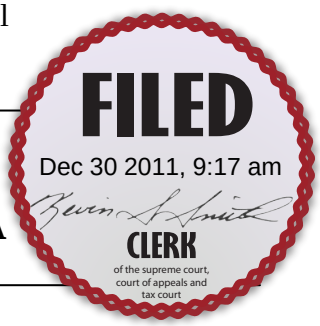
ATTORNEY FOR APPELLANT:

ERIN L. BERGER
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

SASSY BELLE SUNDERMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1105-CR-232
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
The Honorable Kelli E. Fink, Magistrate
Cause No. 82C01-1101-FB-99

December 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Sassy Belle Sunderman appeals her conviction for dealing in methamphetamine as a class B felony.[1] Sunderman appears to raise two issues which we revise and restate as:

I. Whether the trial court abused its discretion by admitting certain evidence; and

II. Whether the trial court properly denied Sunderman's motion for judgment on the evidence.

We affirm.[2]

The relevant facts follow. On January 21, 2011, David Eads, an Interdiction Unit Supervisor assigned to the Evansville-Vanderburgh County Drug Task Force, arrived at the scene of an explosion and fire at an apartment and observed "lots of firemen around and several other policemen, and basically firemen engaged in fire suppression clean up in the fire they were fighting at that location." Transcript at 159. Eads eventually entered the apartment and observed that the apartment was "pretty much completely burned out, gutted one bedroom apartment with lots of fire damage, holes in the walls. Charred, melted personal items throughout." Id. at 160. In the bathroom, Eads discovered "holes in the ceiling, piping on the vanity," a "shattered toilet," a "Coleman Fuel can," which has a "heavy smell," Liquid Fire bottle," "melted aquarium airline tubing, some coffee filters," and a roll of duct tape. Id. at 160, 182. The Coleman Fuel, Liquid Fire, tubing, and coffee filters are commonly used in manufacturing methamphetamine. Eads determined that Sunderman was the tenant of the apartment.

[1] Ind. Code § 35-48-4-1.1 (Supp. 2006).

[2] The table of contents of Sunderman's brief indicates that the "Issues Presented for Review" are on page one, but all of the copies of Sunderman's brief are missing page one. Appellant's Brief at i.

Detective-Sergeant Scott Hurt assigned to the Evansville-Vanderburgh County Drug Task Force also determined that Sunderman was the tenant of the apartment and attempted to contact her as she was not at the scene of the fire. Detective-Sergeant Hurt called Sunderman's stepfather and her mother, and eventually contacted Sunderman. After Sunderman signed a Miranda Waiver form and was advised of her rights, Detective-Sergeant Hurt interviewed Sunderman. According to Sunderman, "approximately three o'clock on that date Michael Kingery started collecting chemicals to manufacture methamphetamine," and she watched Kingery open boxes of pseudoephedrine and take the pills out of the blister packs. Id. at 193. Kingery "left the apartment during the process, but he returned to the apartment later to smoke it off or complete the manufacturing process of making methamphetamine."[3] Id. at 194. Kingery went into the bathroom, "placed tape, duct tape around the bathroom door, duct taping himself into the bathroom." Id. at 195. At that point, she was on the couch sleeping, and

[3] During the trial, the following exchange occurred during the direct examination of Detective-Sergeant Hurt:

> Q And through your training and experience what does smoke it off mean?
>
> A Well, we . . . we start out with a solid . . . with pseudoephedrine. We turn into [sic] a liquid extracting the pseudoephedrine out of the pill binding and then we add ingredients to make methamphetamine that is now in its liquid form. As Detective Goergen explained, we're going to introduce HCL gas into this liquid form of methamphetamine that brings the liquid back into a solid so we can ingest it. So you take a solid, you put it into a liquid and then you have to bring it back into a solid and whenever they say they're smoking it off, that's the final step. You're bringing that liquid back into a solid form.
>
> Q And if you can recall, did Ms. Sunderman use the phrase 'smoke it off'?
>
> A She did. In fact I quoted her in the affidavit saying 'smoke it off'.

Transcript at 194-195.

an explosion occurred in the bathroom. Sunderman ran into the bedroom where the bathroom was located and kicked in the door because Kingery was calling for help. Kingery and Sunderman went outside on the balcony where Kingery tried to extinguish the fire on his clothes. Sunderman "freaked out," walked away from the apartment, "went to the Home Depot," "went to a gas station and walked around," and later called her mother. Id. at 197.

