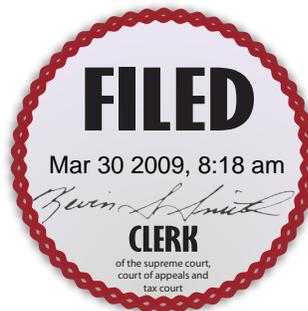


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**IN THE
COURT OF APPEALS OF INDIANA**

VERNON TEAGUE,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0808-CR-759
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-0802-CM-043861

March 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Vernon Teague challenges his conviction for possession of marijuana as a Class A misdemeanor. Specifically, Teague contends that the search by which police discovered the marijuana violated his rights under the Fourth Amendment of the United States Constitution and Article I, § 11 of the Indiana Constitution. Teague also contends that the evidence is insufficient to support his conviction. Concluding that the marijuana was discovered pursuant to a proper inventory search and that there is sufficient evidence to prove that Teague constructively possessed the marijuana, we affirm his conviction.

Facts and Procedural History

During the evening hours of February 20, 2008, Officer Bradley Himes, an officer with the Indianapolis Metropolitan Police Department, observed Teague driving alone with his vehicle's headlights off. Officer Himes stopped Teague in a liquor store parking lot and asked to see his license and registration. Teague informed Officer Himes that his license had been suspended. Officer Himes confirmed that Teague's license was suspended. Officer Himes then arrested Teague for driving while suspended and arranged, pursuant to routine procedure, for Teague's car to be impounded because it was located in a high-crime area. Before the tow truck arrived, Officer Himes conducted an inventory search pursuant to department policy and discovered marijuana in the center console of the vehicle.

The State charged Teague with possession of marijuana as a Class A misdemeanor¹ and driving while suspended as a Class A misdemeanor.² Teague was also

¹ Ind. Code § 35-48-4-11.

issued a traffic ticket for a headlight violation. After a bench trial, Teague was found guilty of the criminal counts and the traffic violation. As for the marijuana possession conviction, the trial court sentenced Teague to 365 days, with twenty days executed, four days credit, and the rest suspended. As for the driving while suspended conviction, the trial court sentenced Teague to 180 days, with four days credit and the rest suspended. Teague filed a motion to reconsider, which the trial court denied. Teague now appeals.

Discussion and Decision

On appeal, Teague challenges his conviction for possession of marijuana. Specifically, Teague contends that the search of the vehicle violated his rights under the Fourth Amendment to the United States Constitution and Article I, § 11 of the Indiana Constitution. Teague also contends that the evidence is insufficient to support his conviction because the State failed to prove that he constructively possessed the marijuana.

I. Vehicle Search

Teague contends that the trial court erred in denying his motion to suppress the evidence discovered in the vehicle he was driving because the search was either an inventory search that violated the Fourth Amendment to the United States Constitution³ or a search incident to arrest that violated Article I, § 11 of the Indiana Constitution.

² Ind. Code § 9-24-19-2.

³ Teague frames his argument regarding the propriety of the search as one under the Fourth Amendment and Article I, §11. However, he makes only a Fourth Amendment argument regarding the inventory search. Teague does not explicitly label his inventory search argument as one made under the Fourth Amendment, but he discusses Fourth Amendment analysis and fails to make any separate argument that the search violated the Indiana Constitution. To the extent Teague intended to make an Article I, § 11 claim regarding the inventory search, it is deemed waived. *See Fair v. State*, 627 N.E.2d 427, 430 n.1 (Ind. 1993).

Because we conclude that the search was a proper inventory search under the Fourth Amendment, we do not address the search incident to arrest claim. Although he argues on appeal that the trial court erred in denying his motion to suppress, Teague appeals following a completed trial. The issue on appeal is therefore properly framed as whether the trial court abused its discretion by admitting the challenged evidence at trial. *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*. Our standard of review of a trial court's determination as to the admissibility of evidence is for an abuse of discretion. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001). We will reverse only if a trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* We will not reweigh the evidence and will consider any conflicting evidence in favor of the trial court's ruling. *Collins*, 822 N.E.2d at 218.

The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. U.S. Const. amend. IV; *Taylor v. State*, 842 N.E.2d 327, 330 (Ind. 2006). For a search to be reasonable under the Fourth Amendment, a warrant is required unless one of the exceptions to the warrant requirement applies. *Taylor*, 842 N.E.2d at 330. A valid inventory search is one such exception. *Id.* To determine whether an inventory search is valid, the threshold question is whether the impoundment itself was proper. *Id.* An impoundment is warranted when it is part of the police's routine community caretaking function or when authorized by statute. *Id.* To prove a valid inventory search under the community caretaking function, the State must demonstrate that (1) the belief that the vehicle posed some threat to the community or was itself imperiled was consistent with

objective standards of sound policing and (2) the decision to combat that threat by impounding the vehicle was consistent with established departmental routine or regulation. *Id.* The second question is whether the scope of the inventory search was lawful. *Woodford v. State*, 752 N.E.2d 1278, 1282 (Ind. 2001), *reh'g denied*.

