

Allen Parker appeals his conviction of Possession of Cocaine,¹ a class B felony, and Criminal Trespass,² a class A misdemeanor. Parker presents the following restated issues for review:

1. Was the evidence sufficient to sustain the conviction for possession of cocaine?
2. Was the evidence sufficient to sustain the conviction for criminal trespass?

We affirm.

The facts favorable to the convictions are that on December 17, 2007, someone called the Indianapolis Metropolitan Police Department (IPD) and reported that someone was trespassing in Apartment A, 10127 John Marshall Drive in Indianapolis. Although the apartment was leased to Alice Lockett, she had given notice on November 30 that she planned to vacate. IPD Officer Richard Weaver and several other officers responded to the call. As he approached the door of the apartment, Officer Weaver could hear music coming from inside the apartment. He knocked on the door and identified himself as a police officer. Parker opened the door. Officer Weaver observed Paul Tyler standing close behind Parker and Tracy Goodall standing in the front room near the hallway that led to the back of the apartment.

Officer Weaver entered and asked Parker why he was in the apartment. Parker claimed he had permission to be there, but could not provide the name of the person who had

¹ Ind. Code Ann. § 35-48-4-6 (West, PREMISE through 2008 2nd Regular Sess.).

² Ind. Code Ann. § 35-43-2-2 (West, PREMISE through 2008 2nd Regular Sess.).

given him permission, identifying her only as an “older Black lady.” *Transcript* at 89. The officer searched the apartment and found a loaded rifle in a closet in one of the bedrooms, a digital scale and 2.9955 grams of cocaine in a kitchen cabinet, and a Pyrex cup containing cocaine residue on the stove. Except for the aforementioned items and a trash can, the kitchen was virtually empty. Men’s clothes, including jeans, shirts, and Parker’s jacket, were strewn around the southeast bedroom of the apartment. The officer also found some articles of women’s clothing scattered throughout the apartment.

On December 17, 2007, Parker was charged under Count I with possession of cocaine as a class B felony, under Count II with possession of cocaine and a firearm, a class C felony, and under Count III with criminal trespass, a class A misdemeanor. A jury found him guilty of all three counts. The trial court entered judgment of conviction only on Counts I and III and sentenced Parker to concurrent terms of eight years for Count I and one year for Count III, with four years suspended to probation.

Parker challenges both convictions on grounds of insufficient evidence. Our standard of review for challenges to the sufficiency of evidence is well settled.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder’s exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

1.

Parker contends the evidence was not sufficient to prove he possessed cocaine. A conviction for possession of contraband may rest upon proof of either actual or constructive possession. *See Britt v. State*, 810 N.E.2d 1077 (Ind. Ct. App. 2004). “Actual possession occurs when the defendant has direct physical control over the item, while constructive possession involves the intent and capability to maintain control over the item even though actual physical control is absent.” *Id.* at 1082. Here, we are presented with the issue of constructive possession.

Evidence of constructive possession is sufficient where the State proves that the defendant had both the intent and capability to maintain dominion and control over the contraband. *Hardister v. State*, 849 N.E.2d 563 (Ind. 2006). The intent element of constructive possession is shown if the State demonstrates the defendant’s knowledge of the presence of the contraband. *Goliday v. State*, 708 N.E.2d 4 (Ind. 1999). This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband. *Id.* These 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; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. *Hardister v. State*, 849 N.E.2d 563. The capability element of constructive possession is met when the State shows that the defendant

is able to reduce the controlled substance to the defendant's personal possession. *Goliday v. State*, 708 N.E.2d 4.