On January 25, 2011, the State charged Sunderman with dealing in methamphetamine as a class B felony. During the jury trial, Sunderman's attorney moved to suppress any evidence found within the apartment and argued that Eads's entry into the apartment was without a warrant or consent. Sunderman's attorney also later objected to the admission of Sunderman's statement as fruit of the poisonous tree.

During the hearing on the motion to suppress, Eads testified that when he arrived, the fire was extinguished, but there were "still a lot of fire personnel all over the place, trucks, all through the parking area there." Id. at 109. Eads testified that "[t]here was significant damage to all parts of the apartment, both visible from the outside and certainly inside. The door and the framing above it was burnt severely. The windows were all out of it. It was destroyed pretty much." Id. at 110-111. Eads also described the walls as "[t]hey're . . . nothin' really . . . you can't tell they had been painted or wallpaper or what. They're heavily charred, smoke damaged, just very bad shape." Id. at 112. Eads also testified that "a large portion of the drywall" was "gone," there were "some exposed studs," there was "what looked like a melted TV," and "the ceiling in the room

was gone." Id. at 111, 113, 115. The State also admitted pictures of the residence after the fire.

After hearing evidence on the motion to suppress, the court stated: "And those photographs, as I look at them, clearly appear to me to make . . . for it to be obvious that this apartment was not inhabitable. It was gonna be uninhabitable at the time of this event. Clearly from those photographs I think that's clear." Id. at 149. The court also stated: "because it appears from the pictures that that apartment was uninhabitable that the defendant no longer had a reasonable expectation of privacy." Id. at 149-150. The court denied Sunderman's motion to suppress.

After the State rested, Sunderman's attorney moved for judgment on the evidence. Specifically, Sunderman's attorney stated: "I don't believe that the State has proven their case that she did anything to aid and abet him other than to merely provide the location." Id. at 200. The court denied Sunderman's motion. The jury found Sunderman guilty as charged. The court sentenced Sunderman to eight years with the first two years executed at the Department of Correction, the following three years on work release, and the final three years in the Drug Abuse Probation Services Program.

I.

The first issue is whether the trial court abused its discretion by admitting certain evidence. In the summary of argument section of her brief, Sunderman argues that the detectives entered her apartment without a warrant or exigent circumstances and that "[a]ny evidence gained as a result of that warrantless search should have been excluded from the trial, and any evidence later gained as a result of information obtained during the

warrantless search should have been excluded as fruit of the poisonous tree." Appellant's Brief at 4. Under the heading "Standard of Review," Sunderman mentions the Fourth Amendment and observes that the constitutionality of warrantless and nonconsensual entries onto fire-damaged premises normally turns on three factors: (1) whether there are legitimate privacy interests in the fire-damaged property which are protected by the Fourth Amendment; (2) whether exigent circumstances justify the government intrusion regardless of any reasonable expectations of privacy; and (3) whether the object of the search is to determine the cause of the fire or to gather evidence of criminal activity. See id. at 5 (citing Null v. State, 690 N.E.2d 758 (Ind. Ct. App. 1998)). Also, under the "Standard of Review" heading, Sunderman cites Article 1, Section 11 of the Indiana Constitution and states that to determine whether a search is constitutionally sound under Article 1, Section 11, the court must evaluate the reasonableness of the conduct under the totality of the circumstances. See id. (citing Myers v. State, 839 N.E.2d 1146 (Ind. 2005)). However, Sunderman does not cite to the record in the argument section of her brief, address the three factors under the federal analysis or address the totality of the circumstances, or make any argument regarding the fruit of the poisonous tree. Rather, Sunderman appears to argue only that the court erred in denying her motion for judgment on the evidence. Specifically, Sunderman's entire argument under the heading "Discussion" states:

> There was not a shred, not a scintilla of evidence admitted at her trial that suggested Sassy Sunderman manufactured methamphetamine or even aided or abetted Michael Kingery by some affirmative conduct on her part. At best, the evidence adduced establishes that Sassy Sunderman did not stop Michael Kingery from attempting to manufacture methamphetamine in

> her home that day and that the meth lab *may* have been left in her apartment while Kingery left for a short while. Absent some evidence that Sassy Sunderman contributed affirmatively to the process, the state has failed to establish even a prima facie case regarding that element of the crime charged. Therefore, Sunderman's Motion for Judgment on the Evidence was improperly denied.

Id. at 8.

