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**IN THE
COURT OF APPEALS OF INDIANA**

TIA BROWN,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0812-CR-1095
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0807-CM-166742

July 1, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Tia Brown a.k.a. Tia Bryon appeals her conviction for Possession of Marijuana,¹ a class A misdemeanor. Her sole contention on appeal is that the State failed to present sufficient evidence.

We affirm.

Just after midnight on June 15, 2008, Officer Shawn Cook responded to the report of a domestic disturbance at Brown's home. As Officer Cook approached the residence, he met Brown's husband, Richard Bryan, who was sitting on the steps next to the sidewalk. Bryan told Officer Cook that he had been in an argument with his wife and that she was "inside tearing the house up" because she was angry with him about some text messages or phone calls. *Transcript* at 7. Bryan also indicated that his wife had been smoking marijuana.

Officer Cook entered the house and found Brown sitting on the floor near the entrance to the kitchen. She was angrily yelling into the phone at the dispatcher. Officer Cook observed three small, burnt marijuana roaches on the floor about five to six feet from Brown. He asked Brown if she had been using any drugs or narcotics, and Brown stated that she "had smoked marijuana earlier." *Id.* at 9. After further investigation regarding the disturbance call, Officer Cook arrested Brown for possession of marijuana.

At her bench trial on November 17, 2008, Brown denied knowledge that the marijuana was in the home. She also denied telling the officer that she had recently smoked marijuana. Officer Cook, however, testified to the facts as set out above. The trial court ultimately found Brown guilty as charged and sentenced her to 365 days in jail, with all but 4 days

¹ Ind. Code Ann. § 35-48-4-11 (West, PREMISE through 2008 2nd Regular Sess.).

suspended. Brown now appeals challenging the sufficiency of the evidence.

When reviewing the sufficiency of the evidence, we will not reweigh the evidence or judge the credibility of witnesses. *Alkhalidi v. State*, 753 N.E.2d 625 (Ind. 2001). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). Moreover, we will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Alkhalidi v. State*, 753 N.E.2d 625.

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. Here, we are presented with the issue of constructive possession.

To demonstrate that the defendant was capable of maintaining dominion and control, the State must show that the defendant was able to reduce the controlled substance to her personal possession. *Grim v. State*, 797 N.E.2d 825 (Ind. Ct. App. 2003). Proof of a possessory interest in the premises in which contraband is found is adequate to show the capability to maintain dominion and control over the items in question. *Massey v. State*, 816 N.E.2d 979 (Ind. Ct. App. 2004). There is no dispute that the home was shared by Brown and her husband. Therefore, capability to maintain dominion and control over the drugs may

be inferred. *See Gee v. State*, 810 N.E.2d 338, 340-41 (Ind. 2004) (even where possession of the premises is non-exclusive, “the law infers that the party in possession of the premises is capable of exercising dominion and control over all items on the premises”).

To establish the intent element where possession of the premises is non-exclusive, the State must demonstrate the defendant’s knowledge of the presence of the contraband, which may be inferred from evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband. *Massey v. State*, 816 N.E.2d 979. These additional circumstances have been found to 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. *Id.*; *Ladd v. State*, 710 N.E.2d 188 (Ind. Ct. App. 1999). In each of these instances, “there exists the probability that the presence and character of the contraband was noticed by the defendant.” *Ladd v. State*, 710 N.E.2d at 190.

Here, the evidence favorable to the conviction reveals that Brown was found in her home sitting five to six feet from several burnt marijuana cigarettes. Further, when asked if she had been using any drugs or narcotics, Brown informed Officer Cook that she “had smoked marijuana earlier.” *Id.* at 9. In light of Brown’s incriminating statement and her close proximity to the burnt marijuana roaches, which were in plain view, the State clearly presented sufficient evidence of constructive possession.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.