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IN THE COURT OF APPEALS OF INDIANA

M.L.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1001-JV-68
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0909-JD-002720

July 16, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

M.L. was adjudicated a delinquent child in Marion Superior Court for committing possession of cocaine, a Class D felony if committed by an adult. M.L. appeals the adjudication and argues that the trial court abused its discretion when it admitted into evidence the cocaine found during a search incident to M.L.'s arrest. We affirm.

Facts and Procedural History

On September 1, 2009, Indianapolis Metropolitan Police Officer Sergeant James Fiscus and Detective Christopher Duckworth executed a search warrant at an Indianapolis residence. When they entered the residence, the officers observed a woman in the living room, M.L. lying on the kitchen floor with his arms spread out, and a man coming up the stairs from the basement. The officers secured the three individuals in the living room, read the search warrant to them, and Mirandized them. At that time, the officers learned that M.L. was a juvenile and was not related to the man and woman who were also present at the residence.

While executing the search warrant, Detective Duckworth found baggies and a razor blade in a closed kitchen cabinet. The detective observed a white residue on the razor blade that he suspected was cocaine. M.L. was then arrested for possession of narcotics paraphernalia, and was searched by another detective on the scene. The detective discovered $562 in M.L.'s pocket.

Before transporting M.L. to the Juvenile Detention Center, Sergeant Fiscus asked M.L. if he had any narcotics or contraband on his person. M.L.'s response to that inquiry led to a more extensive search of M.L. During that search, Detective Duckworth found a baggie containing cocaine, which had been located in M.L.'s underwear.

On September 2, 2009, the State filed a petition alleging that M.L. was a delinquent child for possession of cocaine, a Class D felony if committed by an adult. A denial hearing was held on December 9, 2009. During the hearing, M.L. moved to suppress both the statement he made in response to Sergeant Fiscus's inquiry and the cocaine found during the subsequent search. The juvenile court suppressed M.L.'s statement, but not the cocaine found during the second search. M.L. continually objected to the admission of the cocaine during the hearing.

The juvenile court entered a true finding, and ordered a suspended commitment to the Department of Correction. M.L. was also ordered to participate in a substance abuse program with random urinalysis. M.L. now appeals. Additional facts will be provided as necessary.

Discussion and Decision

M.L. argues that the trial court abused its discretion when it admitted into evidence the cocaine found during the second search. M.L. challenged the admission of the cocaine through a motion to suppress, but appeals following a denial hearing where he properly objected to its admission. Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a motion to suppress or by trial objection. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied. We review the admission of evidence for an abuse of the court's discretion. Taylor v. State, 891 N.E.2d 155, 158 (Ind. Ct. App. 2008), trans. denied. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id. We do not reweigh

the evidence, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). We also consider uncontroverted evidence in the juvenile's favor. See id.

M.L. argues that the officers lacked probable cause to arrest him for possession of paraphernalia, and that the alleged illegal arrest led to Sergeant Fiscus's improper inquiry concerning whether M.L. had any other narcotics or contraband on his person. M.L. asserts that the alleged illegal arrest and subsequent illegal inquiry resulted in the second alleged illegal search during which the officers discovered the cocaine. For these reasons, M.L. argues that the juvenile court abused its discretion when it admitted the cocaine into evidence.[1]

The Fourth Amendment to the United States Constitution protects both privacy and possessory interests by prohibiting unreasonable searches and seizures. Howard v. State, 862 N.E.2d 1208, 1210 (Ind. Ct. App. 2007). Searches and seizures that occur without prior judicial authorization in the form of a warrant are per se unreasonable, unless an exception to the warrant requirement applies. Taylor v. State, 842 N.E.2d 327, 330 (Ind. 2006). One recognized exception is a search incident to a lawful arrest. Williams v. State, 898 N.E.2d 400, 402 (Ind. Ct. App. 2008), trans. denied. In order for a search incident to an arrest to be valid, the arrest itself must be lawful. Id. Probable cause must be present to support the arrest. VanPelt v. State, 760 N.E.2d 218, 222 (Ind. Ct. App. 2001), trans. denied.

[1] M.L. does not cite to Article 1, Section 11 of the Indiana Constitution, and therefore, we consider only whether the arrest and search violated the Fourth Amendment of the United States Constitution. See Armfield v. State, 918 N.E.2d 316, 318 n.4 (Ind. 2009).

