



## **STATEMENT OF THE CASE**

Michael Baker appeals his conviction for Possession of Cocaine, as a Class D felony, following a jury trial.<sup>1</sup> Baker presents a single issue for review, namely, whether the evidence is sufficient to support his conviction for possession of cocaine.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On May 11, 2006, Officer Timothy Huff of the South Bend Police Department began surveillance of 2105 South Michigan Street in South Bend. Officer Huff was a member of the Metro Special Operations Section Narcotics Unit, and he was watching the South Michigan Street house to apprehend the resident outside of the house before executing a narcotics search warrant. The officer began watching the house at approximately 9:00 a.m. No one entered or exited the house until 2:40 p.m., when Officer Huff saw Baker leave the house.

Officer Huff, who was in an unmarked car and dressed in plain clothes, approached Baker, identified himself to Baker as a police officer, and read Baker a Miranda warning. After receiving the Miranda warning, Baker stated that he had been living in the house for the past four or five months; that he stayed in the bedroom twenty-four hours a day, seven days a week at times; and that he had last seen crack cocaine on the previous evening, when he had purchased \$80 worth of crack. Officer Huff then interviewed Baker while other officers searched the premises. In the kitchen area officers found a dinner plate, which had Baker's fingerprint on it, and ten small packages

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<sup>1</sup> The jury also found Baker guilty of Maintaining a Common Nuisance, as a Class D felony, but Baker does not appeal that conviction.

wrapped in foil containing cocaine. In a bedroom that contained Baker's clothes and effects, officers found an exemplar of the foil (a gum wrapper) that held the cocaine in the kitchen as well as a letter from an attorney addressed to Baker at the house's street address.

The State charged Baker with possession of cocaine and maintaining a common nuisance, both as Class D felonies. A jury found Baker guilty as charged, and the trial court entered judgment of conviction accordingly. The court sentenced Baker to three years on each count, to be served concurrently. Baker now appeals.

### **DISCUSSION AND DECISION**

Baker contends that the evidence is insufficient to support his conviction for possession of cocaine. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

The State charged Baker with possession of cocaine, as a Class D felony. To convict Baker of that offense, the State was required to prove, beyond a reasonable doubt, that Baker knowingly possessed cocaine (pure or adulterated) weighing less than three (3) grams. Ind. Code § 35-48-4-6(a). We have explained the proof necessary to show constructive possession as follows:

In the absence of actual possession of drugs, our court has consistently held that constructive possession may support a conviction for a drug offense. In order to prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband.

Jones v. State, 807 N.E.2d 58, 65 (Ind. Ct. App. 2003) (internal quotations and citations omitted), trans. denied. Control in this sense concerns the defendant's relation to the place where the substance is found: whether the defendant has the power, by way of legal authority or in a practical sense, to control the place where, or the item in which, the substance is found. Id.

Here, Baker was the only person in the house from 9:00 a.m. until 2:40 p.m., when officers executed the search warrant. Baker told officers that he had not left the house for four or five months. Although Baker had stated that he stayed in his room when in the house, he later admitted that he had used the microwave in the kitchen, where the cocaine was found. Officers also found in the kitchen a plate containing Baker's fingerprint. And Baker possessed keys that opened the side door to the house and doors inside the house and gave officers the street address of the house as his address. We conclude that the evidence is sufficient to show Baker's capability to maintain dominion and control over the house. See id.

But there was evidence that Baker did not have exclusive possession of the house. Specifically, there was testimony that a woman named Stephanie also shared the house part of the time and that a defense witness, Fred Burton, had been in the house at times prior to the day of the search. Where a person's control is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that

indicate that the person knew of the presence of the contraband. Allen v. State, 798 N.E.2d 490, 501 (Ind. Ct. App. 2003). Those additional circumstances 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. Id.; Jones, 807 N.E.2d at 65.

In the present case, Baker admitted that he had purchased crack cocaine on the evening before the search and that he had smoked crack cocaine almost every day. In the course of the search, officers found the plate containing Baker's fingerprint and crack cocaine in plain view in the kitchen. And Baker's clothes were in a bedroom in the house. We conclude that the evidence supports a finding that Baker had intent to possess the crack cocaine that officers found in the kitchen.

In conclusion, Baker had the capability to maintain dominion and control over the house. The evidence shows that Baker had keys to the house, used the premises as his home address, was the only one in the house for several hours on the day officers executed the search warrant, and had been in the kitchen, where the cocaine was found in plain view. The evidence also supports a finding that Baker had the intent to possess the cocaine because he admitted to buying and smoking crack cocaine the previous evening; he was in the house alone with the drugs for several hours on the day of the search; the drugs were found in plain view; and Baker's personal possessions were in a nearby bedroom. Baker's arguments, pointing to evidence contrary to the verdict, amount to a request that we reweigh the evidence. That we cannot do. See Jones, 783 N.E.2d at

1139. Thus, the evidence and reasonable inferences from that evidence support Baker's conviction for possession of cocaine.

Affirmed.

MAY, J., and ROBB, J., concur.