

Case Summary

Appellant-Defendant Larry D. Bobbitt, Jr. appeals his conviction for Possession of Cocaine, as a Class C felony.¹ He challenges the sufficiency of the evidence supporting the constructive possession element of the charge. We affirm.

Facts and Procedural History²

On August 10, 2007, South Bend police officers were staked out, watching Bobbitt's residence at 448 South Kosciuszko Street to execute an arrest warrant for Clester Bert. Bobbitt and Bert arrived at the Residence at some point and eventually left with Bobbitt driving a green Chevy Z-24.

Police followed the Chevy and initiated a traffic stop. As the officer spoke with Bobbitt, Bobbitt admitted that his license was suspended. As he spoke, Bobbitt was bending and reaching towards the gear shift and center console. For safety purposes, the officer had Bobbitt exit the vehicle. When the officer performed a pat down, he discovered a plastic baggie containing two thousand dollars in cash in Bobbitt's pocket. Bobbitt was arrested for driving on a suspended license, and the Chevy was searched and impounded. Baggies of marijuana and .88 grams of cocaine were recovered from the center console of the Chevy during the search. Before being transported to the county jail, Bobbitt confirmed that his address was that of the Residence.

¹ Ind. Code § 35-48-4-6(b).

² We remind Appellant's counsel to provide citations to the record supporting the Statement of Facts section of a brief. See Ind. App. Rule 46(A)(6)(a) ("The facts shall be supported by page references to the Record on Appeal of Appendix in accordance with Rule 22(C).").

Officers secured the Residence until Kelly Fuller, Bobbitt's girlfriend, arrived and provided consent for the Residence to be searched for narcotics. In the bedroom, a baggie containing 13.16 grams of cocaine located in the glass bowl of a floor lamp, male and female clothing, a Sprint bill addressed to Larry Bobbitt, and a letter addressed to Fuller were found. In the kitchen, there were two scales and two boxes of Glad baggies. Swab tests of the surfaces of the scales tested positive for cocaine.

The State charged Bobbitt with Driving with a Suspended License, as a Class A misdemeanor,³ Possession of Marijuana, as a Class A misdemeanor,⁴ and Possession of Cocaine, as a Class C felony, based on the 13.16 grams of cocaine found at the Residence. After a trial, the jury found Bobbitt guilty as charged. The trial court sentenced him to one year imprisonment for each Class A misdemeanor and six years for Possession of Cocaine. The sentences were ordered to be served concurrently.

Bobbitt now appeals.

Discussion and Decision

On appeal, Bobbitt only challenges the sufficiency of the evidence supporting his conviction for Possession of Cocaine.⁵ In our review, we consider only the probative evidence and reasonable inferences supporting the judgment and will affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a

³ Ind. Code § 9-24-19-2.

⁴ Ind. Code § 35-48-4-11.

⁵ Bobbitt does not contest his convictions or sentences for Driving with a Suspended License or Possession of Marijuana.

reasonable doubt.” Brown v. State, 868 N.E.2d 464, 470 (Ind. 2007) (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)).

To convict Bobbitt, as charged, the State had to prove that Bobbitt (1) knowingly or intentionally possessed cocaine (2) weighing three grams or more. See I.C. § 35-48-4-6. Possession of contraband can be characterized as either actual or constructive. Henderson v. State, 715 N.E.2d 833, 835 (Ind. 1999). Because Bobbitt did not actually possess the cocaine when it was recovered in the Residence, the State was required to prove that Bobbitt constructively possessed the contraband. A defendant is in the 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).

Bobbitt does not contest that he had the capability but contends that the State did not prove that he had the intent to maintain dominion and control over the cocaine. To prove intent, the State must show 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. 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, among others: the location of substances like drugs in settings that suggest manufacturing, the proximity of the contraband to the

defendant, and the mingling of the contraband with other items owned by the defendant. Id.

First, Bobbitt informed police that he lived at the Residence and was seen exiting the Residence prior to the traffic stop. After Bobbitt left, no one was in the Residence until Fuller permitted the police to perform a search. When the cocaine was found in the bedroom of the Residence, the room also contained male clothing and a bill addressed to Larry Bobbitt at 448 Kosciuszko Street. Sitting in plain view on the kitchen counter were baggies and two scales, which tested positive for cocaine. Bobbitt's non-exclusive control of the Residence along with the additional circumstances of a setting that suggested manufacturing and the mingling of the contraband with other items owned by Bobbitt is sufficient evidence to support Bobbitt's conviction for Possession of Cocaine.

Affirmed.

MATHIAS, J., and BARNES, J., concur.