"'Probable cause adequate to support a warrantless arrest exists when, at the time of the arrest, the officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect committed a criminal act.'" Kyles v. State, 888 N.E.2d 809, 812 (Ind. Ct. App. 2008) (quoting Griffith v. State, 788 N.E.2d 835, 840 (Ind. 2003). "'The amount of evidence necessary to meet the probable cause requirement is determined on a case-by-case basis . . . and the facts and circumstances need not relate to the same crime with which the suspect is ultimately charged.'" Id. (quoting Ortiz v. State, 716 N.E.2d 345, 348 (Ind. 1999)).

M.L. argues that the officers could not have reasonably believed that M.L. constructively possessed the baggies and razor blade found in the kitchen that led to his arrest. "[C]onstructive possession involves the intent and capability to maintain control over the item even though actual physical control is absent." Britt v. State, 810 N.E.2d 1077, 1082 (Ind. Ct. App. 2004). The intent element of constructive possession is shown if the State demonstrates the defendant's knowledge of the presence of the contraband. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). When control over the premises where the contraband is found is non-exclusive, as is the case in this appeal, the defendant's knowledge may be inferred from evidence of additional circumstances, which include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. Hardister v. State, 849 N.E.2d 563, 574 (Ind. 2006). "The capability

requirement is met when the state shows that the defendant is able to reduce the [contraband] to the defendant's personal possession." Goliday, 708 N.E.2d at 6.

The officers had a reasonable belief that M.L. had the ability to take possession of the contraband found in the kitchen. When the officers entered the residence, M.L. was found in the kitchen on the floor near the cabinet where the baggies and razor blade were found. The officers also had a reasonable belief that M.L. had knowledge of the contraband. Although, the razor blade and baggies were found in a closed kitchen cabinet, M.L. was the only person in the residence in close proximity to the cabinet when the officers entered the residence. Also, the officers, who were executing a search warrant for cocaine, found M.L. lying on the kitchen floor with his arms spread out. Although this evidence may not have been sufficient to sustain a true finding for possession of paraphernalia, we conclude that the facts known to the officers were sufficient to establish probable cause to arrest M.L. for possession of paraphernalia.

Because the officers had probable cause to arrest M.L., the officers lawfully conducted a warrantless search of M.L. incident to his arrest. See White v. State, 772 N.E.2d 408, 411 (Ind. 2002); Fentress v. State, 863 N.E.2d 420, 423 (Ind. Ct. App. 2007). During that search, the officers found $562 in M.L.'s pocket.

Before transporting M.L. to the Juvenile Detention Center, Sergeant Fiscus asked M.L. if he had any narcotics or contraband on his person. M.L.'s answer to that question resulted in a second, more extensive search of M.L. during which Detective Duckworth discovered a baggie containing over a gram of cocaine. Tr. pp. 18, 37.

The State does not respond to M.L.'s argument that Sergeant Fiscus's inquiry concerning whether M.L. had any contraband or narcotics on his person was illegal.[2] However, the State argues that the cocaine was admissible as a search incident to arrest and under the "inevitable discovery" exception to the exclusionary rule. Under the Fourth Amendment, the inevitable discovery exception "permits the introduction of evidence that eventually would have been located had there been no error, for in that instance 'there is no nexus sufficient to provide a taint.'" Ammons v. State, 770 N.E.2d 927, 935 (Ind. Ct. App. 2002), trans. denied (citations omitted); see also J.B. v. State, 868 N.E.2d 1197, 1201 (Ind. Ct. App. 2007), trans. denied.

The State asserts that it is standard policy to search defendants or juveniles before and after they are transported to jail or a juvenile facility. At the denial hearing, Sergeant Fiscus testified that arrestees are generally searched two or three times because "we don't want someone who's under arrest going down to either say APC or Juvenile with a gun on them and having the ability to hurt someone else who's conducting a search." Tr. p. 13. Also, Detective Duckworth testified that the search was performed as a search incident to arrest. Tr. p. 30. Under these facts and circumstances, we conclude that the cocaine would have been discovered even if Sergeant Fiscus had not made the illegal inquiry. Therefore, the juvenile court did not abuse its discretion when it admitted the

[2] We agree with M.L. that the Sergeant Fiscus's inquiry was improper. See P.M. v. State, 861 N.E.2d 710, 714 (Ind. Ct. App. 2007) (citing Ind. Code § 31-32-5-1; G.J. v. State, 716 N.E.2d 475, 477 (Ind. Ct. App. 1999)).

cocaine into evidence. See Wilson v. State, 754 N.E.2d 950, 956 (Ind. Ct. App. 2001) ("Evidence resulting from a search incident to a lawful arrest is admissible at trial.").

Affirmed.

RILEY, J., and BRADFORD, J., concur.