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# IN THE
# COURT OF APPEALS OF INDIANA

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| TIMOTHY J. CRAFT, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 48A02-0606-CR-531 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0601-FD-12

**November 28, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Timothy J. Craft appeals his conviction and sentence for Possession of Cocaine,[1] a class D felony. He presents the following restated issues for review:

1. Did the State present sufficient evidence to support the conviction?

2. Was the sentence imposed by the trial court inappropriate?

We affirm.

The facts most favorable to the judgment reveal that on December 22, 2005, Joshua Reed contacted Craft to inform him that he had a "buyer lined up" and to see if Craft could "hook [him] up". *Transcript* at 118. Craft said he could, so Craft, Reed, and Philip Lyons went together to pick up about $350 from the buyer. Reed and Craft also contributed some money to purchase cocaine, approximately $60 and $100 respectively.[2] The three then proceeded to Craft's brother's residence and waited. When the dealer arrived, Craft went into a back room with him and purchased cocaine. Craft retained possession of the drugs as the trio left his brother's residence. After delivering a large portion of the cocaine to the buyer, Craft, Reed, and Lyons then went to Lyons's apartment, which he shared with Sue Small. The three men went into Lyons's bedroom, shut the door, and "started breaking out the lines", which apparently means they put cocaine on a glass plate, cut it into lines, and snorted it. *Id*. at 122. Craft, Reed, and Lyons each snorted part of the cocaine Craft purchased earlier that night.

Shortly thereafter, officers of the Elwood Police Department knocked on the door to the apartment in response to a disturbance report from a neighbor. A teenager

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[1] Ind. Code Ann. § 35-48-4-6(A) (West, PREMISE through 2006 2nd Regular Sess.).

[2] Lyons had no money to contribute.

answered the door. Small and Lyons also went to the door and allowed the officers to enter. The door to Lyons's bedroom was closed. When asked if there were others in the apartment, Lyons responded that he had two buddies in his room. With Officer Andy McGuire, Lyons then went and knocked on his bedroom door. Craft opened the door, and he and Reed appeared stunned and worried when they saw Officer McGuire.

When Reed and Craft exited the room, Officer McGuire and Officer Christopher Jones observed "in plain view…a clear circular glass plate with several lines of white powder substance on it." *Id*. at 19. Based upon his training and experience, Officer Jones believed the white substance to be lines of cocaine, as he also observed a razorblade, a straw, and a baggy. Lyons admitted that the substance on the plate was cocaine, which a subsequent field test verified. Lyons and Reed both admitted to Officer McGuire that the cocaine on the plate was "set up for all three of their uses." *Id*. at 51.

Lyons then told the officers that he had other illegal items in his bedroom. He directed them to some hydrocodone pills and a spoon and socket used to smoke cocaine. While collecting these items in the bedroom, Officer McGuire discovered a "larger baggy of white powder substance and three pills [] in a cellophane wrapper" behind a clothes hamper "in the corner right behind the doorway". *Id*. at 25. The powder substance field tested positive for cocaine and was later determined by the police lab to be 1.6 grams of cocaine. While Lyons had readily claimed responsibility for the other drugs and

paraphernalia in his room,[3] he denied knowing anything about the cocaine and pills found behind the hamper. Reed and Craft also denied knowledge or ownership of the cocaine found behind the hamper.

The officers searched Reed and Craft. Reed admitted that he had a "dugout" in his jacket pocket. *Id*. at 27. Officer Jones then recovered a wooden box from Reed that contained two pills and a marijuana pipe. Nothing was found in a search of Craft's person. All three men were arrested. At the police station, Craft initially denied being in the bedroom and then said he was just at the doorway. He further denied having knowledge of any of the cocaine found in the bedroom, despite the fact that the cocaine on the glass plate was out in plain view in the middle of the bedroom. At some point during his stay in jail, Craft encountered Lyons and asked him to take responsibility for everything in the room. At trial, however, Lyons admitted using cocaine with Craft and Reed that night and took responsibility for everything in the room except the pills and cocaine found behind the hamper.

