

STATEMENT OF THE CASE

Jeremy R. Miller (“Miller”) appeals from his convictions, after a bench trial, for possession of cocaine, as a class C felony,¹ and possession of marijuana, as a class A misdemeanor.²

We affirm.

ISSUE

Whether the trial court committed fundamental error by convicting Miller based upon an improper standard.

FACTS

On the night of February 26, 2006, Lawrence Police Department officers Scott Evans and David Carter were patrolling for stolen vehicles. The officers observed an unoccupied 1993 Pontiac Grand Am in the parking lot of the Park Terrace Motel in Marion County. Officer Evans ran a check on the license plate and learned that the vehicle had been reported stolen. Motel manager Mark Clemenz advised Officer Evans that Miller, the occupant of motel unit 121 (“unit 121”), had been driving the stolen vehicle. Clemenz knocked on Miller’s door, woke him, and asked him to move the vehicle. Miller complied, and was subsequently arrested for auto theft³ and read his *Miranda* rights.

¹ Ind. Code § 35-48-4-6.

² I.C. § 35-48-4-11.

³ Miller was not ultimately charged with auto theft.

Thereafter, Clemenz advised Officer Evans that he wanted Miller's possessions removed from the premises. Miller overheard Clemenz's request and asked Officer Evans to retrieve his personal property from unit 121. Officer Evans agreed, leaving Miller in the parking lot with Officer Carter. Miller then told Officer Carter, "I'm in trouble now . . . there's drugs and money in there." (Tr. 25).

Officer Evans entered unit 121 and observed a Sony PlayStation in plain view. He then approached the dresser, which was located next to the bed, and observed three gold rings lying on top of it. Officer Evans then opened the dresser drawer and found a bag containing 16.327 grams of cocaine, another bag containing 3.78 grams of marijuana, a fourth ring on top of \$156.00 in cash, and a gold dental plate. Officer Evans also found a set of scales in the room.

On March 2, 2006, the State charged Miller with possession of cocaine, as a class C felony, and possession of marijuana, as a class A misdemeanor. Miller waived his right to trial by jury. The trial court conducted Miller's bench trial on February 16, 2007. Officers Evans and Carter testified on behalf of the State. Miller then took the stand and denied making any incriminating statements to Officer Carter. He did, however, acknowledge ownership of the ring, cash, and gold dental plate found alongside the cocaine and marijuana in the dresser drawer, as well as the PlayStation and three other rings. Miller attributed the drugs to someone named "Carlos," with whom Miller had

allegedly been “partying the night before.”⁴ (Tr. 32). On re-cross, the following colloquy occurred between the State and Miller:

[State:] What kind of partying were you doing?
[Miller:] Huh?
[State:] What kind of partying were you doing out with Carlos?
[Miller:] Drinking.
[State:] Drinking?
[Miller:] And smoking.
[State:] Smoking what?
[Miller:] Smoking marijuana.
[State:] Was that the same marijuana that was found in the room?
[Miller:] I don’t know, sir.
[State:] Was it Carlos’ marijuana or your marijuana?
[Miller:] Yeah. It was Carlos’ marijuana.

(Tr. 33-34). At the close of the evidence, the trial court made the following statement:

COURT: All right. The standard for me is what evidence is most convincing. That’s – I think the State’s witnesses have been. Counts One and Two, which are Cocaine Possession, [and] Marijuana Possession, I find Mr. Miller guilty of those offenses.

(Tr. 35-36). At Miller’s sentencing hearing on February 23, 2007, the trial court sentenced him as follows: Count I – four years, with two years executed and two years ordered suspended to probation; and Count II – one year executed. The trial court ordered Miller’s sentences served concurrently. Miller now appeals.

DECISION

Miller argues that the trial court committed fundamental error. Specifically, he argues that the trial court decided the case on the basis of whose witnesses were “most

⁴ Miller also attributed the stolen Pontiac to “Carlos,” who according to Miller, left unit 121 without either the car or the car keys, while Miller was sleeping.

convincing,” and thereby, “effectively reduced the determination of Miller’s guilt to a preponderance of the evidence standard.” Miller’s Br. 5. We disagree.

Fundamental error is an extremely narrow exception “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.” *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006).

Moreover, we presume that trial courts know and follow the applicable law; Miller has not overcome this presumption. *Thurman v. State*, 793 N.E.2d 318, 321 (Ind. Ct. App. 2003). “It is black letter law that the Due Process Clause of the Fourteenth Amendment requires that a conviction be supported by proof beyond a reasonable doubt of every element necessary to constitute the crime charged.” *Id.* at 320. This principle is so vital to the American scheme of criminal procedure that it is referred to as “the fundamental principle.” *Staton v. State*, 853 N.E.2d 470, 473 (Ind. 2006) (characterizing the “beyond a reasonable doubt standard” as a “bedrock, axiomatic and elementary [constitutional] principle”). Therefore, for the trial court to have concluded that Miller was guilty as charged, it must have necessarily believed that the State proved the elements of the charged crimes beyond a reasonable doubt.

Further, we note that the State presented sufficient evidence from which the trial court could find that Miller constructively possessed the cocaine and marijuana. A defendant constructively possesses drugs when the State shows that the defendant has both 1) the capability to maintain dominion and control over the drugs, and 2) the intent to maintain dominion and control over the drugs. *Gault v. State*, 861 N.E.2d 728, 732

(Ind. Ct. App. 2007). The proof of a possessory interest in the premises on which illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question. *Id.* Here, the State presented evidence sufficient to establish that Miller rented unit 121, and thus, had a possessory interest in the premises.

If we believed that “Carlos” actually existed, then Miller’s possession of unit 121 was not exclusive. Where a defendant’s possession of the premises on which drugs are found is not exclusive, then the inference of intent to maintain dominion and control over the drugs must be supported by additional circumstances pointing to the defendant’s knowledge of the nature of the controlled substances and their presence. *Id.* These “additional circumstances” include: (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in a setting that suggests manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant’s plain view, and (6) the mingling of the contraband with other items owned by the defendant. *Id.*

Accordingly, in order to support the inference that Miller intended to maintain dominion and control over the cocaine and marijuana found in the dresser drawer of unit 121, the State presented evidence of (1) Miller’s incriminating statement to Officer Carter; (2) the proximity of the contraband to Miller, as evidenced by the fact that the dresser was located next to the bed in which Miller was sleeping immediately before his arrest; and (3) the mingling of the contraband with Miller’s personal possessions – his money, his rings and his gold teeth. We find no error.

Affirmed.

MAY, J., and CRONE, J., concur.