Teague's argument is based on the State's failure to show that the vehicle posed a threat to the community due to its location. Here, however, the evidence shows that the car itself was imperiled. Officer Himes testified that the car, parked in a liquor store parking lot, was located in a high-crime area. According to Officer Himes, his supervisors deem an area a high-crime area and concentrate police presence there if many crimes, such as murder, robbery, or stabbings, occur in the area. Officer Himes testified that, according to his personal experience, many arrests and traffic violations take place in the area. The car would have been left in the lot unsupervised after Teague's arrest because there was no passenger who could have driven the car. At the motion to suppress hearing, Teague admitted that he did not mention to the police that his father, who lived nearby, could have come to pick up the car. It was thus reasonable to determine that the car itself was imperiled in its current location, satisfying the first prong. *See Abran v. State*, 825 N.E.2d 384, 390 (Ind. Ct. App. 2005) (finding that it would be reasonable for officer to believe truck abandoned on the road without anyone to drive it away would be subject to vandalism and theft), *reh'g denied, trans. denied*.

As for the second prong, Officer Himes testified that he made the decision to impound the vehicle pursuant to General Order 7.3, which allows officers to tow vehicles for being operated by a non-licensed or suspended driver. Officer Himes stated that the

General Orders comprise the standard operating procedure. As a result, the trial court could determine that the decision to impound the vehicle to combat the threat it was imperiled was made according to established police procedure. *See Abran*, 825 N.E.2d at 390. Thus, the marijuana in the vehicle Teague was driving was discovered during a valid inventory search.

Teague argues that the search is nevertheless invalid because Teague was not provided an opportunity to telephone someone to come pick up his car. Our Supreme Court stated in *Taylor* that the defendant, who was driving with a suspended learner's permit when he was pulled over, should have been permitted to contact someone to retrieve his car. *Taylor*, 842 N.E.2d at 333. We have previously held that *Taylor* does not require that all defendants be given an opportunity to contact someone to retrieve a stopped vehicle before impoundment. *See Jones v. State*, 856 N.E.2d 758, 761 (Ind. Ct. App. 2006) (distinguishing *Taylor* on the ground that Jones's vehicle was dangerously parked on Interstate 65 but the State in *Taylor* failed to prove that the vehicle posed some threat or was itself imperiled), *trans. denied*. Teague's case is also distinguishable from *Taylor*. *Taylor* was suspected of committing an infraction, and Indiana law does not permit a law enforcement officer to arrest for an infraction. *Taylor*, 842 N.E.2d at 333. However, Teague was suspected of a misdemeanor, and Teague was lawfully arrested for a misdemeanor crime. Also, the State failed to show in *Taylor* that the vehicle was a threat to the community or itself threatened. *Id.* But the State did show here that Teague's car was located in a high-crime area and was therefore imperiled. Teague makes no argument that the scope of the inventory search was not lawful. Thus, we

conclude that the trial court did not abuse its discretion by admitting at trial evidence of the marijuana discovered in Teague's vehicle.

II. Constructive Possession

Teague next contends that the evidence is insufficient to support his conviction for possession of marijuana. Specifically, Teague argues that the evidence does not show that he constructively possessed the marijuana found in the vehicle he was driving. We disagree.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

To convict Teague of marijuana possession, the State was required to prove that Teague knowingly or intentionally possessed marijuana. I.C. § 35-48-4-11. In the absence of actual possession of drugs, constructive possession may support a conviction

for a drug offense. *Donnegan v. State*, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004) (citing *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)), *trans. denied*. In order to prove constructive possession, the State must demonstrate that the defendant has both (1) the intent to maintain dominion and control over the contraband and (2) the capability to maintain dominion and control over the contraband. *Id.*

To prove the intent element, the State must show the defendant's knowledge of the presence of the contraband. *Whitney v. State*, 726 N.E.2d 823, 826 (Ind. Ct. App. 2000). "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." *Id.* (quotation omitted). To prove the capability requirement, the State must show that the defendant is able to reduce the controlled substance to the defendant's personal possession. *Id.* "Proof of a possessory interest in the premises in which the illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question." *Id.* at 826-27 (quotation omitted). Sole possession of the vehicle in which the drugs were found is sufficient to show the defendant's ability to control the contraband. *Id.* at 827.

As for both intent and capability, Teague was the only person in the vehicle when the police stopped it. His exclusive possession of the vehicle was sufficient to raise a reasonable inference of intent and capability to maintain dominion and control over the marijuana in the vehicle's center console. *See Goliday*, 708 N.E.2d at 6. As for Teague's contention that it might be possible that he borrowed the car immediately

before being pulled over, this is mere speculation and does not rebut the inference created by his exclusive possession of the vehicle. *See Jones*, 807 N.E.2d at 66 (“Regarding the capability component, proof of a possessory interest in the premises in which the illegal drugs are found is adequate to show the defendant’s capability to maintain dominion and control over the contraband. . . . A defendant’s possessory interest in the premises does not require actual ownership.”). We conclude that there is sufficient evidence to support Teague’s conviction for possession of marijuana.

Affirmed.

RILEY, J., and DARDEN, J., concur.