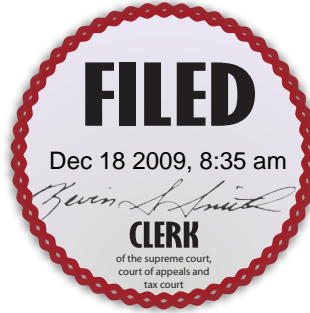


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD CORNEAL WATSON,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 18A02-0906-CR-562

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0803-FB-4

December 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Donald Corneal Watson appeals his conviction for possession of cocaine, as a Class B felony,¹ alleging that there is insufficient evidence to support the conviction. We affirm.

Facts and Procedural History

On the evening of March 7, 2008, Officers Michael Nickens and Amoreena Kesler of the Muncie Police Department were on duty patrolling in a squad car. While on duty, the officers were instructed to be on the lookout for a black Jeep Cherokee due to a report of shots fired involving that make and model of vehicle. Later that evening, the officers observed a black Jeep Cherokee that did not have a license plate on the rear of the vehicle and the driver of the vehicle failing to use a turn signal when turning into a parking lot. The officers initiated a traffic stop.

Due to the snow covering the vehicle, the officers could not readily determine how many passengers were in the vehicle. As the officers exited the squad car, the driver of the Cherokee, Watson, and the front passenger exited the vehicle and walked towards the officers. Officer Nickens ordered Watson to stop and remove his hands from his pockets. Officer Kesler walked the passenger back to the vehicle and discovered there was another passenger in the backseat of the vehicle. Soon thereafter, Watson admitted that he did not have a valid driver's license and that he did not own the vehicle. Based on these circumstances, the officers called a tow truck to tow the vehicle and performed a vehicle

¹ Ind. Code § 35-48-4-6(b)(2).

inventory to prepare the vehicle for towing. During the vehicle inventory, a clear plastic bag containing a substance later confirmed to be cocaine was discovered stuffed three to four inches down between the driver's seat and the center console.

On March 12, 2008, the State charged Watson with Possession of Cocaine, as a Class B felony. After a trial on July 16, 2008, a jury found Watson guilty as charged. The trial court sentenced Watson to six years imprisonment to be fully executed at the Department of Correction.

Watson now appeals.

Discussion and Decision

Watson contends that there is insufficient evidence to uphold his conviction on the theory of constructive possession.² When reviewing the sufficiency of the evidence to support a conviction, we will consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We will not assess the credibility of the witnesses or reweigh the evidence. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

Possession of contraband can be characterized as either actual or constructive. Henderson v. State, 715 N.E.2d 833, 835 (Ind. 1999). Because Watson did not actually possess the cocaine when it was recovered from the vehicle, the State was required to prove

² Watson does not challenge the fact that he was arrested within 1,000 feet of a public park, elevating the conviction to a Class B felony. See Ind. Code § 35-48-4-6(b)(2)(B)(ii).

that Watson constructively possessed the contraband. A defendant has constructive possession of drugs when evidence demonstrates that the defendant has both (1) the intent to maintain dominion and control over the drugs and (2) the capability to maintain dominion and control over the drugs. Gee v. State, 810 N.E.2d 338, 340 (Ind. 2004). Constructive possession of contraband need not be exclusive, and the items may be possessed jointly by two or more persons without showing that any one person had actual physical control. Massey v. State, 816 N.E.2d 979, 989 (Ind. Ct. App. 2004) (citing Iddings v. State, 772 N.E.2d 1006, 1015 (Ind. Ct. App. 2002), trans. denied).

To establish that the defendant was capable of maintaining dominion and control, the State must demonstrate that the defendant was able to reduce the contraband to his personal possession. Iddings v. State, 772 N.E.2d 1006, 1015 (Ind. Ct. App. 2002), trans. denied. Here, as the contraband was within his reach, Watson does not contest that he was capable of maintaining dominion and control of the cocaine that was in the Jeep Cherokee. Rather, his argument focuses on whether he had the intent to do so.

When control of the premises where drugs are found is not exclusive, the inference of intent to maintain dominion and control over the drugs “must be supported by additional circumstances pointing to the defendant’s knowledge of the nature of the controlled substances and their presence.” Gee, 810 N.E.2d at 341 (quoting Lampkins v. State, 682 N.E.2d 1268, 1275 (Ind. 1997)). Such additional circumstances include: (1) incriminating statements made by the defendant; (2) attempted or furtive gestures; (3) location of substances like drugs in settings that suggest manufacturing; (4) proximity of the contraband

to the defendant; (5) location of the contraband within the defendant's plain view; and (6) the mingling of the contraband with other items owned by the defendant. Id. To prove the element of intent, the State must demonstrate the defendant's knowledge of the presence of the contraband. Donnegan v. State, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004), trans. denied.

Where the premises are not in the exclusive control of the defendant, contraband that is not in plain view and is found in close proximity to the defendant is insufficient, alone, to infer the defendant's knowledge of the presence of the contraband. Holmes v. State, 785 N.E.2d 658, 661 (Ind. Ct. App. 2003) (citing Godar v. State, 643 N.E.2d 12 (Ind. Ct. App. 1994), trans. denied). However, in Holmes, this court held that the defendant being in close proximity to hidden contraband in a vehicle along with attempted flight was sufficient evidence to sustain a contraband possession conviction by way of constructive possession. Id. at 662. Holmes was a passenger in a car that was subjected to a traffic stop based on an improperly displayed license plate. Id. at 660. The driver initially pulled over, but then accelerated, initiating a high-speed chase. Once the tires of the vehicle blew out, Holmes jumped out of the car and ran east. Id. During the search of the car, a vinyl bag containing 77.64 grams of marijuana was found. Id.

Similar to Holmes, there is circumstantial evidence beyond Watson's close proximity to the hidden contraband to support this conviction. Once Watson stopped the Jeep Cherokee in response to the squad car's emergency lights, he and the passenger exited the vehicle and walked towards the squad car. This action concerned the officers as well as raised their suspicions because it is typical for motorists to stay in their vehicles and let the officer

approach, and from their personal experience, Officers Kesler and Nickens testified that when motorists exit the stopped car, it is with the intent to evade, confront or distract the officer from something in the vehicle. This unusual response to a traffic stop is an additional circumstance from which the jury could infer that Watson had knowledge of the presence of the contraband in the vehicle. Thus, there is sufficient evidence to support his conviction.

Affirmed.

BAKER, C.J., and ROBB, J., concur.