



which the subjects of the investigation were “Josh Foley” and Defendant. In the course of the investigation, Deputy Lawson performed “trash pulls” in the “middle of the night” of trash from the trailer, and “went through it looking for items associated with drug use and sale.”

The trash pulls were usually done between 1:00 and 3:30 in the morning to reduce the chance of being seen. In a three-to-four-week period in September 2014, Deputy Lawson pulled the trash at the trailer on three occasions and “checked” the trailer on another three occasions. In the trash pulls, Deputy Lawson found “[a]pproximately three to four” “[l]arge plastic bags that had the corners cut out of them.” The significance to Deputy Lawson of the plastic bags with missing corners was that “[t]he corners are often used for packaging of the drugs for sale.” During one trash pull at “[a]pproximately 2:30 a.m.,” Deputy Lawson observed Defendant step out of the trailer onto the porch with Foley.

Although Deputy Lawson only observed Defendant at the trailer physically on this one occasion, Deputy Lawson observed one of two vehicles that Deputy Lawson “know[s] to belong” to Defendant parked at the trailer “[a]ll six times” Deputy Lawson “went by” the trailer “during that three-week span.” On cross-examination, Deputy Lawson stated that he has never observed Foley drive either of Defendant’s vehicles. On October 1, 2014, law enforcement went to the trailer. Before law enforcement actually reached the trailer, Foley ran out the back door of the trailer and was taken into custody.

Deputy Lawson “heard people in the [trailer],” and “stepped onto the back porch” of the trailer from where he saw Defendant and another person¹ in the trailer – Defendant

¹ The third person was an unidentified male.

“was walking towards the back door.” Deputy Lawson asked Defendant and the other person to come outside the trailer. At that point, Defendant asked Deputy Lawson if she could leave and Deputy Lawson directed her to Detective Schoenfeld.

Trent Beebe testified that he works for Ford Motor Company at a plant in the Kansas City area “Friday day, Saturday day, Sunday night and Monday night.” Mr. Beebe lives in St. Clair County when he is not working at the plant, and owns a trailer in Appleton City that he rented to Foley and a female named Ashley Mitchell. Mr. Beebe “never saw [Ashley Mitchell] around.” Mr. Beebe met a person he knew as Vicki Gilmore at the trailer on two occasions – once when he jump-started her vehicle and a second time when, “as far as” Mr. Beebe knew, only she was present at the trailer. Mr. Beebe observed the vehicle he jump-started for the woman he knew as Vicki Gilmore at the trailer “[s]omewhere in [the] neighborhood” of “[m]aybe – ten times, maybe” over “[m]aybe a two-month period.” Mr. Beebe never received any rent for the trailer so he would go by the trailer frequently in attempts to collect rent from Foley. The trailer had “[t]wo bedroom[s], living room, bathroom.”

Detective Kevin Schoenfeld with the Mid-Missouri Drug Task Force testified it is a pretty common practice for those who are selling controlled substances to use the corners from Ziploc bags to package a controlled substance including methamphetamine. On October 1, 2014, when law enforcement went to the trailer expecting to find Foley and Defendant at the trailer, Detective Schoenfeld met with Defendant. Detective Schoenfeld told Defendant about complaints of drug activity at the trailer, and asked Defendant if there was anything illegal within the trailer. Defendant replied that there was drug paraphernalia in the trailer. Detective Schoenfeld then told Defendant that (1)

Foley had also admitted to the drug paraphernalia, but “had refused consent to search” the trailer, (2) law enforcement was applying for a search warrant for the trailer, and (3) the trailer would be secured to make sure nobody enters the trailer. When Defendant asked if she could leave, Detective Schoenfeld told her she could leave but that her property would be detained until the search warrant was obtained. Defendant then “consented to a search of herself, her vehicle and her cellular phone.”

A text message on Defendant’s phone from somebody else inquired about a “20 bag.” In Detective Schoenfeld’s experience, a “20 bag” is a common term for \$20 worth of marijuana. When asked about the text message, Defendant told Detective Schoenfeld that Foley and Defendant did sell marijuana, but they were currently out of marijuana because they had smoked the rest that they had the previous night. Defendant’s purse was in the trailer on the floor in a “very short hallway” leading toward the bathroom and the back bedroom.