Reed similarly testified[4] that he used cocaine with Lyons and Craft on the night in question, that he in fact helped Craft purchase the cocaine that evening, and that he had contraband on his person when he was searched. Reed explained he was upset that Lyons was taking all the heat because Lyons was "just along for the ride" and "it wasn't his

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[3] The officers also recovered two baggies with a white powdery residue under Lyons's mattress. He said he had forgotten they were there and explained those were "old baggies that he had used before that had cocaine in them." *Id*. at 28.

[4] Reed testified without immunity, though it was offered by the State. Lyons, on the other hand, testified only after he was granted use immunity. Both had charges pending.

stuff." *Id*. at 125. Reed opined that, as they exited the bedroom, Craft discarded the cocaine that was still in his possession.

Following a bench trial, Craft was found guilty of possession of cocaine, a class D felony. The trial court subsequently sentenced him to a maximum term of three years in prison. Craft now appeals. Additional facts will be presented below as needed.

1.

Craft initially challenges the sufficiency of the evidence. In this regard, he claims the State failed to establish that he constructively possessed the cocaine found behind the hamper.

Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor assess the credibility of the witnesses. *Overstreet v. State*, 783 N.E.2d 1140 (Ind. 2003). Rather, we look to the evidence most favorable to the judgment and draw reasonable inferences therefrom. Id. The conviction will be upheld if there is substantial evidence of probative value from which the trier of fact could have found the defendant guilty beyond a reasonable doubt. Id. In other words, we will not substitute our judgment for that of the trier of fact, and the claim of insufficient evidence will prevail only if no reasonable trier of fact could have found Craft guilty beyond a reasonable doubt. *See Ritchie v. State*, 809 N.E.2d 258 (Ind. 2004).

A conviction for possession of contraband may rest upon proof of either actual or constructive possession. *See Britt v. State*, 810 N.E.2d 1077 (Ind. Ct. App. 2004). "Actual possession occurs when the defendant has direct physical control over the item, while constructive possession involves the intent and capability to maintain control over

the item even though actual physical control is absent." *Id*. at 1082. To demonstrate constructive possession where control is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate the person knew of the presence of the contraband.[5] *White v. State*, 772 N.E.2d 408 (Ind. 2002). To demonstrate that the defendant was capable of maintaining dominion and control, the State must demonstrate that the defendant was able to reduce the controlled substance to his personal possession. *Grim v. State*, 797 N.E.2d 825 (Ind. Ct. App. 2003). Further, possession of contraband by the defendant need not be exclusive and it can be possessed jointly. *Massey v. State*, 816 N.E.2d 979.

Contrary to Craft's assertion on appeal, this is not a case where the evidence "shows nothing more than [he] was in the room with 2 others and that drugs were found in the room." *Appellant's Brief* at 8. Further, we reject Craft's implied invitation to ignore the testimony of Reed and Lyons and close our eyes to the doubtful and self-serving testimony offered by Craft at trial.

In the instant case, the State presented sufficient evidence to establish that Craft possessed cocaine, whether actually or constructively. The evidence reveals that Craft (with the assistance of Reed) purchased cocaine that night to be shared by Craft, Lyons,

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[5] Additional circumstances that support finding a defendant had the intent and capability to maintain dominion and control over contraband kept in non-exclusive premises may include, among other things:

> "(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."

