

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Timothy J. O'Connor
O'Connor & Auersch
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jajuan L. Clayton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 7, 2022

Court of Appeals Case No.
22A-CR-693

Appeal from the Marion Superior
Court

The Honorable James Osborn,
Judge

Trial Court Cause No.
49D21-2110-F2-30893

Crone, Judge.

Case Summary

- [1] Jajuan L. Clayton appeals his conviction, following a jury trial, for level 2 felony dealing in a Schedule I controlled substance. He contends that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] On May 18, 2021, the City of Lawrence Police Department (LPD) received a report of a stolen orange Ford Escape. LPD Officer Joshua Wise located a vehicle matching that description at the Canterbury Apartments in Lawrence. A male was sitting inside the vehicle, and three other individuals were standing next to the driver's window. Officer Wise was unable to check the license plate of the vehicle, so he could not determine if it was the stolen vehicle.
- [3] Shortly thereafter, LPD Captain Brandon Stone observed a car matching the description of the stolen vehicle approaching him on 46th Street. Captain Stone made a U-turn in his unmarked police vehicle and followed the orange Escape as it turned into a gas station and stopped. Captain Stone was able to run the license plate and confirmed that the vehicle was stolen. As he activated the police lights on his unmarked police vehicle, the driver of the Escape, Clayton, exited the stolen car. Captain Stone exited his police vehicle, drew his weapon, ordered Clayton to stay where he was, and called for assistance. Additional officers arrived on the scene within minutes.

- [4] Clayton was handcuffed and read his *Miranda* rights. LPD Officer Michael McGaha searched Clayton and found three \$100 bills in his hand and a baggie containing a green leafy substance in his pocket. Clayton admitted that the substance was “K-D,” the street term used for “spice,” which is a controlled substance “that people inhale.” Tr. Vol. 2 at 180-82.
- [5] LPD Officer Khalid Brooks searched the vehicle and found a digital scale and two cell phones on the front passenger seat. A third cell phone was found on the back seat. A “blunt” and a folded-up dollar bill was located in the cup holder in the center console, and “shake” that likely had been “discarded from a blunt” was scattered all over the floorboard of the vehicle. The vehicle smelled like the odor associated with synthetic marijuana. Under a rear seat, Officer McGaha located a Crown Royal bag containing single dollar bills and three plastic grocery bags that contained a green leafy substance that was later identified as synthetic marijuana. One of the grocery bags contained 66.32 grams of ADB-BUTINACA, or synthetic marijuana, another contained 111.89 grams, and the other contained 115.22 grams.
- [6] The State charged Clayton with level 2 felony dealing in a Schedule I controlled substance and class A misdemeanor possession of a controlled substance. The State also alleged that Clayton was a habitual offender. A jury trial was held on February 7, 2022. The jury found Clayton guilty as charged, and Clayton subsequently admitted to the habitual offender enhancement. Following a hearing, the trial court imposed a twelve-year aggregate sentence on the level 2 felony count, with four years executed in the Department of Correction, six

years in community corrections, and two years suspended to probation, and enhanced that sentence by six years based upon the habitual offender finding. The court also imposed a concurrent one-year executed sentence on the possession count. This appeal ensued.

Discussion and Decision

[7] Clayton’s sole challenge on appeal is to the sufficiency of the evidence to support his conviction for dealing in a Schedule I controlled substance. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “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*, 907 N.E.2d at 1005.

[8] To convict Clayton of level 2 felony dealing in a Schedule I controlled substance as charged, the State was required to prove that he knowingly or intentionally possessed at least twenty-eight grams of synthetic marijuana with

the intent to deliver it. Ind. Code § 35-48-2(a)(2).¹ Clayton's sole challenge is to the sufficiency of the evidence that he possessed the synthetic marijuana found in the vehicle.

[9] Possession can be actual or constructive. *Grubbs v. State*, 132 N.E.3d 451, 453 (Ind. Ct. App. 2019). As Clayton did not have actual possession of the synthetic marijuana found in the vehicle, we must determine whether the State proved he constructively possessed it. For the State to prove constructive possession, it must prove the defendant had the intent and capability to maintain dominion and control over the contraband. *Id.* A trier of fact may infer that a defendant had the intent to maintain dominion and control over contraband from the defendant's possessory interest in the premises, even when that possessory interest is not exclusive. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). Where, as here, that possessory interest is not exclusive, however, the State must provide evidence of additional circumstances pointing to the defendant's knowledge of the presence and the nature of the item. *Parks v. State*, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018).

[10] Proof of dominion and control, and therefore knowledge, of contraband has been found through the existence of a variety of additional circumstances including: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest

¹ The offense of dealing in a Schedule I controlled substance becomes a level 2 felony if "the amount of the drug involved is at least twenty-eight (28) grams." Ind. Code § 35-48-4-2(f)(1).

manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant. *Henderson v. State*, 715 N.E.2d 833, 836 (Ind. 1999). These enumerated circumstances are non-exhaustive; ultimately, the question is whether a reasonable factfinder could conclude from the evidence that the defendant knew of the nature and presence of the contraband. *Gray*, 957 N.E.2d at 174-75. Clayton argues that the State presented insufficient evidence to prove that he knew that the synthetic marijuana was in the vehicle.² We disagree.

[11] Here, the large amount of synthetic marijuana was found in plastic grocery bags under the rear passenger seat of the small vehicle, in close proximity to, and definitely within reach of, the driver's seat where Clayton had been seated. Clayton admitted that the one-dollar bills in the Crown Royal bag, which was found near the bags of synthetic marijuana (essentially comingled), belonged to him. Moreover, officers observed what appeared to be marijuana "shake" all over the floorboard of the vehicle, and further observed that the vehicle smelled of synthetic marijuana. Finally, Clayton had three \$100 bills in his hand, he admitted that the substance found in his pocket was a type of synthetic marijuana, a "blunt" was found in plain view in the center console, and a scale and multiple cell phones were located in plain view on the front seat. All of

² Clayton told police that he borrowed the Ford Escape from his cousin and that he had possession of the vehicle for only five to ten minutes before he was arrested. State's Ex. 21.

these circumstances belie Clayton's claims of ignorance as to the presence of contraband, specifically the synthetic marijuana, in the vehicle. The totality of the evidence supports a reasonable inference by the jury that Clayton had the requisite ability and intent to maintain dominion and control over, and hence knowledge of, the synthetic marijuana found in the vehicle. The State presented sufficient evidence that Clayton constructively possessed the synthetic marijuana, and therefore we affirm his conviction.

[12] Affirmed.

May, J., and Weissmann, J., concur.