A search warrant was obtained. In the course of executing the search warrant, Detective Schoenfeld found the following items in the trailer: (1) a glass pipe commonly used to smoke methamphetamine with a white powder residue in the bowl that was pretty consistent with the appearance of methamphetamine after the methamphetamine has been consumed² (found in the top cabinet of a console stereo), (2) a small plastic Ziploc-type bag that contained a small amount of white powder that was consistent with the appearance of methamphetamine and that Detective Schoenfeld, based on his training and experience, believed was methamphetamine³ (found in an ashtray on the kitchen counter

² The residue was not sent to a laboratory for analysis.

³ The white powder was not sent to a laboratory for analysis.

in plain view), (3) a “marijuana water bong” and a “small marijuana pipe” (found in the kitchen cabinet over the stove), (4) a set of digital scales and a corner of a plastic bag that contained a crystalline substance that Defendant stipulated at trial was methamphetamine (found in a closed medicine cabinet in the trailer bathroom), (5) a second set of digital scales (found in the rear bedroom right next to the bathroom), and (6) a Ziploc bag with both corners cut off (found lying on a pile of trash next to the back door of the trailer). In addition, a magnetic picture of Defendant and Foley was on the refrigerator in the kitchen of the trailer.

In a single point, Defendant contends “[t]he trial court erred in overruling” Defendant’s motion for judgment of acquittal “and entering judgment” because “there was not sufficient evidence to prove beyond a reasonable doubt that [Defendant] had knowledge about the methamphetamine found in the bathroom or that she ever exercised control over it, as it was located inside a bathroom medicine cabinet out of plain view and there was no evidence presented that she was ever in the bathroom, nor any evidence connecting her to the methamphetamine.”

“To determine whether the evidence presented was sufficient to support a conviction and to withstand a motion for judgment of acquittal,⁴ this Court does not weigh the evidence but rather accept[s] as true all evidence tending to prove guilt together with all reasonable inferences that support the verdict, and ignore[s] all contrary evidence and inferences.” *State v. Ess*, 453 S.W.3d 196, 206 (Mo. banc 2015) (internal quotations omitted). This Court, however, “may not supply missing evidence, or give the [state] the benefit of unreasonable, speculative or forced inferences.” *State v. Whalen*, 49 S.W.3d 181, 184 (Mo. banc 2001) (internal quotations omitted). Evidence is sufficient to support a conviction when “there is sufficient evidence from which a reasonable [fact-finder] might have found the defendant guilty beyond a reasonable doubt.” *State v. Coleman*, 463 S.W.3d 353, 354 (Mo. banc 2015); *see also Musacchio v. United States*, — U.S. —, 136 S.Ct. 709, 715, 193 L.Ed.2d 639 (2016).

⁴ Both issues are analyzed under the same standard of review. *State v. Browning*, 357 S.W.3d 229, 233 (Mo.App. S.D. 2012).

State v. Clark, 490 S.W.3d 704, 707 (Mo. banc 2016). Further, “[i]nferences contrary to the verdict are disregarded ‘unless they are such a natural and logical extension of the evidence that a reasonable juror would be unable to disregard them.’” *State v. Grim*, 854 S.W.2d 403, 411 (Mo. banc 1993).” *State v. Kopp*, 325 S.W.3d 466, 467, 471 n.6 (Mo.App. S.D. 2010).

[P]ossession itself requires a defendant to have “conscious and intentional possession of the [controlled] substance, either actual or constructive[.]” *State v. Zetina–Torres*, 482 S.W.3d 801, 807 (Mo. banc 2016) (internal quotations omitted).

....

To have constructive possession of a controlled substance, a person must have both “knowledge of the presence and nature of a substance” and “the power and the intention at a given time to exercise dominion or control over the substance either directly or through another person or persons[.]” Section 195.010(34). Proof of constructive possession requires:

[A]t a minimum, evidence that the defendant had access to and control over the premises where the [controlled substances] were found. Exclusive possession of the premises containing the [controlled substances] raises an inference of possession and control. When the accused shares control over the premises, as here, further evidence is needed to connect [the defendant] to the [controlled substances]. The mere fact that a defendant is present on the premises where the [controlled substances were found] does not by itself make a submissible case. Moreover, proximity to the contraband alone fails to prove ownership. There must be some incriminating evidence implying that the defendant knew of the presence of the [controlled substances], and that the [controlled substances] were under his control.[.]

