

Case Summary

Candace Brewer appeals her conviction for Class D felony possession of a controlled substance. Brewer contends there is insufficient evidence that she constructively possessed the ecstasy pill found in her purse in the backseat of the vehicle she was driving. Finding sufficient evidence to sustain her conviction, we affirm.

Facts and Procedural History

In the early morning hours of June 20, 2009, Officer Reginald Jackson of the Fishers Police Department observed a vehicle traveling northbound on Interstate 69 at a high rate of speed and making multiple lane changes without signaling. Officer Jackson initiated a traffic stop. The driver, later identified as Brewer, was the sole occupant of the vehicle. Brewer was fumbling through papers and talking on her cell phone when Officer Jackson approached the vehicle. Officer Jackson observed plant material, stems, and seeds that he believed from his training and experience to be marijuana. Based on this observation, Officer Jackson searched the vehicle.

On the passenger floorboard directly behind the driver's seat, Officer Jackson found a denim skirt containing heroin in one of its pockets. In the seat directly behind the driver's seat, Officer Jackson found a purse. Brewer told Officer Jackson that the purse was hers and that it contained about \$1100. In the purse, Officer Jackson found \$1092 in cash, an ecstasy pill wrapped in a five-dollar bill, and a digital scale with heroin residue.

The State charged Brewer with Class D felony possession of a narcotic drug (heroin), Ind. Code § 35-48-4-6(a), and Class D felony possession of a controlled substance (ecstasy), *id.* § 35-48-4-7(a).

At a jury trial, Officer Jackson and another officer testified for the State. Brewer's cousin testified for the defense that Brewer borrowed the vehicle and that multiple women shared use of the purse and took turns carrying it while they were at a club just hours before Officer Jackson stopped Brewer. The jury found Brewer not guilty of possession of a narcotic drug but guilty of possession of a controlled substance. The trial court sentenced Brewer to 365 days in the Indiana Department of Correction.

Brewer now appeals.

Discussion and Decision

Brewer contends there is insufficient evidence that she constructively possessed the ecstasy pill found in her purse.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*. We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the verdict. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable people would not be able to form inferences as to each material element of the offense. *Id.*

“A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses a controlled substance (pure or adulterated) classified in schedule I, II, III, or IV, except marijuana or

hashish, commits possession of a controlled substance, a Class D felony.” I.C. § 35-48-4-7(a). A conviction for possession of contraband may rest upon proof of either actual or constructive possession. *Washington v. State*, 902 N.E.2d 280, 288 (Ind. Ct. App. 2009), *trans. denied*. Actual possession occurs when a person has direct physical control over the contraband. *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). Brewer did not have direct physical control over the ecstasy pill; therefore, we consider whether the State established that she constructively possessed it.

Constructive possession occurs when the defendant has the intent and capability to maintain dominion and control over the contraband. *Atwood v. State*, 905 N.E.2d 479, 484 (Ind. Ct. App. 2009), *trans. denied*. Brewer does not deny that she had the capability to maintain dominion and control over the ecstasy pill found in her purse; instead, she claims that there is no evidence of her knowledge of the presence of the ecstasy pill that would establish her intent to maintain dominion and control over it. *See* Appellant’s Br. P. 11 (“Although, Brewer could have turned around and picked up her purse with the contraband, there is insufficient evidence to establish she had any knowledge that the contraband was actually in her purse.”).

To prove intent, the State must demonstrate the defendant’s knowledge of the presence of the contraband. *Iddings v. State*, 772 N.E.2d 1006, 1015 (Ind. Ct. App. 2002), *trans. denied*. Knowledge may be inferred from the defendant’s exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s

knowledge of the presence of the contraband. *Ables v. State*, 848 N.E.2d 293, 297 (Ind. Ct. App. 2006).

Here, Brewer was the driver and sole occupant of the vehicle when Officer Jackson stopped her. She thus had exclusive dominion and control over the vehicle and purse containing the ecstasy pill. Moreover, Brewer admitted that the purse belonged to her and demonstrated at least some knowledge of the purse's contents by telling Officer Jackson that it contained about \$1100. From this evidence, a factfinder could reasonably infer Brewer's knowledge of the presence of the ecstasy pill, which in turn demonstrates her intent to maintain dominion and control over it.

Despite this clear evidence, Brewer argues that the possession of her purse was non-exclusive by pointing to testimony that her friends shared use of the purse and took turns carrying it while they were at a club just hours earlier. Nevertheless, Brewer had exclusive possession of the purse at the time Officer Jackson stopped her, and exclusive possession is sufficient to raise a reasonable inference of intent. The facts here are akin to those in *Goliday v. State*, where drugs were found in the vehicle the defendant was driving. 708 N.E.2d 4, 5 (Ind. 1999). Although the defendant claimed that he borrowed the vehicle and thus was not in exclusive possession, our Supreme Court stated, "The defendant was the only person in the vehicle when police stopped it. His exclusive possession of the vehicle was sufficient to raise a reasonable inference of intent." *Id.* At 6. Likewise, because Brewer had exclusive possession of the purse at the time Officer Jackson stopped her, her knowledge of the presence of the ecstasy pill may be reasonably inferred. To the extent testimony was presented that many women shared the purse hours

earlier, it was within the province of the jury to decide whether Brewer knew the ecstasy pill was in her purse. In short, Brewer asks us to reweigh the evidence, which we may not do.

Finally, Brewer notes that “the Jury found Brewer not guilty of possessing a narcotic drug as charged in Count 1 under the same fact pattern with the exception that the narcotic drug was on the digital scale.” Appellant’s Br. P. 10. To the extent she claims that the jury’s verdict on the possession of a narcotic drug charge is inconsistent with the jury’s verdict on the possession of a controlled substance charge, we note that jury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable. *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010).

We conclude that there is sufficient evidence that Brewer constructively possessed the ecstasy pill and therefore affirm her conviction.

Affirmed.

BAKER, J., and BARNES, J., concur.