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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL FIELDS,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-1008-CR-480
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
Cause No. 49F08-1005-CM-36228

April 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Michael Fields appeals his conviction of Class A misdemeanor possession of paraphernalia.¹ Fields argues the evidence was not sufficient to prove he constructively possessed the contraband. We affirm.

FACTS AND PROCEDURAL HISTORY

On May 6, 2010, Indianapolis Police officers were on patrol near a Marion County motel when they saw a man and woman leave a room and engage in sexual intercourse on the sidewalk. The officers knocked on the door of the room and Fields answered the door. He acknowledged he knew the couple on the sidewalk, admitted the room was registered to him, and consented to a search of the room. The officers found drug paraphernalia and arrested Fields.

DISCUSSION AND DECISION

“Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). “[W]e will affirm the conviction unless . . . we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000).

Both parties acknowledge Fields, as the registered guest, had authority to consent to a

¹ Ind. Code § 35-48-4-8.3.

search of his room. Fields does not dispute that the seized items in the motel room were drug paraphernalia. Rather he argues he did not have constructive possession of the paraphernalia and, therefore, could not be convicted of its possession.

A person possesses paraphernalia when he knowingly or intentionally “possesses a raw material, an instrument, a device, or other object that the person intends to use for: (1) introducing into the person’s body a controlled substance; (2) testing the strength, effectiveness, or purity of a controlled substance; or (3) enhancing the effect of a controlled substance.” Ind. Code § 35-48-4-8.3(a)(1)-(a)(3). Possession may be actual or constructive. *Trigg v. State*, 725 N.E.2d 446, 450 (Ind. Ct. App. 2000). Because Fields did not have physical possession of the paraphernalia when the officers entered the motel room, he was not in actual possession of the paraphernalia. *See Tate v. State*, 835 N.E.2d 499, 511 (Ind. Ct. App. 2005) (defining actual possession as “direct and physical control over” the object), *trans. denied*. Therefore, the State needed to prove he had constructive possession.

“To show constructive possession, the State must show that the defendant had both (1) the intent to maintain dominion and control, and (2) the capability to maintain dominion and control over the contraband.” *Powell v. State*, 912 N.E.2d 853, 865 (Ind. Ct. App. 2009). Because Fields was the registered guest in the motel room, he was capable of maintaining dominion and control over the paraphernalia found in the room. *See Gee v. State*, 810 N.E.2d 338, 340-41 (Ind. 2004) (a person with a possessory interest in a room is capable of maintaining dominion and control over items in the room, even if possession is not exclusive).

As for intent, however, our law requires more. When, as here, possession of the premises is not exclusive, intent to maintain dominion and control over the paraphernalia may be inferred from additional circumstances that indicate the person knew of the presence of the contraband and was able to exercise control over the paraphernalia. *Tate*, 835 N.E.2d at 511. Such additional circumstances include incriminating statements made by the defendant, proximity of the contraband to the defendant, location of the contraband in the defendant's plain view, and the mingling of the contraband with other items owned by the defendant. *Gee*, 810 N.E.2d at 341.

There was evidence the paraphernalia was in Fields' plain view. In this context, "plain view" means the contraband is in a location where it can be "plainly viewed" and "the incriminating character of the evidence is immediately apparent." *Gee*, 810 N.E.2d at 341 (quoting *Houser v. State*, 678 N.E.2d 95, 101 (Ind. 1997)). One officer reported, "When I first initially walked into the room I observed a glass pipe. . . . I immediately observed it in plain view . . . on the counter where the sink is located in the motel room." (Tr. at 20.) The officer noted pipe is "used to smoke crack cocaine." (*Id.*) The paraphernalia was plainly visible and its incriminating character was immediately apparent, which suggests Fields knew about the presence of the paraphernalia. *See Tate*, 835 N.E.2d at 511 (holding objects plainly visible to the responding officers were also plainly visible to the defendant).

The location of the paraphernalia indicates Fields knew about and intended to maintain control over it. *See Gee*, 810 N.E.2d at 344. Officers saw the paraphernalia on the counter of the sink in or near the bathroom in the Fields' room. Because guests in a motel

room presumably use the restroom, and thus pass by the sink as a matter of course, one can reasonably infer Fields had knowledge of the paraphernalia. *See, e.g., id.* (the presence of a container of marijuana was kept in a kitchen refrigerator, which all residents would presumably access, permitted inference defendant knew about marijuana).

Although the record is silent as to whether Fields brought personal items to the motel, motel guests presumably bring some personal items for their stay. This supports an inference the paraphernalia was near other items Fields owned. *See Tate*, 835 N.E.2d at 511 (holding it was reasonable to infer illegal items were near other things owned by the defendant because the defendant was staying in a motel room).

The location of the crack pipe on a sink that was plainly visible to officers upon entry and that was in an area that guests in the hotel room would have accessed when using the restroom is sufficient evidence Fields knew about the contraband and had intent to maintain dominion and control over it. *See id.* Because the evidence was sufficient to demonstrate Fields had the capability and intent to maintain dominion and control over the crack pipe, we affirm his conviction.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.