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IN THE
COURT OF APPEALS OF INDIANA

PHILLIP T. BILLINGSLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0812-CR-613
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0805-FD-381

July 29, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Phillip T. Billingsley (Billingsley), appeals his conviction for possession of cocaine or narcotic drug, a Class D felony, Ind. Code § 35-48-4-6.

We affirm.

ISSUE

Billingsley raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that he constructively possessed the cocaine that was discovered in the locked glove box of the car he was driving.

FACTS AND PROCEDURAL HISTORY

On May 4, 2008, at approximately 2:50 p.m., Officer Marc Deshaies of the Fort Wayne Police Department (Officer Deshaies) observed Billingsley drive a silver Ford Taurus in Fort Wayne, Indiana. Because of several prior instances, Officer Deshaies was familiar with both Billingsley and the vehicle he was driving. Knowing that Billingsley did not have a driver's license, the Officer stopped him.

After exiting his patrol car, Officer Deshaies approached the driver's side of the Ford Taurus. Billingsley was the sole occupant of the car; he had unbuckled his seatbelt and was leaning out of the window. The Officer informed Billingsley that he knew that Billingsley did not possess a driver's license and asked him to step out of the car. Billingsley fumbled with the keys, trying to remove them from the ignition. Although Officer Deshaies instructed Billingsley several times to leave the keys in the ignition, Billingsley refused to do so. After finally getting the keys out of the ignition, the Officer took possession of the keys and

noticed a plastic holder on the keychain, containing Billingsley identification and social security card. Billingsley confirmed that both cards were his. Checking the registration of the vehicle, the Officer learned that Kamika Eldridge (Eldridge), the mother of Billingsley's child, was the registered owner.

Because Officer Deshaies intended to issue Billingsley a citation for driving without a license, he decided to impound the vehicle as nobody else was present to drive the car. He asked Officer John Drummer (Officer Drummer) to begin the pre-tow inventory while he did the paperwork to issue the traffic citation and impound the car. Meanwhile, Billingsley waited on the curb, talking to other officers who had arrived to assist. While Officer Deshaies went to his patrol car, Billingsley's car keys were left on the trunk lid of the Ford Taurus.

Officer Drummer began the inventory on the front passenger side of the vehicle and asked Billingsley for the keys to the glove box, which was locked. Billingsley responded that he did not want the police in his car or looking in his trunk and moved towards the trunk to pick up his keys. Officer Drummer took the keys from Billingsley and continued his inventory of the vehicle. Opening the glove box, Officer Drummer noticed a clear plastic baggy which contained an off-white, rock-like substance that was later identified as cocaine. In addition to the cocaine, the inventory search of the glove box revealed a plastic pill bottle that Billingsley identified as antibiotics which had been prescribed to him to treat a spider bite. Scattered throughout the vehicle were various papers and resumes with Billingsley's name on them.

Officer Deshaies arrested Billingsley and transported him to the Allen County lock-up. While en route, Billingsley told Officer Deshaies that the car gets stopped all the time and that he should just buy it. He also informed the Officer that even though Eldridge owned the car, he drove it all the time.

On May 8, 2008, the State filed an Information charging Billingsley with possession of cocaine or narcotic drug, a Class D felony, I.C. § 35-48-4-6. On October 8, 2008, a jury trial was held. At the conclusion of the evidence, the jury returned a guilty verdict. On November 3, 2008, a sentencing hearing[1] was held at which time the trial court sentenced Billingsley to one and one-half years of incarceration.

Billingsley now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Billingsley contends that the State failed to present sufficient evidence to sustain his conviction for possession of paraphernalia. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*. at 213. A conviction may be based on

[1] It appears that the trial court sentenced Billingsley in two cause numbers: "08-FC-212" and "08-FC-381." (Sent. Transcript p. 4). This appeal only concerns the single charge filed under cause number 08-FC-381.

circumstantial evidence alone. *Id*. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id*.

Possession of cocaine or narcotic drug, a Class D felony, is defined in I.C. § 35-48-4-6 as "[a] person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II[.]" Thus, the State was required to prove beyond a reasonable doubt that Billingsley (1) knowingly or intentionally; (2) possessed; (3) cocaine; (4) without a valid prescription or order of a practitioner. Billingsley now claims that the evidence was insufficient to establish "his intent to exercise dominion or control over the cocaine." (Appellant's Br. p. 2).

A conviction for possession of contraband may rest upon proof of either actual or constructive possession. *Macklin v. State*, 701 N.E.2d 1247, 1251 (Ind. Ct. App. 1998). Actual possession occurs when a person has direct physical control over the item, whereas constructive possession occurs when one has the intent and capability to maintain dominion and control over the item. *See Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999); *Womack v. State*, 738 N.E.2d 320, 323 (Ind. Ct. App. 2001), *trans. denied*. Here, Billingsley was not in actual possession of the cocaine and thus the State had to present evidence supporting his intent and capability to maintain dominion and control over the contraband. However, again, Billingsley only disputes the intent element of the constructive possession doctrine, not the capability element.

To prove intent, the State must demonstrate the defendant's knowledge of the presence of the contraband. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). This knowledge may be inferred from either the exclusive dominion and control over the premise 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. *Id*. Such additional circumstances include, but are not limited to the following: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) a manufacturing setting; (4) proximity of the defendant to the contraband; (5) location of the contraband within the plain view of the defendant; and (6) location of the contraband within close proximity of items owned by the defendant. *Bradley v. State*, 765 N.E.2d 204, 212 (Ind. Ct. App. 2002).

In the present case, there is sufficient evidence to support the jury's conclusion that Billingsley intentionally maintained dominion and control over the cocaine. Billingsley was the driver and sole occupant of the Ford Taurus. He informed Officer Deshaies that even though the vehicle was registered to Eldridge, he drove the car all the time. While the glove box containing the cocaine was locked, the key was on Billingsley's key chain which also included a plastic holder with his identification card and social security card. When Officer Drummer asked for the key to the glove box, Billingsley took the keys from the trunk lid and told the officers that he did not want them looking in his car or trunk. In addition to the crack cocaine, the glove box also contained prescription medication which Billingsley admitted

was his. Based on the totality of the evidence, we conclude that Billingsley intended to maintain dominion and control over the cocaine.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to prove beyond a reasonable doubt that Billingsley constructively possessed the cocaine that was found in the locked glove box of the car he was driving.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.