

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tamika La Shawn Ross,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 4, 2022

Court of Appeals Case No.
22A-CR-1173

Appeal from the Clinton Superior
Court

The Honorable Justin H. Hunter,
Judge

Trial Court Cause No.
12D01-2006-CM-422

Mathias, Judge.

- [1] Tamika La Shawn Ross appeals her convictions for Class A misdemeanor operating a vehicle while intoxicated and Class B misdemeanor possession of

marijuana.¹ Ross raises a single issue for our review, namely, whether the State presented sufficient evidence to support her convictions. We affirm.

Facts and Procedural History

- [2] On May 29, 2020, Clinton County Sheriff's Deputy Joshua Blackwell observed Ross operate a vehicle at ninety-four miles per hour in a fifty-five mile per hour zone. Deputy Blackwell initiated a traffic stop of Ross's vehicle. There were no other occupants in the vehicle.
- [3] Upon initiating the traffic stop, Deputy Blackwell noticed that Ross's speech was "slow and slurred." Tr. Vol. 2, p. 140. Ross "kept repeating the same story" to Deputy Blackwell that "she was coming home from her mother's." *Id.* She also was "fumbling around with her papers" and exhibiting "poor . . . manual dexterity." *Id.*
- [4] Deputy Blackwell asked Ross to step out of the vehicle for field sobriety tests. Ross agreed to do so and "stumbled out of the vehicle." *Id.* at 149. She then failed the horizontal gaze nystagmus test, the walk-and-turn-test, and the stand-on-one-leg test. During those tests, Ross was unable to keep her balance and follow basic instructions. Deputy Blackwell further noted that Ross smelled of alcohol while administering the tests. Ross then "stumbled" again as she came back to her vehicle. *Id.*

¹ Ross does not appeal her conviction for Class C misdemeanor reckless driving.

- [5] Deputy Blackwell “believed [Ross] was intoxicated” and asked her to submit to a portable breath test. *Id.* at 150. Ross refused to do so. Deputy Blackwell then read Ross her implied consent warning, and she again refused a chemical test. Deputy Blackwell then placed Ross under arrest.
- [6] During the course of the stop, Deputy Jared Yoder and his K-9 unit, Bary, arrived to assist Deputy Blackwell. Deputy Yoder walked Bary around Ross’s vehicle. Bary alerted to contraband in the trunk of the vehicle. After Deputy Blackwell had placed Ross under arrest for operating while intoxicated, Deputy Yoder searched the trunk of Ross’s vehicle and found a black jacket. From one of the jacket pockets, he seized marijuana. He also observed some cold beer cans in the trunk and a cup that “smell[ed] . . . of alcohol” in the back passenger seat. *Id.* at 108.
- [7] The State charged Ross with Class A misdemeanor operating a vehicle while intoxicated, Class B misdemeanor possession of marijuana, and Class C misdemeanor reckless driving. A jury found her guilty as charged, and the trial court entered its judgment of conviction and sentenced Ross accordingly. This appeal ensued.

Discussion and Decision

- [8] Ross appeals her convictions for Class A misdemeanor operating a vehicle while intoxicated and Class B misdemeanor possession of marijuana. In particular, she asserts that the State failed to present sufficient evidence to support her convictions. For sufficiency-of-the-evidence challenges, we consider

only probative evidence and reasonable inferences therefrom that support the decision of the trier of fact. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will neither reweigh evidence nor judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

[9] Ross first asserts that her Class A misdemeanor conviction for operating a vehicle while intoxicated must be vacated because the State did not present any evidence that she had consumed alcohol. [Indiana Code section 9-30-5-2\(b\) \(2019\)](#) states that “a person who operates a vehicle while intoxicated commits . . . a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.” And to be “intoxicated” means, as relevant here, to be “under the influence of . . . alcohol . . . so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.” [I.C. § 9-13-2-86\(1\)](#).

[10] The State presented sufficient evidence to support the inference that Ross had consumed alcohol. Both officers smelled alcohol on her during the traffic stop. Deputy Blackwell observed that Ross had slurred speech, poor manual dexterity, and apparent difficulty remembering what she had just told him. She failed three field sobriety tests and refused a portable breath test. She stumbled while exiting the vehicle and returning to it. Cold beer cans were found in her trunk and an empty cup that smelled of alcohol was found in the back passenger seat. For all of these reasons, the State presented sufficient evidence from which a reasonable fact-finder could find Ross guilty of Class A

misdemeanor operating a vehicle while intoxicated, and we affirm that conviction.

[11] Ross also asserts that the State failed to prove that the marijuana in the jacket in the trunk was hers. In particular, she notes that the evidence is undisputed that she had recently purchased the vehicle in Illinois, where marijuana is legal, and she told Deputy Blackwell during the traffic stop that she was on her way home from her mother's, and her mother lives in Chicago.

[12] But Ross's argument regarding ownership of the marijuana is merely a request for this Court to reweigh the evidence, which we will not do. Indiana law is clear that a person may be found to be in constructive possession of contraband "when the person has (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). The factfinder "may infer that a defendant had the capability to maintain dominion and control over contraband from the simple fact that the defendant had a possessory interest in the premises on which an officer found the item." *Id.* To prove the intent element, the State must establish the defendant's knowledge of the presence of the contraband, which may be inferred from the defendant's exclusive dominion and control over the premise containing the contraband. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

[13] Here, there is no dispute that the vehicle was Ross's vehicle. Therefore, she had the capability to maintain dominion and control over the marijuana. See *Gray*,

957 N.E.2d at 174. Ross also had exclusive dominion and control over the vehicle containing the marijuana, proving her intent, as she was the vehicle's only occupant at the time of the traffic stop and the discovery of the marijuana. Thus, a reasonable fact-finder could find Ross guilty of Class B misdemeanor possession of marijuana, and we affirm that conviction.

[14] In sum, we affirm Ross's convictions for Class A misdemeanor operating a vehicle while intoxicated and Class B misdemeanor possession of marijuana.

[15] Affirmed.

Robb, J., and Brown, J., concur.