

STATEMENT OF THE CASE

Willie G. Pargo appeals his convictions of dealing in cocaine, as a class A felony; possession of cocaine with a firearm, as a class C felony; and unlawful possession of a firearm by a serious violent felon, as a class B felony.¹

We affirm.

ISSUE

Whether sufficient evidence supports the convictions of Pargo for dealing in cocaine, possession of cocaine and a firearm, and unlawful possession of a firearm by a serious violent felon based on his constructive possession of the cocaine and firearm.

FACTS

Testimony and exhibits, including a videotape recording, established the following facts. On the afternoon of March 13, 2009, various Indianapolis Metropolitan Police Department officers were engaged in a narcotics investigation of which Pargo was the target. The house at 4001 Owster Lane was under surveillance, and officers were placed in the neighborhood nearby.

A maroon Camaro arrived and parked in front of the house at 4001 Owster Lane. A man with a backpack, later identified as David Hoagland, went to the door, apparently found no one at home, and returned to his car – where he proceeded to wash its windows. Pargo drove a car into the driveway, and the garage door opened. As the garage door was going up, Hoagland grabbed his apparently empty backpack, walked to Pargo's car, and

¹ Pargo does not challenge his convictions of dealing in marijuana, as a class B felony, and possession of marijuana, as a class D felony.

talked to Pargo. Hoagland then walked into the garage, as Pargo's car entered it, and the garage door closed.

A few minutes later, a black Chrysler LHS pulled into the driveway at 4001 Owster Lane. A woman -- later identified as Angela Coburn -- and her ten-year old daughter got out, and they entered the house.

Shortly thereafter, Hoagland emerged from the house carrying what appeared to be a loaded backpack. He placed the backpack inside the Camaro's trunk and covered it. Hoagland drove away and was observed speeding down a nearby street. He was stopped by police, and his backpack was found to contain two pounds of marijuana.²

Shortly after Hoagland drove away from 4001 Owster Lane, a red Tahoe arrived and parked in the driveway. A man later identified as Darryl Williams got out and went into the house. A few minutes later Williams emerged carrying a large black trash bag, which he placed in the back of the Tahoe. After Williams sped away, he was stopped by police on a nearby street. As the officer approached him, Williams was observed talking on his cell phone. Minutes later, while police spoke to Williams, Pargo drove "very slowly" by, "staring at [them]," then "circled back, . . . driving by slowly again," and parked nearby. (Tr. 65, 66). Police recovered ten pounds of marijuana in the black trash bag in the back of Williams' Tahoe.³ Meanwhile, Pargo was detained at his car. While speaking to an investigating officer, Pargo asked to smoke one of "his cigarettes." (Tr.

² Hoagland was subsequently charged with, pleaded guilty to, and convicted of dealing in marijuana, as a class D felony.

³ Williams was subsequently charged with, pleaded guilty to, and convicted of dealing in marijuana, as a class D felony.

197). Given permission, Pargo smoked a cigarette from the “Newport cigarettes” confiscated from Pargo by the police. *Id.*

Several minutes later, the black LHS emerged from the garage at 4001 Owster Lane with Coburn and her daughter inside. Coburn was stopped shortly thereafter, and she consented to a search of the car. From its trunk, police recovered a large black garbage bag containing 34 one-pound bags of marijuana; a clear plastic bag of marijuana; a digital scale; and two metal tins containing marijuana and cocaine. A loaded 40 caliber Smith and Wesson handgun, for which Coburn had a valid permit, was found inside the car. Coburn also had oxycodone and hydrocodone pills in her pockets.

Coburn gave her signed consent for the police to search the house at 4001 Owster Lane. A bag of marijuana was found in the freezer compartment of the refrigerator. In the dresser close to the bed in the master bedroom, the top right drawer contained a bag of cocaine, a small bag of marijuana, a roll of black trash bags, several plastic baggies, and a photograph of Pargo. The top center dresser drawer contained a Newport cigarette box with a large chunk of crack cocaine inside of it, plastic baggies, a digital scale with cocaine residue on it, two weights used to calibrate a scale, a pouch labeled “DADDY’S MONEY,” and a Dish Network bill addressed to Pargo at 4001 Owster Lane. Some loose marijuana and a baggie were on the floor between the bed and the dresser, and marijuana stems were on the nightstand next to the bed. A Bushmaster 9 millimeter semi-automatic weapon “was inside the closet behind the – where the door would open into the closet so you wouldn’t see it unless you were actually in the closet” (Tr. 97). The closet contained “men’s clothing,” such as “jeans . . . hanging up” and “some

on the floor,” some women’s clothing, and “five or six pairs” of men’s shoes. (Tr. 97, 107). The men’s clothing was “quite large,” of a size “consistent with” Pargo’s large size. (Tr. 98).

