

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Joann Sumey,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

April 29, 2022

Court of Appeals Case No.  
21A-CR-2172

Appeal from the Elkhart Superior  
Court

The Honorable Eric S. Ditton,  
Magistrate

Trial Court Cause No.  
20D04-2102-CM-214

**Robb, Judge.**

## Case Summary and Issue

- [1] Following a bench trial, Joann Sumey was convicted of possession of marijuana, a Class B misdemeanor. Sumey now appeals, raising one issue for our review which we restate as whether there was sufficient evidence to support her conviction. Concluding the State presented sufficient evidence to support Sumey's conviction, we affirm.

## Facts and Procedural History

- [2] On January 9, 2021, Officer Jason Peters of the Middlebury Police Department conducted a traffic stop on a vehicle driven by Sumey. Sumey shared the vehicle with her sister and her sister's boyfriend but was the only person in the vehicle at the time of the traffic stop. As Officer Peters approached the vehicle, the driver's window was slightly cracked, and he could smell the odor of raw marijuana. Subsequently, Officer John Meadows arrived at the scene. Officer Meadows mentioned the marijuana smell to Sumey and she became "a little upset" and "agitated[.]" Transcript of Evidence, Volume II at 43.
- [3] The officers then asked Sumey to exit the vehicle so they could conduct a search due to the smell of marijuana. Sumey initially refused to exit her vehicle and Officer Meadows tried to forcefully remove her. After Sumey finally exited the vehicle, she permitted the search and indicated to the officers that they would not find anything. However, upon searching the vehicle, the officers found multiple cigarillo butts in the middle console ash tray and a plastic bag

containing a green leafy substance in between the middle console and the driver's seat. Both the cigarillo butts and the leafy green substance in the plastic bag tested positive for THC.

- [4] On February 1, 2021, the State charged Sumey with possession of marijuana, a Class B misdemeanor. Following a bench trial, Sumey was found guilty. Sumey now appeals.

## Discussion and Decision

### I. Standard of Review

- [5] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider only the evidence supporting the judgment and any reasonable inferences that can be drawn therefrom. *Morris v. State*, 114 N.E.3d 531, 535 (Ind. Ct. App. 2018), *trans. denied*. We consider conflicting evidence most favorably to the judgment. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may reasonably be drawn from the evidence to support the judgment. *Silvers*, 114 N.E.3d at 936.

## II. Sufficiency of the Evidence

- [6] Sumey argues there was insufficient evidence to support her possession of marijuana conviction. To convict Sumey, the State was required to prove beyond a reasonable doubt that Sumey knowingly or intentionally possessed marijuana. Ind. Code § 35-48-4-11(a). Convictions for possession of illegal items can be based on either actual or constructive possession. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011).
- [7] In the instant case, constructive possession is at issue because Sumey did not have direct physical control of the marijuana. To prove constructive possession, the State must show that the defendant has both (1) the intent and (2) the capability to maintain dominion and control over the contraband. *Jones v. State*, 807 N.E.2d 58, 65 (Ind. Ct. App. 2004), *trans. denied*.
- [8] The intent element of constructive possession is shown by demonstrating a defendant's knowledge of the presence of the contraband. *See Armour v. State*, 762 N.E.2d 208, 216 (Ind. Ct. App. 2002), *trans. denied*. 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*. Sumey notes that the vehicle was shared with her sister and her sister's boyfriend. However, at the time of the traffic stop Sumey was the only person in the vehicle. Thus, her "exclusive possession of

the vehicle [is] sufficient to raise a reasonable inference of intent.” *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

- [9] The capability requirement is met when the State shows that the defendant is able to reduce the controlled substance to the defendant’s personal possession. *Id.* “[P]roof of a possessory interest in the premises on which illegal drugs are found” may also show the capability to maintain control over the items in question. *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). This is so regardless of whether the possession of the premises is exclusive. *Id.* at 341.
- [10] Sumey argues that the marijuana was not in her plain view but “was located between the center console and the driver’s seat, requiring [Officer] Meadows to pull the driver’s seat apart or away from the center console to locate and find the marijuana.” Appellant’s Brief at 11. However, both the cigarillo butts and the plastic baggie containing marijuana were within arm’s length of Sumey and therefore, able to be reduced to her personal possession. *See Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997) (“Because the [bottle containing cocaine] was under defendant’s seat and easily within his reach, he was able to reduce the cocaine to his personal possession.”) (internal quotation marks omitted); *Negash v. State*, 113 N.E.3d 1281, 1291-92 (Ind. Ct. App. 2018) (holding the defendant was able to reduce a handgun to his personal possession when it “was in the glove compartment and easily within reach of the driver’s seat”).

[11] Based on the evidence, a reasonable factfinder could determine that Sumey constructively possessed the marijuana; therefore, there was sufficient evidence to support her conviction.

## Conclusion

[12] We conclude there was sufficient evidence to support Sumey's possession of marijuana conviction. Accordingly, we affirm.

[13] Affirmed.

Riley, J., and Molter, J., concur.