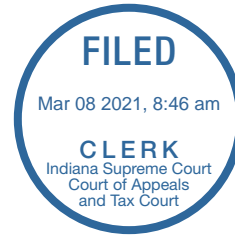


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Barbara J. Simmons
Batesville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JC Taylor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

March 8, 2021

Court of Appeals Case No.
20A-CR-1353

Appeal from the Marion Superior
Court

The Honorable Alicia A. Gooden,
Judge

Trial Court Cause No.
49G21-1811-F5-41914

Robb, Judge.

Case Summary and Issue

- [1] Following a bench trial, JC Taylor was found guilty of possession of a narcotic drug, a Level 5 felony; driving while suspended, a Class A misdemeanor; and possession of paraphernalia, a Class C misdemeanor. The trial court sentenced Taylor to 1,095 days all suspended to probation or credited as time served. Taylor now appeals, raising one issue: whether there was sufficient evidence to support his possession convictions.¹ Concluding that the State presented sufficient evidence to support his convictions, we affirm.

Facts and Procedural History

- [2] On November 28, 2018, Officer Jason Reetz of the Indianapolis Metropolitan Police Department (“IMPD”) was undercover in an unmarked police car when he witnessed a red GMC Acadia pull into the parking lot of a Family Dollar. The Acadia sat in the Family Dollar parking lot “for a few minutes[.]” Transcript of Evidence, Volume II at 7. Officer Reetz testified that the Acadia “looked suspicious” because no one entered or exited the vehicle during this time. *Id.* When the Acadia left the parking lot, Officer Reetz followed the vehicle and witnessed it turn without using a turn signal. Because Officer Reetz was undercover in an unmarked car, he was unable to initiate a traffic stop but

¹ Taylor does not appeal his driving while suspended conviction.

radioed IMPD Officers Jereme Morris, Jeremy Messer, and Matthew McDonald.

[3] Officer Morris conducted the traffic stop of the Acadia based on Officer Reetz's radio communication. Taylor was the driver of the vehicle and the only occupant; however, Taylor was not the owner of the vehicle. Taylor testified that he borrowed the car from a friend to get to work that day. *See id.* at 56.

While conducting the stop, Officer Morris smelled burnt marijuana. Taylor was then removed from the vehicle due to the odor of burnt marijuana and his lack of a driver's license.²

[4] The officers proceeded to search the vehicle. In the center console, officers found a glass pipe, a torch lighter, and a small white pill which Officer Morris believed to be Xanax. In the back seat of the vehicle, officers found a backpack which contained a digital scale and individual baggies. In the passenger side ashtray, officers found a baggie with narcotics, identified by Officer Messer as heroin, and the remnants of a marijuana blunt. Further, Officer McDonald testified that he conducted a secondary search of the vehicle that day and found a clear baggie containing what he suspected was cocaine between the driver's seat and the center console. *See id.* at 45-46.

[5] The State charged Taylor with possession of a narcotic drug (heroin), a Level 5 felony; possession of cocaine, a Level 5 felony; possession of a controlled

² Taylor only had an Indiana identification card.

substance (Xanax), a Level 5 felony; driving while suspended, a Class A misdemeanor; and possession of paraphernalia, a Class C misdemeanor. On February 3, 2020, after a bench trial, Taylor was found guilty of possession of a narcotic drug, driving while suspended, and possession of paraphernalia. The trial court sentenced Taylor to 1,095 days all suspended to probation or credited as time served. *See id.* at 84-85; Appellant's Appendix, Volume II at 97. Taylor now appeals.

Discussion and Decision

I. Standard of Review

[6] Our standard of reviewing claims of sufficiency of the evidence is well settled. We consider only the probative evidence and reasonable inferences supporting the judgment. *Boggs v. State*, 928 N.E.2d 855, 864 (Ind. Ct. App. 2010), *trans. denied*. We neither reweigh evidence nor judge witness credibility. *Id.* We consider conflicting evidence most favorably to the trial court's ruling, and we will affirm the conviction unless no reasonable trier of fact could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment, and a conviction may be based on circumstantial evidence alone. *Id.*

II. Sufficiency of the Evidence

[7] Taylor argues that insufficient evidence exists to support his convictions for possession of a narcotic drug and possession of paraphernalia. To convict

Taylor of possession of a narcotic drug, the State was required to prove beyond a reasonable doubt that Taylor “knowingly or intentionally” possessed a narcotic drug. Ind. Code § 35-48-4-6.³ And to convict Taylor of possession of paraphernalia, the State was required to show that Taylor:

knowingly or intentionally possesse[d] an instrument, a device, or another object that the person intend[ed] to use for:

(1) introducing into the person’s body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance[.]

Ind. Code § 35-48-4-8.3(b).

[8] Here, Taylor did not physically possess any of the contraband; however, an accused may be convicted of possession charges based upon constructive possession. *White v. State*, 772 N.E.2d 408, 413 (Ind. 2002). Constructive possession is established when the defendant had (1) the intent to maintain dominion and control over the contraband, and (2) the ability to maintain dominion and control over the contraband. *Lampkins v. State*, 685 N.E.2d 698, 699 (Ind. 1997) (opinion on reh’g).

