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IN THE
COURT OF APPEALS OF INDIANA

JERRAMY MOORE,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1104-CR-294
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Anne Flannelly, Judge
Cause No. 49F09-1002-FD-11860

October 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a bench trial, Jerramy Moore appeals his conviction of possession of marijuana as a Class D felony. The sole issue for our review is whether sufficient evidence was presented to sustain his conviction. Concluding that sufficient evidence was presented, we affirm.

Facts and Procedural History

On February 5, 2010, Indianapolis Metropolitan Police Department officers Nathan Schmidt and Jerry Piland responded to a caller's report of the odor of marijuana smoke emanating from the home of the caller's neighbor. Officer Schmidt knocked on the front door of the suspect home while Officer Piland looked through a window.

Officer Piland observed a man, later identified as Moore, pick up a small electronic device and plastic bags, stuff them under couch cushions, and then sit down on top of those cushions. Office Piland also observed a woman, later identified as Katie Lannom, pick up some items and head towards the back of the home. Officers then heard Lannom ask that they come around to the back of the home, and they did so.

Lannom consented to the officers' search of the home. Officers recovered one bag of marijuana from under the couch cushions where Officer Piland observed Moore stuff items minutes earlier, one bag of marijuana from under cushions of a love seat, and one more bag of marijuana from inside a kitchen cabinet.

The State charged Moore with possession of marijuana as a Class A misdemeanor. Officer Piland testified at a bench trial that Moore explained at the scene that he "removed a digital scale and some marijuana and ah . . . put it in the couch cushion." Transcript at 14 (ellipses in original). The trial court found Moore guilty, and Moore

then stipulated to a prior conviction to support an enhancement and the trial court's judgment of conviction for possession of marijuana as a Class D felony. The trial court sentenced Moore to five hundred and forty-five days, with four days executed and the rest suspended to probation. Moore now appeals his conviction. Additional facts will be provided as appropriate.

Discussion and Decision

I. Standard of Review

Our standard of reviewing a sufficiency claim is well-settled: we do not assess witness credibility or weigh the evidence, and "we consider only the evidence that is favorable to the judgment along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction." Staten v. State, 844 N.E.2d 186, 187 (Ind. Ct. App. 2006), trans. denied. "We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt." Id.

II. Possession of Marijuana

The trial court convicted Moore of "knowingly or intentionally possess[ing] (pure or adulterated) marijuana," in violation of Indiana Code section 35-48-4-11. "This court has long recognized that a conviction for possession of contraband may be founded upon actual or constructive possession." Holmes v. State, 785 N.E.2d 658, 660 (Ind. Ct. App. 2003) (citation omitted).

Moore first contends he was only a guest in Lannom's home, so he cannot be held responsible for drugs found in the home. Officer Piland testified he learned that Lannom

was the leaseholder of the home and that Moore, while not on the lease, was Lannom's live-in boyfriend. Lannom testified that she was living there alone and that Moore was her employee in a cleaning business. However, because we consider only evidence in favor of the judgment and reasonable inferences therefrom, we consider only Officer Piland's testimony as to this issue and disagree with Moore's appellate contention that he was merely a guest in the home. Further, and more importantly, being a guest in another's home is irrelevant when Officer Piland observed and Moore admitted to physically holding and attempting to hide marijuana under couch cushions. "Actual possession occurs when a person has direct physical control over the items." Bradshaw v. State, 818 N.E.2d 59, 62 (Ind. Ct. App. 2004). Officer Piland's observation and Moore's admission leads to a reasonable inference of Moore's actual possession of marijuana.

On appeal, Moore seems to admit to actual possession of that bag of marijuana, but objects to liability for possession of the marijuana under the cushions of the love seat and in the kitchen cabinet. This would be helpful to Moore if he were seeking a reversal of a Class D felony conviction in favor of a conviction for possession of marijuana as a Class A misdemeanor based on the weight of the drugs. See Ind. Code § 35-48-4-11 (possession of marijuana is a Class D felony "if the amount involved is more than thirty (30) grams of marijuana"). However, Moore concedes that his offense was aggravated to a Class D felony because he stipulated to a prior conviction involving marijuana. Appellant's Brief at 2; Tr. at 49-50; see Ind. Code § 35-48-4-11 (the crime is also a Class D felony "if the person has a prior conviction of an offense involving marijuana, hash oil, hashish, salvia, or a synthetic cannabinoid"). Therefore, the State was not required to

prove that Moore possessed any particular amount of marijuana to sustain this conviction. The State was only required to prove that Moore knowingly or intentionally possessed pure or adulterated marijuana. See Ind. Code § 35-48-4-11(1). Therefore, Moore's possession of the marijuana that he hid under the couch cushions, regardless of the amount, is sufficient to sustain his conviction for possession of marijuana as a Class D felony.

Second, Moore highlights both his own and Lannom's testimony that the marijuana was Lannom's and not his. Indiana law prohibits possession of contraband under specific circumstances, and proof of ownership is unnecessary to sustain a conviction. See Bradshaw, 818 N.E.2d at 62 (describing actual possession as "direct physical control over" contraband); Holmes, 785 N.E.2d at 660 (describing constructive possession as a defendant's "intent and capability to maintain dominion and control over the contraband"). Moore knowingly or intentionally possessed marijuana and attempted to hide it under couch cushions. That is sufficient to sustain his conviction.

Third, Moore contends that Officer Piland incorrectly described the location of the couch in the living room, and argues that Officer Piland's testimony should be disregarded. We decline this request to reassess Officer Piland's credibility and reweigh his testimony against that of Moore and Lannom.

The State presented sufficient evidence to find Moore guilty of possession of marijuana as a Class A misdemeanor, and Moore stipulated to the fact justifying elevation of that offense to a Class D felony.

Conclusion

Sufficient evidence was presented to sustain Moore's conviction of possession of marijuana as a Class D felony, and therefore we affirm.

Affirmed.

BARNES, J., and BRADFORD, J., concur.