*Massey v. State*, 816 N.E.2d 979, 989 (Ind. Ct. App. 2004) (quoting *Ladd v. State*, 710 N.E.2d 188, 190 (Ind. Ct. App. 1999)).

and Reed. Craft retained possession of the cocaine following the purchase. After delivering a portion to the unidentified buyer procured by Reed, the three friends went to Lyons's apartment and began snorting the remaining cocaine. Just prior to the unexpected arrival of the police, according to both Lyons and Reed, the three had all ingested cocaine and several more lines of cocaine had been set up for their use on a glass plate. Upon entering the bedroom in which Craft and Reed were found, the officers discovered the glass plate with several lines of cocaine on it in plain view. This evidence alone is sufficient to support Craft's conviction, as it establishes that he possessed the cocaine on the plate[6] jointly with Reed and Lyons. *See Matter of J.L.*, 599 N.E.2d 208, 212 (Ind. Ct. App. 1992) ("[p]ossession need not be exclusive and the substance can be possessed jointly by a person and another without a showing that the person had actual physical control"), *trans. denied*. Moreover, the testimony of his cohorts,[7] the cocaine found by police set up for use in plain view, and Craft's close proximity to the additional amount of cocaine found near the door support a finding that Craft had the intent and

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[6] We recognize that, unlike the bag of cocaine found behind the hamper, the substance on the plate was not tested by the police lab. The identity of a drug, however, may be proven by circumstantial evidence. *Halsema v. State*, 823 N.E.2d 668 (Ind. 2005). In the absence of expert testimony based on chemical analysis, this may include the testimony of someone sufficiently experienced with the drug indicating that the substance was indeed a dangerous drug. *Id.*; *see also Clifton v. State*, 499 N.E.2d 256, 258 (Ind. 1986) ("convictions supported by circumstantial evidence have relied on the testimony of past drug users who actually ingested the drug in question and identified it based on its effects"). There was ample circumstantial evidence presented in this case to establish that the substance on the glass plate was cocaine.

[7] As set out in detail previously, Lyons and Reed testified regarding Craft's purchase, possession, and use of cocaine that night. Further, while they each openly admitted using cocaine and possessing contraband, Lyons and Reed denied knowledge of the baggy of cocaine found behind the hamper.

capability to maintain dominion and control over this additional cocaine and likely discarded it before exiting the room.

2.

Craft also challenges the three-year sentence imposed by the trial court, which constitutes the maximum sentence for a class D felony. *See* I.C. § 35-50-2-7 (West, PREMISE through 2006 2nd Regular Sess.). He claims the maximum sentence is inappropriate in light of his character and the nature of the offense.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

While the nature of Craft's offense in the context of possession cases does not seem particularly egregious, his character is aggravating. Craft's criminal history is not insignificant or minor, as he would have us believe. At the relatively young age of twenty-six, Craft has amassed three felony and two misdemeanor convictions and has spent nearly all of his adult life either confined or on probation.[8] The record reveals that in 1998, Craft was convicted of the misdemeanor offense of illegal consumption and

[8] Craft also has a juvenile history, which includes true findings of theft (1995) and auto theft (1996).

placed on probation for sixty days. He was later convicted that same year of class B felony burglary and class D felony theft and received a sentence of six years in prison, which was suspended to probation. About a year later, Craft violated probation and was given one year of in-home probation. In 2001, he was convicted of the misdemeanor offense of criminal conversion and placed on one year of informal probation. Later that year, he was convicted of class C felony burglary and sentenced to an executed term of eight years in prison. Craft was released on parole in August 2005. Four months later, while on probation and parole, he committed the instant offense.

Craft correctly observes that the significance of a criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." *Westmoreland v. State*, 787 N.E.2d 1005, 1010 (Ind. Ct. App 2003). Thus, "a relatively minor criminal history comprised of offenses unrelated to the present offense cannot be considered significant." *Id*. at 1011. Here, while Craft's criminal history does not include drug offenses, it certainly cannot be described as relatively minor. *Cf. Wooley v. State*, 716 N.E.2d 919, 929 (Ind. 1999) (concluding that "a criminal history comprised of a single, nonviolent misdemeanor is not a significant aggravator in the context of a sentence for murder"). Rather, Craft has accumulated a significant criminal record in only eight years as an adult. Craft's history of criminal convictions, in addition to the fact that he committed the instant offense while on probation and parole, indicates an unwillingness to conform his conduct to the dictates of the law. Therefore, in light of Craft's character, we conclude that the maximum sentence of three years imposed by the trial court was not inappropriate.

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.