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.

ATTORNEY FOR APPELLANT:

MARK S. LENYO
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

FILED
Aug 09 2011, 9:37 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

AARON DAVIDSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-1005-CR-298
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D02-0907-FB-81

August 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a jury trial, Aaron Davidson was convicted of Class B felony dealing in methamphetamine it.[1] He appeals, arguing that the State failed to present sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the evening of July 14, 2009, Officer Patrick Howard of the Lakeville Police Department was on patrol. Both as part of his routine patrol duties and relative to an ongoing investigation into the production of methamphetamine, Officer Howard drove past a company called Ultra Glass at approximately 10:00 p.m. He noticed a black, Chevy pick-up truck parked on the north side of the building, which he found to be "unusual" because typically there are no cars there, and Ultra Glass is usually closed at that time. *Tr*. at 10.[2] Officer Howard contacted dispatch asking for assistance to investigate, and Senior Trooper Kevin Kubsch of the Indiana State Police ("ISP") arrived.

The two officers walked up to the truck and noted that the engine was still warm, the truck bed contained cold beer, and there were latex gloves sitting on the front seat. They also noticed a strong chemical smell, like ether, coming from the building; the odor was not consistent with the products manufactured by Ultra Glass.[3] Officer Howard suspected methamphetamine production, so he notified dispatch of a possible methamphetamine lab.

---

[1] *See* Ind. Code § 35-48-4-1.1(a)(1)(A).

[2] We have in the record before us several separately-bound transcripts of different proceedings; our reference to *Tr*. in this decision refers to the transcript of the March 2-3, 2010 trial.

[3] Ultra Glass manufactures fiberglass tubs and shower enclosures.

More ISP officers arrived, and Officer Howard began the process of obtaining a search warrant. Officer Howard and Trooper Kubsch walked the building perimeter and observed that all of the doors were locked.

While some officers were typing up the search warrant, others were conducting surveillance of the building. About midnight, one officer heard trash being thrown away in a dumpster. *Id*. at 14. Shortly thereafter, two people entered the pick-up truck and began driving away. Because the truck failed to signal a turn, ISP Trooper Mick Dockery initiated a traffic stop of the vehicle, which Davidson was driving. North Liberty Police Officer Sean Stuart assisted with the traffic stop. Both Davidson and his passenger, Malinda Rae, exited the vehicle as instructed, and a K-9 police dog conducted an "exterior open air free sniff" and alerted to both the driver's door and the passenger's door. *Id*. at 64-65. Officers found a marijuana joint in the truck, a burnt spoon, as well as one or more plastic baggies inside of which were coffee filters that contained a white substance, which field-tested positive for the presence of methamphetamine. In addition, police found items used in the manufacturing of methamphetamine, including a butane torch, lithium batteries, and receipts for the purchase of pseudoephedrine and Coleman camping fuel. Davidson and Rae were arrested and placed in separate police vehicles. Officer Stuart read *Miranda* warnings to both Davidson and Rae.

Rae eventually was switched from Officer Stuart's police car to an ISP vehicle for transport to the St. Joseph County Jail. One or more officers smelled ether in Officer Stuart's police vehicle where Rae had been seated,[4] and they found three bags of a substance, later

[4] The smell had not been present in the vehicle before Rae was placed in the car.

determined to be methamphetamine, in the rear of the seat. Officer Howard testified that he found several aspects of the discovery to be distinctive: the methamphetamine "was still in coffee filters," was emanating a strong chemical odor of ether, and "was still wet." *Id*. at 19. Prior to the pick-up truck being impounded, officers conducted an inventory of the vehicle and found a butane torch, lithium batteries, receipts for pseudoephedrine/Sudafed and Coleman camping fuel, and a burnt spoon.

After Davidson and Rae were taken to jail, Officer Howard and other officers went to Ultra Glass to execute the search warrant. Officers made several attempts to contact the owners, Davidson's parents, but were unsuccessful so they made a forced entry into the building. As part of their investigation, officers recovered a "fresh trash bag" from an outside dumpster. *Id*. at 24. In it, they found soiled coffee filters with a strong chemical odor, containers of Coleman camping fuel, box of Ziploc baggies, vinyl gloves, "pill dough," vinyl or electrical tape, a jug of muriatic acid, Ziploc baggies, and vinyl tubing containing presence of hydrochloric gas. *Id*. at 24-25, 98-99. Also inside the trash bag were containers of camping fuel, muriatic acid, and packaging for lithium batteries. Members of the ISP "meth clean up crew" were called to secure the dangerous chemicals. *Id.* at 24-25.

Ronald Davidson, father of Davidson and owner of Ultra Glass, came to the premises to resecure the building following law enforcement's forced entry into the building. Officer Howard returned to the police department to continue his report and visited the jail to interview Davidson, who had received his *Miranda* warnings when arrested earlier in the evening. The interview was recorded.