To the extent that Sunderman argues that the trial court improperly admitted evidence, we conclude that Sunderman does not develop a cogent argument or cite to the record. Consequently, this issue is waived. See Johnson v. State, 675 N.E.2d 678, 681 n.1 (Ind. 1996) (observing that the defendant failed to cite to the record and "[o]n review, this Court will not search the record to find grounds for reversal"); Keller v. State, 549 N.E.2d 372, 373 (Ind. 1990) (holding that a court which must search the record and make up its own arguments because a party has presented them in perfunctory form runs the risk of being an advocate rather than an adjudicator); Haddock v. State, 800 N.E.2d 242, 245 n.5 (Ind. Ct. App. 2003) (noting that "we will not, on review, sift through the record to find a basis for a party's argument"); see also Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument); Smith v. State, 822 N.E.2d 193, 202-203 (Ind. Ct. App. 2005) ("Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."), trans. denied; Ind. Appellate Rule 46(A)(8)(a) ("The argument must

contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.").

II.

The next issue is whether the trial court properly denied Sunderman's motion for judgment on the evidence. "When a defendant moves for judgment on the evidence, the court is required to withdraw the issues from the jury if: (1) the record is devoid of evidence on one or more elements of the offense; or (2) the evidence presented is without conflict and subject to only one inference, which is favorable to the defendant." Farris v. State, 753 N.E.2d 641, 647 (Ind. 2001) (citing Ind. Trial Rule 50(A); Cutter v. State, 725 N.E.2d 401, 407 (Ind. 2000), reh'g denied).

As previously mentioned, Sunderman argues that there was no evidence that she "manufactured methamphetamine or even aided or abetted Michael Kingery by some affirmative conduct on her part." Appellant's Brief at 8. The State argues that the evidence "clearly demonstrates that methamphetamine was manufactured inside [Sunderman's] apartment on January 21, 2011," and points to the various items associated with the manufacturing of methamphetamine in the apartment. Appellee's Brief at 11. The State points to Sunderman's statement indicating that methamphetamine was manufactured in her bathroom. The State argues that Sunderman "knowingly permitted [Kingery] to use her apartment to manufacture methamphetamine." Id. at 13. The State argues: "For [Sunderman] to know that Kingery duct taped the inside of the bathroom door, [Sunderman] would either have had to have been inside the bathroom

with Kingery or she would have had to have been very close to the outside of the bathroom door." Id. The State argues that "when the evidence is considered most favorable to the State's position, it is sufficient to demonstrate that [Sunderman], at least, was an accomplice in the manufacturing of the methamphetamine in her apartment on the date charged." Id. at 11-12.

With respect to accomplice liability, we observe that Ind. Code § 35-41-2-4 provides that "[a] person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . ." "'[A]n accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence' of their concerted action." McGee v. State, 699 N.E.2d 264, 265 (Ind. 1998) (quoting Vance v. State, 620 N.E.2d 687, 690 (Ind. 1993)). It is not necessary that a defendant participate in every element of a crime to be convicted of that crime under a theory of accomplice liability. Bruno v. State, 774 N.E.2d 880, 882 (Ind. 2002), reh'g denied.

In determining whether there was sufficient evidence for purposes of accomplice liability, we consider such factors as: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of the crime; and (4) course of conduct before, during, and after occurrence of the crime. Id. A defendant's mere presence at the crime scene, or lack of opposition to a crime, standing alone, is insufficient to establish accomplice liability. Tobar v. State, 740 N.E.2d 109, 112 (Ind. 2000). These factors, however, may be considered in conjunction

with a defendant's course of conduct before, during, and after the crime, and a defendant's companionship with the one who commits the crime. Id.

The State presented evidence that an explosion and fire occurred in the bathroom of Sunderman's apartment. Coleman Fuel, Liquid Fire, tubing, and coffee filters, which are commonly used in manufacturing meth, were found in the bathroom. According to Sunderman, she watched Kingery open the boxes of pseudoephedrine and take the pills out of the blister packs. Sunderman told Detective-Sergeant Scott Hurt that Kingery left the apartment and returned "to smoke it off" or complete the manufacturing process of making methamphetamine. Transcript at 194. Sunderman also stated that she "freaked out" after the explosion, walked away from the apartment, "went to the Home Depot," "went to a gas station and walked around," and later called her mother. Id. at 197.

We cannot say that the record was devoid of evidence on one or more elements of the offense or that the evidence presented is without conflict and subject to only one inference which is favorable to the defendant. Consequently, we conclude that the trial court did not err by denying Sunderman's motion for judgment on the evidence.

For the foregoing reasons, we affirm Sunderman's conviction for dealing in methamphetamine as a class B felony.

Affirmed.

MAY, J., and CRONE, J., concur.