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ATTORNEY FOR APPELLANT:

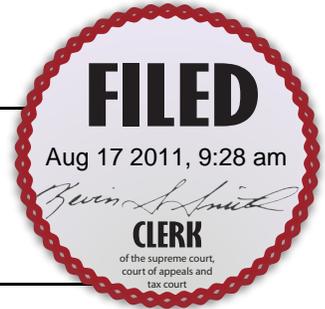
MARK I. COX
The Mark I. Cox Law Office, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHERINE M. COOPER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



JOSHUA FARMER,)
)
Appellant- Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

No. 89A01-1012-CR-656

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0908-FD-96

August 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a jury trial, Joshua D. Farmer was convicted of possession of a narcotic drug, a Class D felony. For our review, Farmer raises one issue: whether sufficient evidence supports his conviction. Concluding sufficient evidence supports Farmer's conviction of possession of a narcotic drug, we affirm.

Facts and Procedural History

On August 17, 2009, Farmer stopped by his friend Kevin Hounshell's house, and agreed to drive Hounshell to Dayton, Ohio to purchase heroin. Upon arrival, Hounshell purchased the heroin, and Farmer and Hounshell drove back home to Centerville, Indiana. On their way back, Officer Dustin Lindley and Officer Alan Campbell of the Wayne County Sheriff's Department were parked near Interstate 70 in Richmond, Indiana. As Farmer made a left-hand turn from the interstate ramp onto Centerville Road, Officer Campbell observed Farmer fail to use his turn signal. Officer Campbell and Officer Lindley pursued Farmer in separate cars, with Officer Campbell subsequently making the traffic stop. Officer Lindley approached and asked Farmer for his driver's license, vehicle registration, and proof of insurance. Officer Lindley returned to his vehicle to run Farmer's information and write him a citation for failure to signal. During that time, Officer Chenowith arrived with his canine. The canine gave a positive indication for narcotics on the passenger side of the vehicle, and the officers asked Farmer and his friend to step out of the car. The officers searched the vehicle, and subsequently found a clear baggy containing clear capsules with a brown substance in them and a cigarette pack containing three white pills and what was later determined to be marijuana. The officers also found syringes. The clear capsules were later found to

contain heroin and the pills were found to contain alprazolam. Hounshell stated that all the drugs found in the vehicle were his. He stated he used his own money to purchase the heroin and that the heroin was for him, not Farmer.

Farmer was charged with possession of a narcotic drug, a Class D felony; maintaining a common nuisance, a Class D felony; failure to signal a turn, a Class C infraction; and he was alleged to be an habitual substance offender. On November 9, 2010, Farmer was found guilty by a jury of possession of a narcotic drug and not guilty of maintaining a common nuisance.¹ Farmer admitted the habitual substance offender allegation. On November 29, 2010, the trial court imposed an aggregate sentence of five and one-half years. Farmer now appeals.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh the evidence nor judge witnesses' credibility. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Rather, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Therefore, we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find all elements of the crime proven beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

¹ The traffic infraction had previously been dismissed.

II. Possession of a Narcotic Drug

Indiana Code section 35-48-4-6(a) provides that a person who, without a valid prescription or order of a practitioner acting in the course of professional practice, knowingly or intentionally possesses a scheduled narcotic drug (pure or adulterated) such as heroin, commits possession of a narcotic drug. In the absence of actual possession of drugs, “constructive” possession may support a conviction for a drug offense. Lampkins v. State, 682 N.E.2d 1268, 1275 (Ind. 1997). Actual possession occurs when a defendant has direct physical control over an item, whereas constructive possession occurs when a person has both the intent and capability to maintain dominion and control over the item. Griffin v. State, 945 N.E.2d 781, 783 (Ind. Ct. App. 2011). To fulfill the capability element of constructive possession, the State must demonstrate that the defendant was able to reduce the controlled substance to his personal possession. Grim v. State, 797 N.E.2d 825, 832 (Ind. Ct. App. 2003).

In cases where the accused has exclusive possession of the premises on which contraband is found, an inference is permitted that he or she knew of the presence of contraband and was capable of controlling it. Richardson v. State, 856 N.E.2d 1222, 1228 (Ind. Ct. App. 2006), trans. denied. When possession of the premises is not exclusive, though, the inference is not permitted absent some additional circumstances indicating knowledge of the presence of the contraband and the ability to control it. Id. The recognized “additional 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 contraband; (5) the contraband is in plain view; and (6)

the location of the contraband is in close proximity to items owned by the defendant. Id. at 1228-29.

The heroin was not found on Farmer's person and he was not in exclusive control of the vehicle, so he did not actually possess the drugs. Accordingly, to prove intent and capability to maintain dominion and control over the contraband, additional circumstances must be present to support an inference that Farmer constructively possessed the heroin. To show capability to maintain dominion and control over contraband, the State must prove that Farmer was able to reduce the contraband to his personal possession. See Grim, 797 N.E.2d at 832. Farmer contends that he never had the ability to possess the narcotics that were found. We disagree. In this case, Hounshell testified "the heroin [was] placed in the center of the seat in between us." Transcript at 237-38. Since the heroin was between Farmer and Hounshell, Farmer was in close enough proximity to reduce the heroin to his personal possession. Thus, the State presented sufficient evidence to satisfy the capability element of constructive possession.

Next, we must determine whether the State sufficiently proved that Farmer had the intent to maintain dominion and control over the heroin. Where control is nonexclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate the person knew of the presence of the contraband. Gee v. State, 810 N.E.2d 338, 341 (Ind. 2004).

Farmer contends he never had the intent to maintain dominion and control over the narcotics. We disagree. In this case, the evidence sufficiently demonstrates that Farmer knew of the presence of heroin. Farmer owned the vehicle in which the heroin was found, and consented to driving Hounshell to Dayton, Ohio for the sole purpose of

purchasing heroin. He witnessed Hounshell's and the supplier's transaction. Thus, he had knowledge of the narcotics in his vehicle. Significantly, the record reveals that Farmer was in close proximity to the heroin. Hounshell testified "the heroin [was] placed in the center of the seat in between [Farmer and Hounshell]." Tr. at 237-38. Thus, it is reasonable to infer that Farmer had the intent to maintain dominion and control over the narcotics. See Holmes v. State, 785 N.E.2d 658, 662 (Ind. Ct. App. 2003) (holding the State presented sufficient evidence to convict the defendant based in part upon defendant's close proximity to marijuana found under the driver's seat of a vehicle). Considering all these circumstances, the State presented sufficient evidence to satisfy the intent element of constructive possession.

Conclusion

Sufficient evidence supports Farmer's conviction of possession of a narcotic drug. His conviction is therefore affirmed.

Affirmed.

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