On March 13, 2009, as the house was being searched, Pargo made a taped statement to police. He admitted that he had sold two pounds of marijuana to Hoagland and ten pounds of marijuana to Williams. He further admitted that he had stored the marijuana at “4001 Owster,” – specifically, in the “closet.” (Ex. 60; Ex. 61, p. 4). Pargo also admitted that he had phoned Coburn and asked her to “get the marijuana out of the house . . . and the cocaine” because he “saw the police.” (Tr. 165, 166; Ex. 60; Ex. 61, p. 5). Finally, Pargo admitted that he knew there was “a gun, a firearm” in the house, although he attributed its ownership to Coburn. (Ex. 60; Ex. 61, p. 6).

On April 17, 2009, the State filed criminal charges against Pargo. The State alleged that he had committed the offenses of dealing in cocaine, as a class A felony; possession of cocaine, as a class C felony; possession of cocaine with a firearm, as a class C felony; unlawful possession of a firearm by a serious violent felon, as a class B felony; dealing in marijuana, as a class C felony; and possession of marijuana, as a class D felony.

Pargo waived trial by jury and was tried to the bench on March 30, 2010. In addition to the above, the trial court heard evidence that all mail, including a water bill, found in the house at 4001 Owster Lane was addressed to Pargo. A lease naming Pargo as a tenant and signed by him was entered into evidence. Police found no evidence reflecting personal use of cocaine at 4001 Owster Lane. On March 13th, the police had

recovered \$1,382.00 in cash from Pargo, and at the time of his arrest approximately one month later, they recovered an additional \$513.00 from him. The police seized thirteen vehicles that were “associated” with Pargo. (Tr. 157). Although the vehicles were “purchased” by Pargo, none were registered to him. (Tr. 167). On March 13th, one of these vehicles was being driven by Pargo and one by Coburn, and two were parked at the 4001 Owster Lane address. The detective leading the Pargo investigation testified that it was common practice for drug dealers not to personally register vehicles in their names as a method of protecting assets from seizure.

According to stipulated evidence, approximately one ounce of cocaine was recovered from the car driven by Coburn and two and one-half ounces recovered from the house at 4001 Owster Lane. Detective Ingram, who had been involved in approximately 700 narcotics investigations, testified that cocaine sold “for about \$1,000.00 an ounce,” and the three and a half ounces recovered would be valued at “roughly \$3,500.00.” (Tr. 186). He further testified that the most common amount of cocaine consumed for personal use was a twentieth of a gram; and that the amount the police recovered was approximately “96 grams of cocaine,” which if sold for \$20.00 “a unit,” would be “\$100.00 per gram,” or a total of \$9,600.00. (Tr. 188). If the cocaine were “cut[]” with an “agent,” he testified, the profit would be even greater. (Tr. 189). Ingram further testified that drug dealers “usually have things like scales to weigh out their product”; “baggies” or “trash bags, depending on what kind of drugs they’re dealing”; “a decent amount of money on them”; and “weapons, guns to protect themselves and their

product.” (Tr. 192). In addition, “larger quantities” of drugs are “associated with drug dealing.” *Id.*

Pargo testified at trial. According to Pargo, he had not planned to meet Hoagland at 4001 Owster Lane on March 13th, but nevertheless sold him marijuana when he found Hoagland at the house. Pargo admitted that he also sold marijuana to Williams that day. However, Pargo denied any knowledge of cocaine or the firearm at 4001 Owster Lane.

On April 6, 2010, the trial court announced its decision. With respect to the cocaine and firearm offenses, the trial court stated that it had applied “the concept of constructive possession” pursuant to *Massey v. State*, 816 N.E.2d 979 (Ind. Ct. App. 2004). (Tr. 262). It found Pargo guilty as charged.⁴

DECISION

Pargo argues that the evidence is not sufficient to support his convictions for dealing in cocaine, possession of cocaine with a firearm, and unlawful possession of a firearm by a serious violent felon because his convictions “were based on constructive possession of the cocaine and firearm and the evidence does not show that [he] had the intent to maintain control or dominion over the cocaine or firearm.” Pargo’s Br. at 5-6. We disagree.

In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility, as it is the province of the fact-finder to weigh conflicting evidence. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Thus, we

⁴ At sentencing on May 3, 2010, the trial court concluded that the possession of cocaine offense was a lesser-included offense of the dealing in cocaine offense, and that the possession of marijuana offense was a lesser-included offense of the dealing in marijuana offense. Hence, it entered judgments of conviction and sentenced Pargo on the remaining four offenses.

consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* If such probative evidence and reasonable inferences drawn from the evidence would have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm. *Id.*

In order to convict Pargo of dealing in cocaine as a class A felony, the State was required to prove beyond a reasonable doubt that Pargo possessed three grams or more of cocaine with intent to deliver. Ind. Code § 35-48-4-11. “Delivery” includes the “organizing or supervising” of the actual or constructive transfer of a controlled substance from one person to another. I.C. § 35-48-1-11. To convict Pargo of possession of cocaine with a firearm as a class C felony, the State was required to prove beyond a reasonable doubt that he possessed three grams or more of cocaine and “was in possession of a firearm.” I.C. § 35-48-4-6. To convict Pargo of unlawful possession of a firearm by a serious violent felon as a class B felony, the State was required to prove beyond a reasonable doubt that Pargo was a “serious violent felon” as defined by statute and “possesse[d] a firearm.” I.C. § 35-47-4-5.

