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IN THE
COURT OF APPEALS OF INDIANA

MIA TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0811-CR-651
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
Cause No. 49F19-0808-CM-185346

June 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a bench trial, Mia Taylor was found guilty of reckless possession of paraphernalia, a Class B misdemeanor.[1] Taylor appeals her conviction, raising for our review one issue: whether sufficient evidence supports her conviction. Concluding that the evidence is insufficient to find Taylor acted recklessly, we reverse and remand.

Facts and Procedural History

On August 5, 2008, Officer Brian McCann of the Indianapolis Metropolitan Police Department was dispatched to the 3200 block of Georgetown Road in Indianapolis to investigate a 911 call reporting a woman causing a disturbance in that area. Officer McCann encountered Taylor, who matched the description of the woman, and discovered that there was a warrant for Taylor's arrest. Officer McCann placed Taylor under arrest and Officer Cathy Faulk arrived on scene to conduct a search incident to arrest. Taylor told Officer Faulk she had a crack pipe in the purse she was carrying on her shoulder. Officer Faulk retrieved a glass pipe from a side pocket of the purse. Both officers testified that the pipe was, in their training and experience, the kind of pipe used to smoke crack cocaine. Laboratory tests confirmed the presence of cocaine residue in the pipe.

Taylor was charged pursuant to Indiana Code section 35-48-4-8.3(c) with recklessly possessing drug paraphernalia. Following a bench trial, Taylor was found

[1] We note that Taylor was incorrectly charged with and convicted of reckless possession of paraphernalia as a Class A misdemeanor. See Appellant's Appendix at 13 (information alleging violation of Indiana Code section 35-48-4-8.3 to be a Class A misdemeanor) and 10 (abstract of judgment). By statute, reckless possession of paraphernalia is a Class B misdemeanor. Ind. Code § 35-48-4-8.3(c). Given our resolution of this case, however, we need not address the discrepancy further.

guilty as charged and sentenced to 365 days with 347 days suspended. Taylor appeals her conviction.

Discussion and Decision

Taylor contends that the evidence is insufficient to prove she recklessly possessed paraphernalia. In reviewing sufficiency of the evidence claims:

> [we] must consider only the probative evidence and reasonable inferences supporting the verdict. 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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

Taylor was charged with violating Indiana Code section 35-48-4-8.3(c), which provides:

> A person who recklessly possesses . . . an instrument . . . that is to be used primarily 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;
>
> in violation of this chapter commits reckless possession of paraphernalia, a Class B misdemeanor.

Conduct is reckless if it is done in "plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable

standards of conduct." Ind. Code § 35-41-2-2(c). We have held on numerous occasions that recklessness requires a showing of possible harm. See Castner v. State, 840 N.E.2d 362, 367 (Ind. Ct. App. 2006); C.A. Bean v. State, 818 N.E.2d 148, 151 (Ind. Ct. App. 2004). Mere possession of paraphernalia is insufficient to show recklessness. See Castner, 840 N.E.2d at 367 (holding evidence that defendant carried a crack pipe in his pocket did not show recklessness); C.A. Bean, 818 N.E.2d at 152 (holding evidence that defendant carried in his pocket a "push rod" which is used to clean crack pipes and to push crack cocaine into them did not show recklessness even when two children were present because there was no showing of possible harm); Grim v. State, 797 N.E.2d 825, 833-34 (Ind. Ct. App. 2003) (holding evidence that defendant constructively possessed paraphernalia found in a car did not show recklessness because there was no evidence of harm which might result from his possession or that he was acting in disregard of any such harm); Vertner v. State, 793 N.E.2d 1148, 1155 (Ind. Ct. App. 2003) (holding evidence that defendant possessed a crack pipe did not show recklessness in the absence of evidence of harm that might result from his carrying a pipe in his pocket).

Here, too, the State's evidence shows that Taylor possessed a crack pipe, but fails to show any potential for harm arising from Taylor's carrying the crack pipe in her purse. The State argues evidence that Taylor was carrying in her purse "a fragile object contaminated with a substance capable of harming [her]" showed a potential of harm to Taylor herself. Brief of Appellee at 4. We are not persuaded by this argument. Carrying a glass object with residue of a substance that is not dangerous on contact does not constitute "unjustifiable disregard" for potential harm or a "substantial deviation

from acceptable standards of conduct." Accordingly, the State failed to prove the reckless element of the charge against Taylor and we must reverse her conviction of reckless possession of paraphernalia.

When a conviction is reversed because of insufficient evidence, however, we may remand for the trial court to enter a judgment of conviction upon a lesser-included offense if the evidence is sufficient to support that lesser offense. Weideman v. State, 890 N.E.2d 28, 33 (Ind. Ct. App. 2008). As the charge of reckless possession of paraphernalia necessarily includes an allegation of possession of paraphernalia and as the trial court's finding that Taylor was guilty of recklessly possessing paraphernalia necessarily includes a finding that she possessed the paraphernalia, we remand for the trial court to enter a conviction for possession of paraphernalia as a Class A infraction. See Ind. Code § 35-48-4-8.3(a).

Conclusion

The evidence was insufficient to support Taylor's conviction for reckless possession of paraphernalia and her conviction is therefore reversed. This case is remanded to the trial court for further proceedings consistent with this opinion.

Reversed and remanded.

DARDEN, J., and BAILEY, J., concur.