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IN THE
COURT OF APPEALS OF INDIANA

PHILLIP T. BILLINGSLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0902-CR-102
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0808-FD-212

August 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Phillip T. Billingsley appeals his convictions, following a bench trial, of possession of cocaine as a Class C felony[1] and possession of marijuana as a Class A misdemeanor.[2] Concluding there is sufficient evidence to support his convictions, we affirm.

FACTS AND PROCEDURAL HISTORY

On August 9, 2008, Fort Wayne Police officers Chris Hoffman and Nicholas Lichtsinn were patrolling the Eden Green Apartments when they saw Billingsley standing on a sidewalk. The officers knew Billingsley by sight and knew he had been banned from the apartment complex property. Upon seeing the officers, Billingsley − who had a plastic bag in his hand − sprinted away from the officers, ran into the apartment of his friend, Kristin Wilson, and locked the door behind him. Officer Hoffman kicked in the door of the apartment, and Billingsley came out of a bedroom at the end of the hallway. Officer Lichtsinn attempted to handcuff Billingsley, who pulled away from the officer and dragged him down an outside hallway and up a flight of stairs. During the struggle with the officer, Billingsley dropped a plastic baggie that contained ten cigarillos. The officers eventually stopped Billingsley by using pepper spray and a taser and arrested him. During the booking process at the jail, staff found a small baggie containing 1.5 grams of marijuana in Billingsley's pocket.

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[1] Ind. Code § 35-48-4-6.

[2] Ind. Code § 35-48-4-11. Billingsley was also convicted of two counts of Class A misdemeanor resisting law enforcement but does not challenge these convictions on appeal.

After Billingsley's arrest, Officer Hoffman went into the bedroom where Billingsley had been when the officer entered the apartment. On a bookshelf in the bedroom, the officer saw baggies containing 8.53 grams of cocaine and 8.1 grams of marijuana. The officer also found a digital scale with a green, leafy residue, a box of baggies, and some razor blades on the bookcase. The bookcase contained a box of cigarillos of the same brand and with the same UPC code as the cigarillos Billingsley dropped in the hallway. The bedroom also contained male clothing and a male hairbrush and body spray. That same day, Officer Lichtsinn spoke to Kristin Wilson, who had returned from a two-day trip out of town. Wilson told the officer there was no cocaine, marijuana, or cigars in her apartment when she left for her trip and that Billingsley was the only person staying at her apartment while she was gone.

The State charged Billingsley with Count I, Class C felony possession of cocaine; Count II, Class C felony criminal trespass; Count III, Class A misdemeanor possession of marijuana; and Counts IV and V, Class A misdemeanor resisting law enforcement. During Billingsley's bench trial, Wilson, who admitted she had a few conversations with Billingsley since his arrest, denied telling the officer that Billingsley was the only person staying at her apartment while she was gone. Instead, she testified Billingsley did not have a key and was not staying at her apartment. She indicated the men's clothes in her bedroom were her brother's and that she had the cigars in her apartment before she left town. The State impeached Wilson with her prior statements to Officer Lichtsinn, and the trial court found Wilson was not a credible witness. The trial court found Billingsley

guilty of Counts I, III, IV, and V but not guilty of Count II. The trial court sentenced Billingsley to an aggregate term of four years.[3]

DISCUSSION AND DECISION

Billingsley's sole argument on appeal is that the State's evidence was insufficient to support his convictions of possession of cocaine and possession of marijuana. Our Supreme Court has summarized the standard of review when assessing claims of insufficient evidence:

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

[3] During the sentencing hearing, the trial court also sentenced Billingsley to one and one-half years for a Class D felony possession of cocaine conviction under a separate cause number and ordered that sentence served consecutively to the four-year sentence in this case. Billingsley separately appealed that conviction, and we affirmed. *See Billingsley v. State*, 02A03-0812-CR-613, slip op. at 7 (Ind. Ct. App. July 29, 2009).

To prove Billingsley committed Class C felony possession of cocaine, the State was required to prove beyond a reasonable doubt that Billingsley knowingly or intentionally possessed three or more grams of cocaine. *See* Ind. Code § 35-48-4-6.

To prove Billingsley committed Class A misdemeanor possession of marijuana, the State was required to prove beyond a reasonable doubt that Billingsley knowingly or intentionally possessed marijuana. *See* Ind. Code § 35-48-4-11.

Billingsley argues the evidence was insufficient to prove he possessed either cocaine or marijuana because the evidence presented did not prove beyond a reasonable doubt that he had intent to maintain dominion and control over the drugs.

A conviction of possession of contraband may rest on 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. *Hayes v. State*, 876 N.E.2d 373, 375 (Ind. Ct. App. 2007), *trans. denied*. Here, police found marijuana in Billingsley's pocket during the booking process at the jail. Accordingly, the evidence was sufficient to support Billingsley's conviction of possession of marijuana.[4]

Billingsley was not in actual possession of the cocaine found in the apartment; thus, the State was required to prove Billingsley had constructive possession of the cocaine. Evidence of constructive possession is sufficient where the State proves the defendant had both the intent and capability to maintain dominion and control over the

[4] Because the trial court found Billingsley guilty of possession of marijuana based on the marijuana found in his pocket, *see* Tr. at 130-31, and the evidence supports that conviction, we need not review whether Billingsley was in constructive possession of the marijuana found in the apartment.

contraband. *Hardister v. State*, 849 N.E.2d 563, 573 (Ind. 2006). Billingsley does not challenge the capability element of constructive possession. Thus, we will focus our review on the intent element.

Intent is shown if the State demonstrates the defendant knew 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.* These additional circumstances may 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) location of the drugs in close proximity to items owned by the defendant. *Hardister*, 849 N.E.2d at 574.

The evidence presented supports the determination that Billingsley constructively possessed the cocaine in the bedroom. As soon as Billingsley, who had a plastic baggie in his hand, saw the officers at the apartment complex, he sprinted away, went into Wilson's apartment, locked the door behind him, and hid in the bedroom where the cocaine was discovered. When the officers attempted to handcuff him, Billingsley pulled away and engaged the officers in a struggle, during which he dropped a baggie of cigarillos. A bookcase in the bedroom had 8.53 grams of cocaine and 8.1 grams of marijuana in plain view. The bookcase also contained a digital scale with a leafy residue, a box of baggies, and some razor blades, which Officer Hoffman testified was indicative

of packaging narcotics. Also on the bookcase was a box of Swisher Sweets cigarillos, which Officer Hoffman testified "are a very popular brand used to blunt out and remove the tobacco and insert in the tobacco's place marijuana." (Tr. at 27.) There was a male hairbrush and body spray on the bookcase and men's clothing in the bedroom. Finally, despite her trial testimony to the contrary, Wilson told Officer Lichtsinn that Billingsley was the only person staying at her apartment while she was gone. The State presented evidence of additional circumstances sufficient to prove Billingsley had intent to maintain dominion and control over the contraband.

The evidence is sufficient to support Billingsley's convictions of possession of cocaine and possession of marijuana.

Affirmed.

BAKER, C.J., and BARNES, J., concur.