In challenging the sufficiency of the evidence regarding the cocaine conviction, Parker contends the State did not prove the elements of constructive possession. In support of this, Parker points out that the apartment in which he and the cocaine were found was leased to someone else at the time, that the cocaine was concealed inside a kitchen cabinet, and that his fingerprints were not found on any items associated with the cocaine. We first observe that the lack of fingerprint evidence or other direct evidence linking Parker to the cocaine is not fatal to the State's case. A verdict may be sustained based on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt. *Maul v. State*, 731 N.E.2d 438 (Ind. 2000). This is particularly true when proving the offense of possession of cocaine under the theory of constructive possession, where the knowledge and possession elements are proven by resort to evidence of surrounding circumstances.

With respect to Parker's knowledge of the presence of the cocaine, the evidence showed that, other than the cocaine, the kitchen was virtually empty except for some water in the refrigerator and perhaps a trash can in a corner of the kitchen. Thus, it cannot be argued that the cocaine was obscured or hidden among other objects. To the contrary, the cocaine located inside a kitchen cabinet was the more conspicuous precisely because it was nearly the only thing to be found in the kitchen. It may reasonably be inferred that Parker was aware of its presence in view of the fact that he admittedly had been living there for several days. Moreover, we note that police also found a Pyrex cup containing cocaine residue sitting in

plain view on the stove. The evidence permitted a reasonable inference that Parker was aware of the presence of the cocaine.

Addressing Parker's observation that the apartment was leased to someone else, the evidence reveals that Parker admitted he had been living in the apartment for at least a short time because his family had kicked him out of the house. His jacket was found in one of the bedrooms, along with other articles of male clothing. It is of no moment that two other persons were found inside the apartment when police arrived, or that the apartment at that time was leased to a different individual. Possession of contraband by the defendant need not be exclusive and it can be possessed jointly. *Massey v. State*, 816 N.E.2d 979 (Ind. Ct. App. 2004).

Based upon the foregoing evidence, we find that the State presented sufficient evidence that Parker had both the intent and the capability to maintain dominion and control over the cocaine. Accordingly, the State presented sufficient evidence that Parker constructively possessed the cocaine.

Parker also challenges the sufficiency of the evidence that the substance found in the cabinet was actually cocaine. This argument turns upon a Stipulation Of Facts signed by Parker. According to Parker, "it is not clear whether the stipulation established that the substance was, in fact, cocaine." *Appellant's Brief* at 5. We disagree. Paragraph 2 of the Stipulation Of Facts states: "That the alleged cocaine to be admitted into evidence as State's exhibit 23D is cocaine in the amount of 2.9955 grams[.]" *Appellant's Appendix* at 31 (emphasis supplied). The highlighted portion of paragraph 2 clearly reflects Parker's

admission that State's Exhibit 23D (i.e., the cocaine found in the kitchen cabinet) was in fact 2.9955 grams of cocaine.

The evidence was sufficient to support the conviction of possession of cocaine.

2.

Parker contends the evidence was not sufficient to support the trespass conviction. Relative to the instant case, a person commits the offense of criminal trespass when he or she: "(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent; [or] (5) not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person's consent[.]" I.C. § 35-43-2-2(a). Parker contends the State failed to prove that his presence in the apartment interfered with the lessor's or then-current lessee's use of the apartment. In support of this argument he notes, respectively, that the lessor could not re-rent the apartment until fourteen days after these events, and there was no evidence that the lessee is the one who called in the trespassing complaint.

Because Luckett had leased the apartment through the end of December 2007, her interests are the only relevant ones here. Clearly, if she did not give Parker permission to live there, his presence would interfere with her use of the apartment should she return, which she had a legal right to do for fourteen more days. Of course, this implicates the question of consent – a subject that Parker does not address, much less challenge, in his appellate brief. Under I.C. § 35-43-2-2(a)(5) a person commits trespass if he enters the dwelling of another without that person's consent. The apartment was still Luckett's dwelling at the time Parker

was admittedly living there. Under the circumstances, and given that he did not even know Lockett's name, the jury may reasonably have inferred that Lockett did not give Parker permission to be there.

The evidence was sufficient to support Parker's conviction for criminal trespass under either I.C. § 35-43-2-2(a) (4) or (5).

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.