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IN THE
COURT OF APPEALS OF INDIANA

TORRIEN JEFFERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1012-CR-1300
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jose Salinas, Judge
Cause No. 49G14-1007-FD-54231

September 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Torrien Jefferson appeals his conviction for Class D felony possession of cocaine. We affirm.

Issues

Jefferson raises two issues, which we restate as:

I. whether his Fourth Amendment rights were violated, resulting in fundamental error; and

II. whether the evidence is sufficient to sustain his conviction.

Facts

On July 11, 2010, at approximately 9:15 p.m., Detective Billy Glenn with the Indianapolis Metropolitan Police Department was doing surveillance at the McDonald's parking lot on 38th Street due to a high volume of drug trafficking in the area. Detective Glenn watched two people sit in the parking lot in a maroon Buick Regal and talk on a cell phone for fifteen to twenty minutes. Jefferson pulled up to the Buick in a green Chevy Tahoe. Jefferson was also talking on his cell phone and made eye contact with the passengers of the Buick. Jefferson and the passengers of the Buick nodded to each other, and then they drove out of the McDonald's parking lot. Detective Glenn followed the vehicles to a nearby Subway parking lot.

In the Subway parking lot, a white male got out of the Buick and got into the Tahoe on the passenger side. Detective Glenn parked his vehicle and walked up to the Tahoe's driver's side. Through the open window, Detective Glenn saw the passenger

with cash in his hand and saw Jefferson in the driver's seat with aluminum foil and a white substance, later identified as cocaine, on his lap.

Detective Glenn ordered Jefferson and the passenger not to move. However, Jefferson folded the aluminum foil into a ball in his right hand and threw it out the passenger window of the vehicle. Detective Glenn then recovered the aluminum foil and cocaine. The State charged Jefferson with possession of cocaine as a Class D felony and being an habitual substance offender. After a bench trial, the trial court found Jefferson guilty as charged.

Analysis

I. Fundamental Error

Jefferson argues that his Fourth Amendment rights were violated because Detective Glenn had no reasonable belief that criminal activity was occurring and no reason to follow Jefferson's vehicle to the Subway parking lot. Jefferson concedes that he did not object at trial, but he argues that fundamental error occurred.

A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. Brown v. State, 929 N.E.2d 204, 207 (Ind. 2010). "The fundamental error exception is 'extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.'" Id. (quoting Mathews v. State, 849 N.E.2d 578, 587 (Ind. 2006)). "The error claimed must either 'make a fair trial impossible' or constitute 'clearly blatant violations of basic and elementary principles of

due process.'" Id. (quoting Clark v. State, 915 N.E.2d 126, 131 (Ind. 2009)). "This exception is available only in 'egregious circumstances.'" Id. (quoting Brown v. State, 799 N.E.2d 1064, 1068 (Ind. 2003)).

Jefferson first argues that Detective Glenn should not have followed him to the Subway parking lot. The Fourth Amendment to the Constitution of the United States protects citizens against unreasonable searches and seizures. Trimble v. State, 842 N.E.2d 798, 801 (Ind. 2006), adhered to on reh'g, 848 N.E.2d 278 (Ind. 2006). There are three levels of police investigation, two of which implicate the Fourth Amendment and one of which does not. Powell v. State, 912 N.E.2d 853, 859 (Ind. Ct. App. 2009). First, the Fourth Amendment requires that an arrest or detention that lasts for more than a short period of time must be justified by probable cause. Id. Second, pursuant to Fourth Amendment jurisprudence, the police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based upon specific and articulable facts, the officer has a reasonable suspicion that criminal activity has or is about to occur. Id. The third level of investigation occurs when a police officer makes a casual and brief inquiry of a citizen, which involves neither an arrest nor a stop. Id. This is a consensual encounter in which the Fourth Amendment is not implicated. Id.

"'Not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification.'" Id. (quoting Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), trans. denied). "A person is 'seized' only when, by means of physical force or a show of authority, his or her freedom of movement is restrained." Id. (quoting State v. Lefevers, 844 N.E.2d 508, 513 (Ind. Ct. App. 2006), trans. denied). It is

not the purpose of the Fourth Amendment to eliminate all contact between police and the citizenry. Id. at 860.

Detective Glenn did not stop, detain, or otherwise restrain Jefferson when he followed Jefferson to the Subway parking lot and approached his vehicle. In fact, Jefferson cites no authority for the proposition that Detective Glenn violated his Fourth Amendment rights by following him from the McDonald's parking lot to the Subway parking lot. Consequently, we cannot say that Jefferson's Fourth Amendment rights were violated. See Overstreet, 724 N.E.2d at 664 (holding that the Fourth Amendment was not implicated when the officer followed the defendant to a gas station, approached him, asked about his action, and asked for his identification).

Next, Jefferson argues that Detective Glenn had "no articulable suspicion that criminal activity was afoot." Appellant's Br. p. 9. After Detective Glenn approached Jefferson's vehicle, he saw the aluminum foil and cocaine on Jefferson's lap. "The Fourth Amendment does not protect objects, activities, or statements that a citizen has exposed to the 'plain view' of outsiders because the individual has expressed no intention of keeping those activities private." Trimble, 842 N.E.2d at 801 (quoting Katz v. United States, 389 U.S. 347, 361, 88 S. Ct. 507, 516 (1967) (Harlan, J., concurring)). Because the cocaine was in plain view as Detective Glenn was standing near Jefferson's vehicle, Detective Glenn had reasonable suspicion that criminal activity was occurring and could detain Jefferson. As a result, Jefferson failed to show that his Fourth Amendment rights were violated, much less that fundamental error occurred.

II. Sufficiency

Jefferson argues that the evidence is insufficient to sustain his conviction for Class D felony possession of cocaine. When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id.

To find Jefferson guilty of Class D felony possession of cocaine, the State had to prove that Jefferson, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possessed cocaine. Ind. Code § 35-48-4-6. Jefferson argues that the evidence is insufficient because the cocaine was not on his person and his testimony regarding the events of that evening was different than Detective Glenn's account. Jefferson claims that the passenger threw the cocaine out of the window.

Detective Glenn testified that he saw the passenger in Jefferson's Tahoe with cash in his hand and saw Jefferson with aluminum foil and a white substance, later identified as cocaine, on his lap. Detective Glenn ordered Jefferson and the passenger not to move. However, Jefferson folded the aluminum foil into a ball in his right hand and threw it out the passenger window of the vehicle. Jefferson's claim that his passenger possessed the cocaine is merely a request that we reweigh the evidence and judge the credibility of the

witnesses, which we cannot do. The evidence is sufficient to sustain Jefferson's conviction for possession of cocaine as a Class D felony.

Conclusion

Jefferson's Fourth Amendment rights were not violated when Detective Glenn followed Jefferson to the Subway parking lot. Further, the cocaine was in Detective Glenn's plain view as he stood next to Jefferson's vehicle. The evidence is sufficient to sustain Jefferson's conviction. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.