³ The offense was charged as a Level 5 felony because he had a prior dealing conviction. See Ind. Code §§ 35-48-4-6(b)(2); 35-48-1-16.5(1).

A. Intent to Control

- [9] To prove the intent element, the State must show Taylor’s knowledge of the presence of the narcotic drug, specifically heroin, and the paraphernalia. *Goliday v. State*, 708 N.E.2d 4, 6 (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.” *Taylor v. State*, 482 N.E.2d 259, 261 (Ind. 1985) (citation omitted).
- [10] Taylor argues that his control was non-exclusive because “contraband was found inside the cup ashtray and the center console of a borrowed car[.]” Brief of Appellant at 10. Taylor further contends that no evidence was found “near any items [he] owned” and “[n]o evidence was in plain sight.”⁴ *Id.* We disagree.
- [11] Taylor suggests that his control of the vehicle was non-exclusive, in part, because it was “a borrowed car which [he] was driving for the first time that day[.]” *Id.* However, the fact the Taylor was borrowing the vehicle is irrelevant. Our supreme court has stated that “[t]he issue . . . is not ownership but possession.” *Goliday*, 708 N.E.2d at 6. In *Goliday*, the defendant was found to be in exclusive possession of a borrowed car when he was the only person in the

⁴ Taylor also argues that possession was non-exclusive because Officer McDonald “had to remove a portion of the plastic tab that covered the bolts to the seat mount to obtain the baggie containing cocaine[.]” Br. of Appellant at 10. However, the trial court found Taylor not guilty of possession of cocaine. *See* Tr., Vol. II at 66. Therefore, we need not address this argument.

vehicle when stopped by police. *Id.* Similarly, Taylor was the driver and sole occupant of the vehicle when Officer Morris stopped him; thus “[h]is exclusive possession of the vehicle was sufficient to raise a reasonable inference of intent.” *Id.*

- [12] Further, Taylor seemingly argues that his possession of the contraband was non-exclusive because the contraband was not in plain sight. We have held that proximity to contraband not in plain view alone is insufficient to support an inference of intent to maintain dominion and control over it. *Holmes v. State*, 785 N.E.2d 658, 661-62 (Ind. Ct. App. 2003). However, this is in instances where possession is non-exclusive. *Id.* Whether the contraband was in plain sight has no relevance when the possession of the premises was exclusive.⁵ Because Taylor had exclusive possession of the vehicle it may be inferred that Taylor had knowledge of the contraband.⁶ *Taylor*, 482 N.E.2d at 261.

B. Ability to Control

- [13] The ability requirement is met when the State shows that the defendant is able to reduce the controlled substance to the defendant’s personal possession.

⁵ We do not believe that any of contraband in this case was in a “hidden compartment.” See *Whitney v. State*, 726 N.E.2d 823, 826 (Ind. Ct. App. 2000) (“[A]dditional evidence of guilty knowledge is necessary to establish intent where narcotics are found in a hidden compartment.”). Although the parties discussed *Whitney* at trial, see Tr., Vol. II at 58-65, Taylor does not raise this argument on appeal, so we need not address it further.

⁶ The trial court stated that there was also “sufficient additional circumstantial evidence present” to conclude Taylor knew about the contraband in the vehicle. Tr., Vol. II at 65. Because we cannot reweigh the evidence or judge the credibility of the witness, we will not question the trial court’s assessment in this regard. *Boggs*, 928 N.E.2d at 864. It is also unnecessary for us to do so because of Taylor’s exclusive possession of the vehicle.

Lampkins v. State, 682 N.E.2d 1268, 1275 (Ind. 1997). “Proof of a possessory interest in the premises in which the illegal drugs are found is adequate to show the capability to maintain control and dominion over the items in question.” *Davenport v. State*, 464 N.E.2d 1302, 1307 (Ind. 1984), *cert. denied*, 469 U.S. 1043 (1984); *see also Carnes v. State*, 480 N.E.2d 581, 585 (Ind. Ct. App. 1985) (“Because constructive possession may be proved by circumstantial evidence, proof of a possessory interest in the premises in which contraband is found is adequate to show the *capability* to maintain control and dominion over the contraband.”) (citation omitted), *trans. denied*.

- [14] Taylor argues that there is no evidence to support the inference that he had “the capability to exercise control or dominion over the contraband.” Br. of Appellant at 12. However, Taylor had sole possession of the car in which drugs and paraphernalia were found. Such possession is sufficient to show his ability to control the narcotic drug and paraphernalia. *See Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011) (“A trier of fact 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.”). Further, the contraband was easily within Taylor’s reach. Thus, Taylor had the ability to reduce the heroin and paraphernalia to his personal possession. *See Lampkins*, 682 N.E.2d at 1275 (“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 quotations omitted).

[15] The evidence is sufficient to support the trial court's conclusion that Taylor had constructive possession of a narcotic drug and possession of paraphernalia.

Conclusion

[16] We conclude that the State presented sufficient evidence to support Taylor's possession of a narcotic drug and possession of paraphernalia convictions. Therefore, we affirm.

[17] Affirmed.

Bailey, J., and Tavitas, J., concur.