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**IN THE
COURT OF APPEALS OF INDIANA**

RALPH PATTERSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 34A02-0512-CR-1225

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0309-FA-337

July 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Ralph Patterson appeals his conviction for dealing in cocaine as a class A felony and possession of marijuana as a class A misdemeanor. We affirm.

Issues

Patterson raises two issues, which we restate as follows:

- I. Whether there is sufficient evidence to sustain his conviction for dealing in cocaine; and
- II. Whether his trial counsel rendered ineffective assistance.

Facts and Procedural History¹

Prompted by a tip from a confidential informant, Howard County Drug Task Force Detective Ronald Brown conducted surveillance at a Days Inn in Kokomo on September 15, 2003. Over the course of two hours, Detective Brown observed numerous people parking and exiting their vehicles, entering Room 209, and leaving the room after a short period of time. Detective Brown also saw people come out of the room, approach parked vehicles, stay for a short time, and then return to Room 209. Detective Brown considered the actions he observed to be consistent with drug trafficking. He saw two men, later identified as Patterson and Leroy Brantley, leave Room 209 and drive away together. Detective Brown and other officers followed the vehicle, eventually stopping it and arresting Patterson and Brantley.

¹ We note that Patterson's appellant's brief does not comply with several of the Indiana Rules of Appellate Procedure. Most noticeably, it has no cover or binding, as required by Rule 43, and it lacks cogent reasoning and citations to authorities, as required by Rule 46(A)(8)(a). We admonish Patterson's counsel to comply with the Indiana Rules of Appellate Procedure in the future.

In the meantime, Howard County Drug Task Force Detective Jeff McKay obtained a search warrant for Room 209, and he executed the warrant with the assistance of other officers. The officers recovered various items, including a bag of marijuana, digital scales, and two plastic bags of a substance that later tested positive for cocaine. They also found a wallet containing cigarette rolling papers, phone numbers, and Patterson's social security card and birth certificate. In a safe, the officers discovered seventeen plastic bags, each containing an "eight ball" of crack cocaine. The total weight of this cocaine was later determined to be fifty-three grams, and it had a street value of more than \$6,000.00. Detective McKay testified that this amount is consistent with distribution. The safe also contained \$2,650.00 in cash. The officers also found several electronic devices, such as X-Box systems and video recorders. Detective McKay testified that it is common for people to trade such merchandise for illegal drugs. The police also found a credit card issued to Charlie Stroman. Detective McKay testified that it is a common practice for a drug user to pay for drugs by surrendering his credit card to a dealer and later reporting it as stolen.

On September 19, 2003, the State charged Patterson with class A felony dealing in cocaine, class C felony possession of cocaine, and class A misdemeanor possession of marijuana. At the close of the State's case in chief, Patterson moved for a directed verdict on the dealing charge. He argued that there were no drugs found in his car or on his person. The trial court denied Patterson's motion. On September 20, 2003, the jury found Patterson guilty as charged. The trial court vacated the judgment of conviction as to class C felony possession of cocaine on double jeopardy grounds. The trial court sentenced Patterson to

twenty-five years for dealing in cocaine and one year, to be served concurrently, for possession of marijuana.

On November 22, 2005, Patterson filed his notice of appeal. On March 27, 2006, Patterson filed his brief and appendix, along with a motion to suspend the appeal to allow him to file a petition for post-conviction relief. On April 5, 2006, this Court granted the motion. On November 28, 2006, Patterson filed a motion to reinstate the appeal, which we granted on January 3, 2007.

Discussion and Decision

I. Sufficiency of the Evidence

Patterson claims that the evidence was not sufficient to sustain his conviction for dealing in cocaine as a class A felony.² Pursuant to the charging information, the State was required to prove that “Patterson did knowingly possess with the intent to deliver cocaine said cocaine having a weight of three (3) grams or more[.]” Appellant’s App. at 12.

Our standard for reviewing questions of sufficiency of evidence is well known. Upon a challenge to the sufficiency of the evidence supporting a conviction, this court will not reweigh the evidence or judge the credibility of the witnesses, and we will respect the jury’s exclusive province to weigh conflicting evidence. While considering only the evidence and reasonable inferences that support the verdict, we must decide whether there is evidence of probative value from which a reasonable trier of fact could infer guilt beyond a reasonable doubt. A mere reasonable inference from the evidence supporting a verdict is enough for us to find evidence to be sufficient.

Buckner v. State, 857 N.E.2d 1011, 1017 (Ind. Ct. App. 2006) (citations and quotation marks)

² Patterson also argues that the evidence was insufficient to support his conviction for possession of cocaine as a class C felony. As the State points out, however, the trial court vacated the judgment of conviction on that charge, so we need not address this argument.

omitted).

