



## **STATEMENT OF THE CASE**

Charlotte Hunt appeals her conviction for possession of paraphernalia, as a Class A misdemeanor. Hunt presents a single issue for review, namely, whether the evidence is sufficient to support her conviction.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On July 22, 2010, Hunt was sharing a home with her longtime boyfriend Derek Hinton in Indianapolis. Hinton had a long history of drug use and related criminal offenses. On that date, probation officer Joseph Hodson arrived at Hunt's home with Indianapolis Metropolitan Police Department Officer Richard Tyner to conduct a probation check of Hinton. Hinton was not home, but Hunt let the officers into the home and waited in the living room while they searched. Officer Tyner found three glass crack pipes in a dresser drawer in the bedroom that Hunt and Hinton shared. The drawer also contained only women's clothing and empty prescription bottles labeled with Hunt's name. Hunt admitted that she knew the crack pipes were there.

The State charged Hunt with possession of paraphernalia, as a Class A misdemeanor. Following a bench trial, the trial court found Hunt guilty, entered judgment of conviction, and sentenced her to 365 days in the Department of Correction, with ten days executed and credit for time served. Hunt now appeals.

## **DISCUSSION AND DECISION**

Hunt contends that the evidence is insufficient to support her conviction for possession of paraphernalia, as a Class A misdemeanor. When reviewing the claim of

sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove that Hunt committed the offense of possession of paraphernalia, as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that she knowingly or intentionally possessed the crack pipes, which she intended to use for introducing cocaine into her body. See Ind. Code § 35-48-4-8.3(a)(1). The element of possession may be proved by actual or constructive possession. We have described the proof necessary to show constructive possession as follows:

Constructive possession occurs when someone has the intent and capability to maintain dominion and control over the item. In cases where the accused has exclusive possession of the premises on which the contraband is found, an inference is permitted that he or she knew of the presence of the contraband and was capable of controlling it. When possession of the premises is non-exclusive, the inference is not permitted absent some additional circumstances indicating knowledge of the presence of the contraband and the ability to control it. Among the circumstances which will support such an inference are: (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) contraband in plain view; and (6) location of the contraband in close proximity to items owned by the defendant.

Atwood v. State, 905 N.E.2d 479, 484-85 (Ind. Ct. App. 2009) (citations omitted), trans. denied.

Here, Officer Tyner found the crack pipes in a dresser drawer in a bedroom that Hunt shared with Hinton, a known drug user. The pipes were found in a drawer that contained only women's clothing and prescription bottles with Hunt's name on the label. Moreover, on direct examination Hunt admitted that she knew the pipes were there:

Q: Now, do you recall ever possessing three (3) crack pipes?

A: I knew they were there, yes. I don't lie. I'm not going to lie.

Transcript at 24-25. Given that the pipes were found among only Hunt's personal effects and her admission to knowing the pipes were in the house, the court could have reasonably inferred that Hunt constructively possessed the crack pipes. See Atwood, 905 N.E.2d 484-85.

Still, Hunt challenges the State's assertion that she admitted knowing that the crack pipes were in her home.<sup>1</sup> Her testimony is at times somewhat equivocal on that point. She testified that she "kind of figured there was probably some somewhere in the house, but not exactly where because [Hinton] had habits of hiding things." Id. at 25. She also once replied she was "not one hundred percent for sure" that paraphernalia was in her home. Id. But, again, we consider the evidence supporting the judgment. Jones, 783 N.E.2d at 1139. And we do not reweigh the evidence. Id. Hunt's conviction is supported by evidence that she admitted knowing there was drug paraphernalia in her house. See id.

Hunt also makes much of the fact that the State did not prove several of the circumstances on which an inference of possession may be based. For example, she

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<sup>1</sup> Hunt makes no contention on appeal that the State presented insufficient evidence to prove that she intended to use the paraphernalia to introduce cocaine into her body. See Ind. Code is 35-48-4-8.3(a).

points out that she did not attempt to flee or make any furtive gestures; she allowed the officers into her home and told them it was okay to search; she was completely cooperative; the location of the pipes did not suggest manufacturing; the pipes, found in the bedroom, were not found near Hunt, who was waiting in the living room; and the pipes were found in a room she shared with Hinton. But, again, the State need not prove each of the circumstances listed in Atwood. Rather, those circumstances comprise a non-exhaustive list of factors a factfinder may consider in determining whether a defendant knew of the presence of the contraband and had the ability to control it. See Atwood, 905 N.E.2d 484-84. Here, again, Hunt admitted to knowing that the pipes were in the home, and the trial court could have reasonably inferred from her admission and from the location where the pipes were found that Hunt had the ability to control the paraphernalia and, therefore, constructively possessed the crack pipes.

Finally, Hunt insists that the conviction should be reversed because the pipes belonged to Hinton and were not hers. But a plain reading of Indiana Code Section 35-48-4-8.3 shows that mere possession is prohibited. As long as the State proved all of the statutory elements, the identity of the actual owner of the pipes is irrelevant. See Ind. Code § 35-48-4-8.3. The evidence supports Hunt's conviction for possession of paraphernalia.

Affirmed.

ROBB, C.J., and CRONE, J., concur.