, 50 (Ind. 2001).

Rather, we look to the evidence and reasonable inferences drawn therefrom that support the verdict and will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

To prove the first count of dealing in methamphetamine, the State was required to show that Ridley knowingly possessed with the intent to deliver methamphetamine weighing three grams or more. Ind. Code § 35-48-4-1(b)(1). To prove the second count of dealing in methamphetamine, the State was required to show that Ridley knowingly manufactured methamphetamine. Ind. Code § 35-48-4-1(a)(1).

Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband. Person v. State, 661 N.E.2d 587, 590 (Ind. Ct. App. 1996), trans. denied. Essentially, 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. Id. But 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. Id. Among the circumstances which will support such an inference 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 contraband; (5) contraband in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant. Id. These circumstances apply to show constructive possession even where the defendant is only a

visitor to the premises where the contraband is found. See Ledcke v. State, 260 Ind. 382, 296 N.E.2d 412, 416 (1973).

In this case, there was no evidence showing that Ridley had actual possession of methamphetamine at any time. But the State presented evidence that Ridley lived in and/or visited the house where a drug manufacturing setting was found. In particular, the evidence showed that Ridley paid rent on the house, entered the house as though he lived there, parked his truck at the house, and kept various personal belongings inside the house. In addition, officers found more than five grams of methamphetamine in the pocket of a jacket that was the appropriate size for Ridley. Johnson, the man whom Ridley claims actually lived in the house, testified that the jacket was not his. In all, the circumstantial evidence supports reasonable inferences that Ridley constructively possessed methamphetamine and engaged in the manufacture of methamphetamine. See Person, 661 N.E.2d at 590 (holding constructive possession of gun established where officers found gun next to shirt belonging to defendant). Ridley merely asks us to reweigh the evidence, a task not within our prerogative on appeal. The evidence is sufficient to support Ridley's convictions.

### **Issue Three: Prosecutorial Misconduct**

Ridley last contends that two statements the Prosecutor made during closing argument constituted prosecutorial misconduct. But we need not address this issue, because Ridley has failed to preserve it for our review. It is well settled that when faced with an allegation of prosecutorial misconduct, a defendant is required to object and request an admonishment. Cowan v. State, 783 N.E.2d 1270, 1277 (Ind. Ct. App. 2003),



trans. denied. If, after an admonishment, the defendant is still not satisfied, the proper procedure is to move for a mistrial. Id. The failure to request an admonishment or move for a mistrial results in waiver of the issue. Id.

Here, Ridley neither requested an admonishment nor moved for a mistrial following each of the two challenged statements. Thus, the issue is waived.

Affirmed.

KIRSCH, C.J., and DARDEN, J., concur.