[*State v.]Withrow*, 8 S.W.3d [75,] 80 [(Mo. banc 1999)] (internal quotations and citations omitted); *see also State v. Stover*, 388 S.W.3d 138, 147 (Mo. banc 2012); *Glover v. State*, 225 S.W.3d 425, 428 (Mo. banc 2007). In other words, to prove beyond a reasonable doubt that a defendant who does not have exclusive control over the premises has constructive possession of a controlled substance, the state must present additional facts

that “buttress the inference of the defendant's requisite mental state.”
Withrow, 8 S.W.3d at 80.

Clark, 490 S.W.3d at 708, 709-10 (footnote omitted; brackets in original except for the first set of brackets and the brackets in the citation to **Withrow**). In addition:

“[F]urther evidence” connecting the accused to a controlled substance may take many different forms, including, but not limited to,

routine or superior access to areas where the controlled substance is kept, the presence of large quantities of the controlled substance, an admission by the accused, the accused being in close proximity to the controlled substance in plain view of law enforcement officers, commingling of the substance with the accused's personal belongings, or flight of the accused upon realizing the presence of law enforcement officers.

State v. Kerns, 389 S.W.3d 244, 247 (Mo. App. S.D. 2012). Constructive possession is not determined by a “precise formula,” however, and we look to the totality of the circumstances to determine whether the State has provided the required additional incriminating evidence. *Id.* at 248. See also *State v. Purlee*, 839 S.W.2d 584, 589 (Mo. banc 1992) (“[a]n acquittal verdict would have been inconsistent with the totality of facts reasonably considered, excepting only [the defendant]’s denials”).

State v. Stephens, 482 S.W.3d 499, 502 (Mo.App. S.D. 2016).

The actual methamphetamine in this case was found in a medicine cabinet in the bathroom. There was no further evidence such as superior access to the drug, or close proximity of Defendant to the controlled substance in plain view of law enforcement, or commingling of the substance with Defendant’s personal belongings. However, viewing the evidence as we must, there were items connected with methamphetamine in plain view, such as a small Ziploc bag containing a small amount of white powder. On six different dates when Deputy Lawson visited the trailer doing trash pulls in the early hours of the morning, the officer observed one of Defendant’s vehicles at the trailer and saw Defendant on one of the visits. She was observed at the trailer by the landlord

approximately ten times. On the day of her arrest, the officers found a Ziploc bag with both corners cut off in the trash. The jury also could have reasonably inferred that Defendant was present at the trailer on a regular basis including frequent stays overnight, and shared control of the trailer and objects in the trailer. From this evidence, the jury could have reasonably inferred that Defendant was present at the trailer when illegal drugs were being packaged for distribution in “corner bags” like the corner bag of methamphetamine found in the medicine cabinet of the trailer.

Furthermore, Defendant admitted to Detective Schoenfeld that (1) there was drug paraphernalia in the trailer, and (2) when asked about a text message on her phone inquiring about a “20 bag,” she and Foley did sell marijuana.⁵ From the totality of all the evidence, the jury could have reasonably inferred that Defendant knowingly possessed the methamphetamine found in the cabinet.

The trial court’s judgment is affirmed.

Nancy Steffen Rahmeyer, J. - Opinion Author

Gary W. Lynch, P.J. - Concur

Daniel E. Scott, J. - Concur

⁵ It has been held that evidence of a defendant’s contemporaneous possession of other drugs, paraphernalia, weapons, or money was relevant and admissible to show that the defendant knowingly and intentionally possessed the controlled substance underlying the charge, and that the defendant knew of its illegal nature. *State v. Charlton*, 114 S.W.3d 378, 384 (Mo.App. S.D. 2003) (citations omitted); *State v. Allen*, 856 S.W.2d 676, 677 (Mo.App. E.D. 1993). The defendant’s possession of the marijuana and marijuana paraphernalia, rolling papers, and rolling machine were admissible to show that a defendant knowingly possessed the methamphetamine and methamphetamine paraphernalia. *State v. Brand*, 309 S.W.3d 887, 896-97 (Mo.App. W.D. 2010).