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# IN THE
# COURT OF APPEALS OF INDIANA

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| ROBTAVIOUS COLLINS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 71A04-1001-CR-99 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D08-0902-FA-9

**August 12, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Robtavious Collins ("Collins") appeals his conviction for Possession of Heroin Within One Thousand Feet of School Property,[1] as a Class B felony, presenting the single issue of whether the conviction is supported by sufficient evidence. We affirm.

## Facts and Procedural History

On February 5, 2009, around 7 a.m., officers of the South Bend and St. Joseph County Police Departments served a warrant on the residence Collins shared with Ashley Pfeifer ("Pfeifer") and Ronny King ("King"). While searching a dresser drawer in the bedroom Collins and Pfeifer shared, police discovered a baggie with what appeared to be crack cocaine. Underneath this were several documents belonging to Collins, including a debit card and an ATM card. In the same room police came upon a pair of 36-inch waist blue jeans laid over a pair of sneakers. In the right pocket of the jeans Sergeant Flanagan found a baggie with a white substance, which was later determined to be heroin.

Collins was charged with Possession of Heroin Within One Thousand Feet of School Property and Possession of 3 or More Grams of Cocaine Within One Thousand Feet of School Property. At trial, Collins stipulated that the house was within one thousand feet of a school and that the drugs taken from the house were properly stored and analyzed. On October 20, 2009, at the conclusion of a jury trial, Collins was convicted of Possession of

[1] Ind. Code § 35-48-4-6(a) & (b)(2)(B).

Heroin Within One Thousand Feet of School Property.[2] On December 9, 2009, judgment was entered and Collins was sentenced to fifteen years' imprisonment. This appeal followed.

**Discussion and Decision**

When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh evidence. Id. We will affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). "The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." Id. (quoting Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

In order to convict Collins as charged, the State was required to prove beyond a reasonable doubt that Collins, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly possessed heroin, a Schedule I narcotic drug, and did so within one thousand feet of a school. Ind. Code § 35-48-4-6(a) & (b)(2)(B); App. 4. Collins contends that the State failed to prove that he had constructive possession of the heroin.

A conviction for possession of narcotics may be founded upon actual or constructive possession. Gee v. State, 810 N.E.2d 338, 340 (Ind. 2004). Actual possession occurs when

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[2] Collins was found not guilty of Possession of 3 or More Grams of Cocaine Within One Thousand Feet of School Property, Ind. Code § 35-48-4-6(a) & (b)(3)(B).

the individual has direct physical control over the drugs. Id. (citing Walker v. State, 631 N.E.2d 1, 2 (Ind. Ct. App. 1994)). Constructive possession is established by showing that the defendant has both the intent and the capability to maintain dominion and control over the drugs. Id. (citing Lampkins v. State, 682 N.E.2d 1268, 1275 (Ind. 1997)). Proof of a possessory interest in the premises where drugs are found can be used to show capability and intent to maintain dominion and control. Id.

Where possession of the premises is not exclusive, however, only the capability element is satisfied by proof of a possessory interest in the premises. Id. at 341. To establish the intent element, there "must be additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence." Id. (citing Lampkins, 682 N.E.2d at 1275). These 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, or (6) when the drugs are in close proximity to items the defendant owns. Id. (citing Henderson v. State, 715 N.E.2d 833, 836 (Ind. 1999)). These factors are not exclusive; so long as the State can "demonstrate the probability that the defendant was aware of the presence of contraband and its illegal character," the conviction will stand. Id. at 344.

First, Collins stipulated that the drug found in the jeans was heroin. Then, the State presented evidence that connected Collins with these jeans. Specifically, there was testimony that Pfeifer and Collins shared the bedroom where the heroin was found. Collins went to bed in that room around 5 or 6 a.m., shortly before the police arrived. The only other adult asleep

in the house at this time, King, was in a different bedroom, was wearing jeans when the police arrived, and was bigger than Collins. Collins's debit and ATM cards were found in a dresser drawer in the bedroom Collins shared with Pfeifer, and the dresser itself contained primarily men's clothing. When questioned about his jeans size, Collins responded that he wore 36-inch waist jeans, the same size as those found in the bedroom where he was sleeping.

There is sufficient evidence from which a fact-finder could infer that Collins knowingly possessed heroin within one thousand feet of a school.

Affirmed.

RILEY, J., and KIRSCH, J., concur.