First, the State had to prove that Patterson “knowingly possess[ed]” cocaine. Appellant’s App. at 12. Because Patterson did not have actual possession of the cocaine at the time it was discovered in the motel room, the State presented evidence in support of the theory of constructive possession. To prove constructive possession, the State must show that the defendant had both the intent to maintain dominion and control over the drugs and the capability to maintain dominion and control over the drugs. *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). When the defendant has exclusive possession of the premises on which the drugs are found, then an inference is permitted that he knew of the presence of the drugs and was capable of controlling them. *Collins v. State*, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005), *trans. denied*. When possession is non-exclusive, as it was in this case, there must be additional circumstances indicating his knowledge of the presence of the drugs and his ability to control them. *Id.* Such circumstances include: (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) proximity of the drugs to items owned by the defendant. *Id.*

Here, the State presented ample evidence that Patterson knew that the cocaine was in the motel room and that he was able to control it. First, upon searching Room 209, the officers discovered 6.1 grams of cocaine in plain view on the table. The presence of this substance in a motel room in which Patterson spent at least two hours supports the State’s claim that he knew there was cocaine in the room and that it was being sold. Also during their search of Room 209, detectives discovered a wallet that held Patterson’s identification

documents. These items were in close proximity to the cocaine in Room 209, thus satisfying another circumstance used to indicate knowledge of and control over contraband.

The State also had to show that Patterson had the “intent to deliver” the cocaine. Appellant’s App. at 12. During their search of Room 209, the officers discovered digital scales and a plastic baggie consistent with the type used in drug sales. They found a large amount of cash, another person’s credit card, and seventeen individually-wrapped “eight balls” of cocaine. This evidence was sufficient to show Patterson’s intent to deliver the cocaine to others. *See Hirshey v. State*, 852 N.E.2d 1008, 1015-16 (Ind. Ct. App. 2006) (evidence sufficient to prove intent to deliver where police found 9.56 grams of methamphetamine in defendant’s garage, officer testified that amount was more than someone would generally have for personal use, and drugs were separated into eleven packages in a manner consistent with the way drugs were typically packaged for sale), *trans. denied*; *Davis v. State*, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003) (evidence was sufficient to support finding of intent to deliver where defendant possessed 5.6 grams of cocaine, an amount larger than is customary for personal consumption, and each rock was individually wrapped), *trans. denied*; *White v. State*, 772 N.E.2d 408, 413 (Ind. 2002) (packaging of cocaine in twenty-nine plastic bags was sufficient to support jury’s finding of intent to deliver).

Finally, the State had to show that the amount of cocaine was three grams or more. Here, detectives testified that they had found nearly sixty grams of cocaine in Room 209. In essence, Patterson asks us to reweigh the evidence, something we cannot do. We conclude that there is sufficient evidence to sustain the jury’s finding that Patterson possessed and

intended to deliver cocaine in the amount of three grams or more.

II. Ineffective Assistance of Trial Counsel

Patterson also claims that he received ineffective assistance from his trial counsel in violation of his rights under the Sixth Amendment to the U.S. Constitution.³ The State contends, and we agree, that Patterson has waived his argument on this issue for failure to present a cogent argument with citation to authority. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied* (2006); *see also* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal). Waiver notwithstanding, we will briefly address Patterson's claim.⁴

To prevail on a claim of ineffective assistance of counsel, Patterson must establish the two components set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). He must show that his counsel's performance was deficient, meaning that it fell below an objective standard of reasonableness and that the errors were so serious they resulted in a denial of his Sixth Amendment right to counsel. *Henley v. State*, 855 N.E.2d 1018, 1024-25 (Ind. Ct. App. 2006). Also, he must demonstrate that the deficient performance prejudiced his defense. *Id.*

³ Patterson mistakenly cites the Fifth and Fourteenth Amendments as the bases for his federal constitutional claim. Further, his state constitutional claim is waived because he failed to present a separate and distinct argument in support thereof. *See Teeters v. State*, 817 N.E.2d 275, 279 n.2 (Ind. Ct. App. 2004), *trans. denied*.

⁴ We note that because Patterson has raised the issue of ineffective assistance of trial counsel before this Court, he is precluded from relitigating it in future proceedings, such as a petition for post-conviction relief. *See Woods v. State*, 701 N.E.2d 1208, 1220 (Ind. 1998) (holding that if the issue of ineffective assistance of trial counsel is raised on direct appeal, then the issue will be foreclosed from collateral review).

at 1025. Prejudice may be established by demonstrating a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*

In his brief, Patterson lists several supposed examples of ineffective assistance, including his failure to submit a motion to suppress evidence, his decision not to present an opening statement, and his failure to object to certain exhibits and testimony introduced by the State. Appellant's Br. at 11-13. Patterson cites no authority in support of his claim that these so-called errors are evidence of deficient performance. In fact, it is well established under Indiana law that a reviewing court must presume that counsel provided adequate assistance and defer to counsel's strategic and tactical decisions. *Terry v. State*, 857 N.E.2d 396, 403 (Ind. Ct. App. 2006), *trans. denied* (2007). "Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." *Id.* (quoting *Douglas v. State*, 800 N.E.2d 599, 607 (Ind. Ct. App. 2003), *trans. denied* (2004)); *see also, e.g., Wisehart v. State*, 693 N.E.2d 23, 42 (Ind. 1998) ("decision not to make an opening statement is a matter of trial strategy and will not support an ineffective assistance of counsel claim"), *cert. denied* (1999); *Thompson v. State*, 671 N.E.2d 1165, 1169 (Ind. 1996) ("a decision by trial counsel concerning whether to file particular motions is a matter of trial strategy"). Furthermore, Patterson has failed to allege how any or all of his counsel's alleged errors prejudiced his defense.

Having concluded that Patterson's sufficiency claim fails and that his ineffective assistance of counsel claim is waived, we hereby affirm his convictions.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.