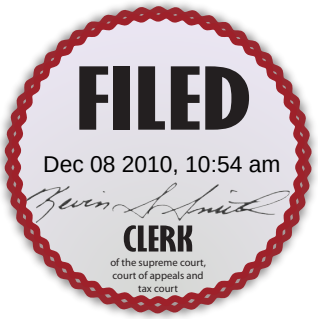

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IN THE
COURT OF APPEALS OF INDIANA

MERLE HAWKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1005-CR-279
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John M. Chavis, Judge Pro Tempore
Cause No. 49G14-1002-FD-14404

December 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Merle Hawkins appeals his convictions for Class D felony possession of paraphernalia and Class C misdemeanor panhandling. Hawkins contends that there is insufficient evidence to support his convictions. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

One day in February 2010, Officer Anthony Patterson of the Indianapolis Metropolitan Police Department was on patrol when he was stopped at a traffic light at 25th Street and College Avenue. After waiting at the light for some time, Officer Patterson pulled his car to the left to determine what was hindering the flow of traffic. A few cars ahead of him, he observed Hawkins standing in the middle of the road at the driver's side window of a stopped minivan. The light at the intersection was green. Officer Patterson observed Hawkins, who was holding dirty plastic flowers, ask the driver of the van whether he wanted to buy one of the flowers.

When the traffic light cycled back to red and no vehicles had moved, Officer Patterson activated his lights. Hawkins stepped out of the road, and Officer Patterson stopped him in a parking lot. Officer Patterson arrested Hawkins for obstructing traffic. During a pat-down search, Officer Patterson found a metal rod in Hawkins' pants pocket. The metal rod was approximately six inches long, small in diameter, and burnt at both ends.

The State charged Hawkins with possession of paraphernalia, both as a Class A misdemeanor and as a Class D felony due to a prior unrelated possession of paraphernalia

conviction. Ind. Code § 35-48-4-8.3. The State also charged Hawkins with Class C misdemeanor panhandling. Ind. Code § 35-45-17-2.

Hawkins waived his right to a jury trial and was tried to the bench. Officer Patterson testified for the State that based on his training and experience, items like the metal rod found on Hawkins are used to push crack cocaine into a crack pipe and to prevent the crack from falling out while the pipe is being lit and smoked. The metal rod and a lab report indicating that cocaine residue was found on the metal rod were admitted into evidence. Hawkins testified in his own defense that he picked up the metal rod from the street to clean his dentures. He also testified that he was on the sidewalk when the driver of the van yelled at him asking if he could have a flower, so Hawkins walked to the van, gave the driver a flower, and left.

The trial court found Hawkins guilty of Class A misdemeanor possession of paraphernalia and Class C misdemeanor panhandling. Regarding the Class D felony possession of paraphernalia enhancement charge, Hawkins stipulated that he had a prior conviction for possession of paraphernalia. The trial court sentenced Hawkins to 545 days for Class D felony possession of paraphernalia and a concurrent 60 days for Class C misdemeanor panhandling.

Hawkins now appeals.

Discussion and Decision

Hawkins contends that there is insufficient evidence to support his convictions for Class D felony possession of paraphernalia and Class C misdemeanor panhandling.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence or judge the credibility of the witnesses. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

I. Possession of Paraphernalia

Hawkins first contends that there is insufficient evidence to support his Class D felony possession of paraphernalia conviction.

To convict Hawkins of Class D felony possession of paraphernalia as charged here, the State had to prove that he knowingly or intentionally possessed the metal rod that he intended to use for introducing cocaine into his body and that he has a prior unrelated possession of paraphernalia conviction. Ind. Code § 35-48-4-8.3; Appellant's App. p. 15, 17.

Hawkins does not dispute that he knowingly or intentionally possessed the metal rod or that he has a prior unrelated possession of paraphernalia conviction. Instead, he argues that the State failed to show that he intended to use the metal rod to introduce cocaine into his body.

The State must prove the defendant's intent to use an instrument for illegal purposes beyond a reasonable doubt. *McConnell v. State*, 540 N.E.2d 100, 102 (Ind. Ct. App. 1989). Intent to use an instrument for illegal drug use may be inferred from circumstantial evidence. *Id.* Intent may not be inferred solely from proof that the instrument possessed is of the type normally used or adapted for use with illegal drugs. *Id.* However, possession of such an instrument coupled with illegal drug residue is sufficient to show the intent element. *See id.* at 104 (officer's testimony that residue in smoking pipe found on defendant appeared to be marijuana was sufficient evidence from which factfinder could infer that residue was marijuana and defendant intended to use pipe to smoke marijuana).

The evidence most favorable to the judgment reveals that Hawkins had in his pants pocket a metal rod about six inches long, small in diameter, and burnt at both ends. Officer Patterson testified that based on his training and experience, items like the metal rod found on Hawkins are used to push crack cocaine into a crack pipe and to prevent the crack from falling out while the pipe is being lit and smoked. The lab report admitted into evidence indicated that cocaine residue was found on the metal rod.

Despite this clear evidence, Hawkins claims that he picked up the metal rod from the street to clean his dentures. This argument is merely a request for us to reweigh the evidence, which we will not do. We conclude that the evidence is sufficient to sustain Hawkins' conviction for Class D felony possession of paraphernalia.

II. Panhandling

Hawkins next contends that there is insufficient evidence to support his Class C misdemeanor panhandling conviction.

Panhandling is defined as soliciting an individual on a street or in another public place by requesting an immediate donation of money or something else of value. Ind. Code § 35-45-17-1(a). Panhandling includes offering an individual an item of little or no monetary value in exchange for money or another gratuity under circumstances that would cause a reasonable individual to understand that the transaction is only a donation. Ind. Code § 35-45-17-1(b)(3).

To convict Hawkins of Class C misdemeanor panhandling as charged here, the State had to prove that he knowingly panhandled a motorist while the individual being solicited was at a bus stop, in a vehicle or facility used for public transportation, in a motor vehicle that was parked or stopped on a public street or alley (unless the person soliciting the individual has the approval to do so by a unit of local government that has jurisdiction over the public street or alley), in the sidewalk dining area of a restaurant, or within twenty feet of an automatic teller machine or the entrance to a bank. Ind. Code § 35-45-17-2(2); Appellant's App. p. 16.

Here, Officer Patterson testified that he observed Hawkins standing in the middle of the road at the driver's side window of a stopped minivan. Even though the traffic light was green, Hawkins was holding dirty plastic flowers and asking the driver of the van whether he wanted to buy one. Hawkins remained in the intersection until Officer Patterson activated his lights.

Although Hawkins claims that he gave the driver of the van a flower only after the driver asked for one, this is merely a request for us to reweigh the evidence, which we will not do.

Based on the facts before us, we conclude that the evidence is sufficient to sustain Hawkins' conviction for Class C misdemeanor panhandling. He knowingly solicited an individual who was in a motor vehicle that was stopped on a public street by offering that individual a dirty plastic flower in exchange for money under circumstances that would cause a reasonable individual to understand that the transaction is only a donation.

Affirmed.

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