

Following a jury trial, Marcus Bailey was convicted of Dealing in Cocaine,¹ a class A felony. On appeal, Bailey argues the trial court abused its discretion in refusing to admit character evidence regarding a witness he sought to introduce at trial.

We affirm.

On June 17, 2009, Bailey met with Demario Lawrence and Tamara Blue outside of a barbershop in Vanderburgh County. Lawrence was driving his mother's Buick Park Avenue. When Lawrence arrived at the barbershop, Bailey entered the car. Lawrence and Blue each contributed twenty dollars to pay Bailey in exchange for cocaine. Once Bailey took the money, several plain clothes police officers, looking for Bailey, approached the vehicle.

The police removed all three occupants from the vehicle and searched the occupants and the vehicle. The police officers discovered over nineteen grams of cocaine and forty dollars in the back seat of the car, in the area where Bailey was sitting. The officers also found on Lawrence and Blue drug paraphernalia used to ingest cocaine. The officers noticed that Blue's purse was covered in make-up, as was one of the dollar bills found in the back seat. The officers also found various pills on Lawrence's person, including OxyContin and Lortabs.

On June 22, 2009, Bailey was charged with possession of cocaine with intent to deliver. Lawrence agreed to testify against Bailey at trial, offering information about their drug deal. In an effort to show that Lawrence intended to sell Lortabs to Bailey, Bailey

¹ Ind. Code Ann. § 35-48-4-1 (West, Westlaw through 2011 Pubs. Laws approved & effective through 06/28/2011).

sought to introduce evidence that Lawrence sold Lortabs on June 17, 2009. The trial court, however, granted the State's motion in limine to exclude the evidence of Lawrence's prior drug deal, finding that it qualified as propensity evidence.

Bailey contends that the trial court abused its discretion in disallowing character evidence he sought to introduce at trial to prove Lawrence's intent to commit the crime. Questions regarding the admission of evidence are within the sound discretion of the trial court, and we review the court's decision only for an abuse of that discretion. *State v. Seabrooks*, 803 N.E.2d 1190 (Ind. Ct. App. 2004). A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law. *Id.* Additionally, errors in admitting evidence are to be disregarded as harmless error unless they affect the substantial rights of the party. *Turben v. State*, 726 N.E.2d 1245 (Ind. 2000); Ind. Trial Rule 61.

In determining whether an error in the introduction of evidence affected the appellant's substantial rights, we must assess the probable impact of that evidence upon the jury. *Rawley v. State*, 724 N.E.2d 1087 (Ind. 2000). If the State presents evidence of guilt that is overwhelming, the error is harmless and reversal is not warranted. *Turben v. State*, 726 N.E.2d 1245. In the instant case, we need not decide whether the court erred in refusing to admit evidence of Lawrence's prior bad acts, because even assuming for the sake of argument that the court erred in that regard, the evidence of guilt is overwhelming and reversal is not warranted. *See id.*

In order to convict Bailey of dealing in cocaine the State was required to prove that Bailey knowingly possessed cocaine, in an amount of over three grams, with the intent to

deliver. *See* I.C. 35-48-4-1(2). “Actual possession of contraband occurs when a person has direct physical control over the item.” *Gee v. State*, 810 N.E.2d 338 (Ind. 2004). In this case, Bailey was not in actual possession of the cocaine when the police arrested him and therefore the state was required to prove constructive possession. In order to prove constructive possession the State had to show that Bailey had the intent to maintain dominion and control over the drugs and the capability to maintain dominion and control over the drugs. *See Lampkins v. State*, 685 N.E.2d 698 (Ind. 1997).

The evidence showed that Bailey was in the car and in close proximity to where the police found the over nineteen grams of cocaine and money used for payment. The State established proof of dominion and control over the contraband through Bailey’s proximity to the cocaine and his ability to quickly reduce the cocaine to his personal possession. *See Taylor v. State*, 482 N.E.2d 259 (Ind. 1984); *Grim v. State*, 797 N.E.2d 825 (Ind. Ct. App. 2003). In addition to the money found in Bailey’s proximity, the quantity and packaging of the drug allowed for the triers of fact to draw reasonable inferences as to Bailey’s intent to deliver the cocaine. *See McGuire v. State*, 613 N.E.2d 861 (Ind. Ct. App. 1993).

The evidence that Lawrence sold Lortabs earlier that day would not have cut against any of this evidence. Therefore, even if the court erred in failing to admit the evidence, such failure constituted harmless error.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.