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IN THE COURT OF APPEALS OF INDIANA

TORIANO MEADE,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1104-CR-363
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
Cause No. 49G20-1009-FD-70475

December 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a jury trial, Toriano Meade was convicted of possession of marijuana, a Class A misdemeanor, and possession of cocaine, a Class B felony. Meade appeals his conviction of possession of cocaine, contending the evidence was insufficient to prove he constructively possessed the cocaine in question. Concluding the evidence was sufficient to prove Meade's knowledge, and therefore his constructive possession of the cocaine, we affirm.

Facts and Procedural History

While assisting in serving a warrant at a Knights Inn on the southside of Indianapolis, Indianapolis Metropolitan Police Department officers Scott Wildauer and Michael O'Day entered a room and found drug paraphernalia as well as a duffle bag containing mail addressed to Paul Horsley.[1] Officer Wildauer inquired at the front desk and discovered Horsley was registered to a different room at the inn. Officers Wildauer and O'Day left the premises for approximately an hour in order to allow for the police to finish processing the scene where the warrant was served, and then they returned to the inn to conduct a "knock and talk" investigation with Horsley.

Horsley answered the door and invited the officers in. Meade was laying on one of the beds in the room. Officer Wildauer immediately smelled raw marijuana and saw a marijuana cigarette on the nightstand. Meade admitted the marijuana cigarette was his. Horsley and Meade were handcuffed and advised of their rights; both consented to a search of the room. Officer Wildauer found a digital scale in the nightstand with white residue on it; a crack pipe under the nightstand; a baggie of marijuana in the area above

[1] Horsley was not the subject of the warrant.

the sink; and a plastic shopping bag next to the trash can that had several baggies in it, one of which contained a white powdery residue. The residue on the scale and in the baggie was later determined to be cocaine.

After the search, Officer Wildauer spoke with Horsley and with Meade separately. Meade told Officer Wildauer that he had spent the previous night in the room. He disclaimed knowledge of the crack pipe, again admitted the marijuana cigarette was his, and claimed the marijuana found over the sink. He also admitted using the scale to weigh marijuana. When asked about the shopping bag, Meade stated, "I was partying last night with some girls in the room . . . . I smoked some marijuana, I did some cocaine, and that is what is left over." Transcript at 80.

The State charged Meade with possession of cocaine, a Class D felony; possession of marijuana, a Class A misdemeanor; possession of marijuana, a Class D felony due to a prior conviction; and possession of cocaine, a Class B felony due to possession within 1,000 feet of a family housing complex. At the conclusion of a jury trial, Meade was convicted of possession of marijuana as a Class A misdemeanor and possession of cocaine as a Class B felony and sentenced to ten years at the Department of Correction, with four years suspended. Meade appeals his possession of cocaine conviction only.

Discussion and Decision

I. Standard of Review

Our standard for reviewing sufficiency of the evidence claims is well-settled:

> we do not reweigh the evidence or judge the credibility of the witnesses, and we respect a fact-finder's exclusive province to weigh conflicting evidence. We consider only the probative evidence and reasonable inferences supporting the verdict. We will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a

> reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.

Joslyn v. State, 942 N.E.2d 809, 811 (Ind. 2011) (quotations and citations omitted).

II. Possession of Cocaine

To convict Meade of possession of cocaine as a Class B felony, the State was required to prove that he knowingly or intentionally possessed less than three grams of cocaine within 1,000 feet of a family housing complex. Ind. Code § 35-48-4-6(b)(2)(B)(iii).[2] A conviction for possession may be premised upon actual or constructive possession of the contraband. Holmes v. State, 785 N.E.2d 658, 660 (Ind. Ct. App. 2003). As Meade did not have actual possession of the cocaine, we must determine whether the State proved he constructively possessed it. "Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband." Id. Where the defendant is in exclusive possession of premises on which contraband is found, it can be inferred that he or she knew of the presence of the contraband and was capable of controlling it. Griffin v. State, 945 N.E.2d 781, 784 (Ind. Ct. App. 2011). Where the defendant is not in exclusive possession of the premises, however, some additional circumstances must be shown indicating knowledge of the presence of the contraband and ability to control it. Id.

Because Meade was not in exclusive possession of the room at the Knights Inn, the State must have shown some "additional circumstances" indicating his knowledge of and ability to control the cocaine in order to prove the charge against him. Meade

[2] Meade does not challenge that the Knights Inn qualifies as a family housing complex for purposes of this statute.

concedes the capability prong, as he "could easily and quickly have gained physical possession of the illegal items" in the room. Brief of Appellant at 6. He challenges only whether there is sufficient evidence of his knowledge of the presence of the contraband. Among the recognized "additional circumstances" indicating knowledge 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 that is in plain view; and 6) contraband that is in close proximity to or commingled with items owned by the defendant. Richardson v. State, 856 N.E.2d 1222, 1228-29 (Ind. Ct. App. 2006), trans. denied.

Meade notes that the room was registered to Horsley, not him, and that none of his personal belongings were found in the room. Although acknowledging his statements to Officer Wildauer,[3] he argues that "[n]o evidence showed [he] knew cocaine residue was present in the [shopping] bag." Br. of Appellant at 8. He points out the shopping bag was placed by the trash can in plain view, and "[i]f Meade knew cocaine were still present in one of the baggies in the [shopping] bag, it stands to reason he would have hidden it." Id.

Meade's argument is a request for us to reweigh the evidence, an exercise in which we will not engage. See Joslyn, 942 N.E.2d at 811. Meade admitted to Officer Wildauer that he had done cocaine the night before and what was in the shopping bag was what was "left over." Tr. at 80. A trier of fact could reasonably infer from that incriminating statement that Meade knew there was cocaine residue in the bag.

[3] In addition to Meade's statement to Officer Wildauer about doing cocaine the night before as quoted in the facts above, Officer Wildauer testified in response to a juror question about the shopping bag, "Mr. Meade's statement was: 'Those are from the night before when I had some girls over partying. They were from, the marijuana and the cocaine, leftover from the cocaine that we had used the night before.'" Tr. at 116-17.

Moreover, although Meade stated that he had used the digital scale the night before to weigh marijuana, it is reasonable to infer, from his statement that he had been using cocaine, that he knew there was cocaine residue on the scale as well. Thus, the State showed an additional circumstance supporting Meade's constructive possession of the cocaine, and presented sufficient evidence supporting his conviction.

Conclusion

The State presented sufficient evidence to support Meade's conviction of Class B felony possession of cocaine, and his conviction is therefore affirmed.

Affirmed.

BARNES, J., and BRADFORD, J., concur.