The State charged Davidson with knowingly manufacturing methamphetamine as a Class B felony. *See* Ind. Code § 35-48-4-1.1(a)(1)(A) (person who knowingly or intentionally manufactures methamphetamine commits dealing methamphetamine). At trial, several officers testified as to their observations, the evidence seized, and the process of manufacturing methamphetamine. A CD recording of Davidson's interview with Officer Howard was admitted without objection into evidence and published for the jury. *Tr*. at 26-27. In response to Officer Howard's interview questions, Davidson conceded during the recorded interview that they started "cooking" the methamphetamine sometime after 9:00 p.m. in a location inside Ultra Glass called "the jail booth," and the reason for making it was to support his own habit and addiction. *See State's Supplemental* Ex. A (CD containing Davidson's recorded statement).

Davidson did not testify at trial. However, his mother testified and stated, among other things, that the two dumpsters outside of Ultra Glass often contain trash dumped by the public. She also stated that in July 2009 her son was not an employee of Ultra Glass and was not receiving a paycheck, but was still working at Ultra Glass to pay off a debt to his parents. She said production at the business normally ends at 2:00 p.m. each day, and people leave the building at 4:00 p.m., but explained that her son might have been there at 10:00 p.m. to run the resin pump so the resin would be ready for the manufacturing of fiberglass to begin at 5:30 a.m. She said her son did not have a key to the business, but she offered that the door to the building was easily opened if pulled because it was an 84-year-old building. The jury convicted Davidson as charged, and he now appeals.

DISCUSSION AND DECISION

Davidson argues that the State failed to present sufficient evidence to convict him of manufacturing methamphetamine. When reviewing a claim of insufficient evidence, we consider only evidence that supports the verdict and draw all reasonable inferences therefrom. *Robertson v. State*, 877 N.E.2d 507, 515 (Ind. Ct. App. 2007); *Bush v. State*, 772 N.E.2d 1020, 1022 (Ind. Ct. App. 2002), *trans. denied*. We neither reweigh the evidence nor judge the credibility of witnesses. *Robertson*, 877 N.E.2d at 515. We uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. *Id.* Circumstantial evidence alone is sufficient to sustain a conviction. *Bush*, 772 N.E.2d at 1022.

Indiana Code section 35-48-4-1.1 states, in relevant part:

> (a) A person who:
> (1) knowingly or intentionally:
> (A) manufactures;
> . . . .
> methamphetamine, pure or adulterated[,]
> . . . .
> commits dealing in methamphetamine, a Class B felony, except as provided in subsection (b).

Ind. Code § 35-48-4-1.1(a)(1)(A).

Davidson asserts that the evidence was insufficient to prove beyond a reasonable doubt that he "was actually the person who manufactured … the [m]ethamphetamine," where, unlike his companion Rae, no methamphetamine was found in his actual possession, and, furthermore, there was "no connection" between him and the two trash bags found in the Ultra Glass dumpster. *Appellant's Br*. at 8. We disagree.

First, Davidson admitted in a recorded statement that he was inside Ultra Glass that night with Rae and another person and was manufacturing methamphetamine to support his own habit and addiction. Second, there was ample circumstantial evidence that Davidson manufactured methamphetamine that night. Officer Howard, as part of his routine patrol of the area and as part of a methamphetamine investigation, observed the black pick-up truck parked outside Ultra Glass during hours when no one should be there. He smelled chemicals, namely an ether smell, not associated with the normal production at Ultra Glass. He observed Davidson and Rae exit the building, get in the truck, and drive away. When the vehicle was stopped for a traffic infraction, a K-9 alerted twice to the truck, and "still wet" methamphetamine, in coffee filters, was discovered in the console of the truck. *Tr*. at 19. Other items found included a marijuana joint, a burnt spoon, lithium batteries, a butane torch, and receipts for pseudoephedrine and Coleman camping fuel. Following their arrest, Rae was found in possession of methamphetamine. Police searched the dumpsters outside Ultra Glass and found "fresh" trash bags, which smelled of ether and contained "pill dough" (excess components from over-the-counter pills that are discarded in the methamphetamine manufacturing process), a Coleman camping fuel container, vinyl tubing, a box of plastic baggies, vinyl or electrical tape, and a jug of muriatic acid. ISP Trooper Michael Toles testified that in his experience investigating methamphetamine lab scenes, these items are used in the manufacture of methamphetamine under the Nazi Birch Reduction Method of manufacturing. *Id*. at 91-93, 101.

As the State asserts, Davidson's challenge to the sufficiency is a request to reweigh the evidence, which we cannot do. The State presented sufficient evidence from which a jury could have found the defendant guilty beyond a reasonable doubt of Class B felony dealing in methamphetamine by manufacturing it.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.