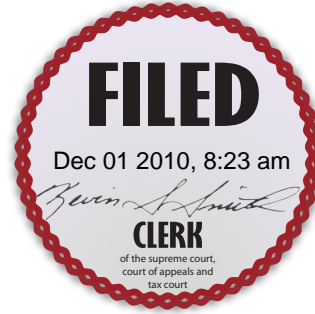


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DEMOND WITHERS,)
)
Appellant- Defendant,)
)
vs.) No. 49A04-1003-CR-182
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Richard Sallee, Judge
Cause No. 49F10-0912-CM-98468

December 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Demond Withers appeals his conviction, following a bench trial, of possession of paraphernalia, a Class A misdemeanor. Withers raises the sole issue of whether sufficient evidence supports his conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On December 1, 2009, Officer Lawlis of the Indianapolis Metropolitan Police Department observed a car parked in a lane of traffic and activated his red and blue lights to approach and investigate. Withers's brother was sitting on the curb, and Withers was in the car's driver's seat. In response to Officer Lawlis's questions, Withers was partly nonresponsive and otherwise incoherent, could not hold his head straight, and had glassy eyes. Officer Lawlis "smelled a strong odor of burnt marijuana that permeated the entire vehicle." Transcript at 15. Officer Lawlis also recognized a "faint[]" marijuana odor coming from Withers. Id. at 30.¹ According to Officer Lawlis's testimony, Withers "appeared to be under the influence of something much stronger than marijuana." Id. at 21.

Officer Lawlis retrieved Withers's identification from his back pocket, ran a license check, and arrested Withers for driving while his license was suspended. During a search incident to the arrest, Officer Lawlis found rolling papers in Withers's back pocket. According to Officer Lawlis's testimony, such rolling papers are commonly used to roll marijuana cigarettes and thereby introduce marijuana into the body. Officer

¹ Although Officer Lawlis was not a specially trained "Drug Recognition Expert," he testified he had training in recognizing the odor of burnt marijuana. Tr. at 25, 28.

Lawlis's search of the car did not uncover any marijuana. Officer McCauley, who responded to the scene as backup, observed that Withers appeared "out of it," did not know where he was, and appeared to be under the influence of "some type of narcotics." Id. at 34. Officer McCauley did not notice any odor of alcohol coming from Withers.

The State charged Withers with possession of paraphernalia and driving while suspended, both Class A misdemeanors. Following a bench trial, the trial court found Withers guilty of the former count and not guilty of the latter. Withers now appeals his conviction of possession of paraphernalia.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support a conviction, we neither reweigh the evidence nor judge the credibility of witnesses. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Rather, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Therefore, we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find all elements of the crime proven beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

II. Evidence of Intent

Withers argues the State failed to present sufficient evidence to support the intent element of the charged offense. To convict Withers of possession of paraphernalia as a Class A misdemeanor, the State must prove beyond a reasonable doubt Withers (1)

knowingly or intentionally (2) possessed rolling papers that he (3) intended to use for introducing marijuana into his body. See Ind. Code § 35-48-4-8.3; Appellant’s Appendix at 12 (charging information alleging Withers intended the rolling papers to introduce “Marijuana”). Specifically, Withers argues the State failed to prove he possessed the rolling papers for the purpose of introducing marijuana. We disagree.

Intent to use paraphernalia to administer illegal drugs “may not be inferred merely from proof that the instruments possessed were normally used or adapted for use with illegal drugs.” McConnell v. State, 540 N.E.2d 100, 102 (Ind. Ct. App. 1989). However, such intent may be inferred from the circumstances surrounding the defendant’s possession of the paraphernalia. See Irvin v. State, 258 Ind. 528, 282 N.E.2d 825, 828 (1972) (concluding under predecessor statute that sufficient evidence supported a defendant’s intent to use paraphernalia to administer illegal drugs when defendant was found with the paraphernalia, incoherent, and with a fresh puncture mark on his arm).

While Withers’s mere possession of the rolling papers would be insufficient to prove his intent to use them for marijuana, the State presented other circumstantial evidence supporting an inference of intent. Withers was in an incoherent state, intoxicated on one or more unidentified substances. Officer Lawlis smelled a strong odor of burnt marijuana in the car where Withers was sitting and a “faint[.]” odor of marijuana on Withers. Tr. at 30. While no marijuana was discovered in the car or on Withers’s person, neither was there any smell of alcohol from Withers. A reasonable inference from these facts is that Withers was carrying the rolling papers in his back pocket because he intended to use them for marijuana. Withers points out that neither officer

specifically attributed his incoherent state to marijuana and Officer Lawlis testified he appeared under the influence of “something much stronger than marijuana.” Id. at 21. However, Withers’s argument in this regard is a request to reweigh the evidence, which we may not do. Wright, 828 N.E.2d at 906.

Conclusion

The State presented sufficient evidence to support Withers’s conviction of possession of paraphernalia.

Affirmed.

MAY, J., and VAIDIK, J., concur.