

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason M. Gonzalez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 5, 2022

Court of Appeals Case No.
21A-CR-2668

Appeal from the
Elkhart Superior Court

The Honorable
Eric S. Ditton, Magistrate

Trial Court Cause No.
20D04-1904-CM-664

Molter, Judge.

- [1] Jason M. Gonzalez was a passenger in Joanna Robinson's car, which police stopped for a traffic infraction and then searched after detecting the odor of

burnt marijuana emanating from the car. An officer then found a grocery bag near Gonzalez's seat that contained marijuana, Gonzalez's snack, and his coin collection. Gonzalez was convicted in a bench trial of Class A misdemeanor possession of marijuana, and he now argues the State failed to present sufficient evidence to show he constructively possessed the marijuana. Because the evidence most favorable to the verdict shows Gonzalez intended to exert dominion and control over the marijuana, we find the evidence was sufficient to support his conviction and thus affirm the trial court.

Facts and Procedural History

[2] On April 5, 2019, Robinson, Gonzalez's girlfriend, was driving her car, and Gonzalez sat in the front passenger seat. Officer Jared Davies saw Robinson commit a traffic infraction, so he stopped her. He then smelled the odor of burnt marijuana emanating from the car and saw Gonzalez reach into a plastic grocery bag near his feet and eat Cheetos from the bag. After ordering Gonzalez and Robinson out of the car, Officer Davies searched it. Inside the grocery bag, Officer Davies found the Cheetos, Gonzalez's "lucky" coin collection, and an electronic cigarette with a marijuana cartridge that contained a substance later field tested as marijuana. In the back seat of the car, Officer Davies found Robinson's purse, which contained its own marijuana vaping cartridge.

[3] On April 10, 2019, the State charged Gonzalez with Class B misdemeanor possession of marijuana enhanced to Class A misdemeanor possession of marijuana due to a prior conviction for a drug offense. On October 26, 2021,

Gonzalez testified at his bench trial that the Cheetos were not his—he was just eating them—and that he had no knowledge of the marijuana or paraphernalia in the grocery bag. Tr. Vol. II at 56, 74–75. The trial court concluded Gonzalez’s testimony was not credible and he constructively possessed the marijuana. The court found him guilty of Class A misdemeanor possession of marijuana and imposed a one-year sentence. Gonzalez now appeals his conviction.

Discussion and Decision

- [4] Gonzalez argues the evidence was insufficient to support his conviction. When reviewing a bench verdict, we consider only the evidence most favorable to the judgment and the reasonable inferences arising from that evidence. *Sargent v. State*, 875 N.E.2d 762, 767 (Ind. Ct. App. 2007). “[T]he [trial] court is responsible for weighing the evidence and judging the credibility of witnesses as the trier of fact, and we shall not interfere with this function on appeal.” *Id.* at 768.
- [5] To convict Gonzalez of possession of marijuana as a Class A misdemeanor, the State needed to prove Gonzalez knowingly or intentionally possessed pure or adulterated marijuana and that he had a prior conviction for a drug offense. Ind. Code § 35-48-4-11(b)(1).¹ On appeal, Gonzalez argues the evidence is insufficient for his conviction because the State failed to prove his intent to

¹ Gonzalez does not dispute that he has a prior conviction for a drug offense.

constructively possess the marijuana. He contends that reaching into the grocery bag “was obviously not an attempt to conceal, but rather the nonchalant act of continuing to eat Cheetos If anything, . . . reaching into the grocery bag . . . evinces a belief he had nothing to hide” Appellant’s Br. at 10–11. Gonzalez also argues the State failed to show his intent to possess the marijuana because it presented no evidence that he was “in direct physical contact with the contraband . . . and he wasn’t even holding the grocery bag.” *Id.* at 12.

[6] “A person constructively possesses 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). To prove intent, the State must show a defendant knew the contraband was present. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). When control of contraband is non-exclusive, evidence of additional circumstances may prove the defendant knew the contraband was present. *Id.* Additional circumstances include whether the incriminating nature of the item was immediately apparent, the contraband’s proximity to the defendant, and the mingling of the contraband with other items the defendant owns. *Gray*, 957 N.E.2d at 175.

[7] Here, Gonzalez reached into the grocery bag that contained the marijuana vape pen, the grocery bag was at his feet, and the vape pen was commingled with Gonzalez’s lucky coin collection and his Cheetos. The incriminating nature of the marijuana was immediately apparent from the pungent odor emanating

from the car. Therefore, the State presented sufficient evidence that Gonzalez constructively possessed the contraband because it proved he had the intent to maintain dominion and control over the marijuana. Gonzalez's arguments are impermissible requests to reweigh the evidence, and accordingly, we affirm his conviction for Class A misdemeanor possession of marijuana.

[8] Affirmed.

Riley, J., and Robb, J., concur.