Evidence of constructive possession is sufficient where the State proves that the defendant had both the intent and the capability to maintain dominion and control over the contraband. *Hardister v. State*, 849 N.E.2d 563, 573 (Ind. 2006). Where the defendant’s control over the premises where contraband is found is not exclusive, the defendant’s intent to maintain dominion and control may be inferred from additional circumstances that indicate that the person knew of the presence of the contraband. *Id.* at 574. Such 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 or weapons; (5) drugs or weapons in plain view; and (6) location of the drugs or weapons in close proximity to items owned by the defendant.

Id.

We note the foregoing statement that the intent to maintain dominion and control may be inferred by “additional circumstances that the person knew of the presence of the contraband.” *Id.* Arguably, the analysis could end here, inasmuch as Pargo’s statement on March 13th effectively admitted his knowledge of both the cocaine and the firearm at 4001 Owster Lane.

Nevertheless, we consider the other probative evidence of record supporting the inference of Pargo’s intent to maintain dominion and control over the contraband. He signed the lease and is a listed tenant of the house. When Hoagland arrived at 4001 Owster Lane and went to the door, it appeared he could not enter. He returned to his car, where he commenced washing it. Later, when Pargo arrived at the address and drove into the driveway, the garage door opened without his leaving his car. Thus, it is reasonable to conclude that he had a garage-door opener for the premises, and entered the house in that fashion. According to Pargo, he had no prior arrangement to meet Hoagland, yet he allowed Hoagland into the house and sold him marijuana from within. Moreover, according to Pargo, the marijuana was stored inside of the house in the closet. The semi-automatic firearm was recovered from the closet.

When stopped by police after leaving the house, Williams was on his cell phone. Shortly thereafter, Pargo appeared near the scene where Williams had been stopped.

Further, Pargo admitted that he called Coburn and told her to take the marijuana and cocaine from the house. When Coburn was stopped, she was driving a car that had been purchased by Pargo, and the car contained an enormous amount of marijuana and some cocaine.

In the master bedroom of the house, an additional large chunk of cocaine was found in a dresser drawer that also contained plastic baggies, a digital scale with cocaine residue, weights to calibrate a scale, a pouch labeled “DADDY’S MONEY,” and a bill addressed to Pargo. A photograph depicts all the drawer contents being in close proximity. There was testimony that baggies are commonly associated with drug dealing. Scales are also associated with drugs dealing, and it is a reasonable inference that weights to calibrate a scale used to weigh the drugs would be as well. Further, the large chunk of cocaine found in the house was in a Newport cigarette box. When Pargo appeared at the site of Williams’ stop, he smoked a Newport cigarette.

In another drawer of the dresser, which was close to the bed, the police found a bag of cocaine, a bag of marijuana, a roll of black plastic trash bags, several plastic baggies, and a photograph of Pargo. According to Detective Ingram, both trash bags and baggies are used by drug dealers “depending on what kind of drugs they’re dealing.” (Tr. 192). Having found both marijuana and cocaine in the drawer, and in other locations in the house and in the car driven away by Coburn at Pargo’s direction, and given the large amount of cocaine and marijuana recovered, it is a reasonable inference that both marijuana and cocaine were being delivered at 4001 Owster Lane – a veritable “one-stop shop” for buying cocaine and marijuana. This reasonable inference is further supported

by the recovery of two scales, one in the dresser drawer and one in the trunk of the car driven by Coburn, the trash bags and baggies; why else would such large amounts of drugs be at 4001 Owster Lane?

Further, in the closet of the master bedroom were men's shoes, jeans "hanging" and "on the floor," (tr. 107), and men's clothing of Pargo's size. Also in the closet was the semi-automatic weapon. Pargo admitted to storing marijuana in the closet. Given the presence of the clothing and his admitted use for the closet, it is a reasonable inference that Pargo had the intent and capability to maintain dominion and control over the weapon. *See Massey*, 816 N.E.2d at 989-990 (evidence that "Massey had knowledge of" guns "sufficient to prove" that he "knowingly possessed" the guns).

We find sufficient evidence to support Pargo's convictions for dealing in cocaine, possession of cocaine with a firearm, and unlawful possession of a firearm by a serious violent felon based on his constructive possession of the cocaine and firearm.

Affirmed.

BAILEY, J., and NAJAM, J., concur.