

Appellant-defendant Charles Payton appeals his conviction for Possession of Marijuana,¹ a class A misdemeanor. Payton argues that the trial court erred in admitting drug evidence seized following a traffic stop and that the evidence is insufficient to support the conviction. Finding no error, we affirm.

FACTS

On July 20, 2007, Indianapolis Police Officer Jeffrey Horn initiated a traffic stop on a vehicle with a broken taillight. Upon discovering that the driver was operating the vehicle with a suspended license, Officer Horn placed the driver under arrest. Payton was one of two passengers in the vehicle and had been sitting in the front passenger's seat. Officer Horn directed the two passengers to exit the vehicle while he conducted an inventory search in preparation to tow the car. During the search, Officer Horn discovered a baggie of marijuana sitting in plain view on the console between the front driver's and passenger's seats. Payton was arrested at the scene for possession of marijuana, and the State subsequently charged him for class A misdemeanor possession.

On September 10, 2007, Payton filed a motion to suppress the marijuana seized by Officer Horn. The trial court denied the motion, finding that Payton did not have standing to challenge the search of the vehicle and that, in any event, the search was a legal inventory search. Following a bench trial, the trial court found Payton guilty as charged on October 12, 2007. At the sentencing hearing held the same day, the trial court sentenced Payton to one year of imprisonment. Payton now appeals.

¹ Ind. Code § 35-48-4-11.

DISCUSSION AND DECISION

I. Marijuana Evidence

Payton first argues that the trial court erroneously admitted the marijuana seized by Officer Horn into evidence at trial. We review the admission of evidence for an abuse of discretion and will not reverse unless the trial court's decision was clearly against the logic and effect of the facts and circumstances before it. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

Initially, we note that it is well settled that passengers who do not have a possessory or property interest in the vehicle to be searched do not have a legitimate expectation of privacy in that vehicle. Thus, such passengers lack standing to challenge the search of the vehicle. Osborne v. State, 805 N.E.2d 435, 439 (Ind. Ct. App. 2004) (holding that a passenger may challenge the stop of the vehicle but not the search of the vehicle); see also Chappel v. State, 591 N.E.2d 1011, 1016 (Ind. 1992) (holding that a defendant has no standing to object to the search of another person's property). Here, Payton did not have a possessory or property interest in the vehicle; thus, he did not have a legitimate expectation of privacy therein and has no standing to challenge Officer Horn's search.

Rather than arguing that he had a legitimate expectation of privacy in the vehicle, Payton relies on the doctrine of "automatic standing" in his quest to challenge the trial court's admission of the marijuana evidence at trial. Essentially, Payton argues that because the State based its charges on an argument that he possessed the contraband that was seized, it cannot claim, for purposes of standing, that he had no possessory interest in

the drugs. In other words, because he owned the drugs that were seized, he necessarily has standing to challenge the search. The doctrine of “automatic standing,” however, has been rejected by state and federal courts. United States v. Salvucci, 448 U.S. 83, 92-93 (1980) (rejecting “blind adherence” to an assumption that possession of the seized goods is an acceptable measure of Fourth Amendment interests); Livingston v. State, 542 N.E.2d 192, 194 (Ind. 1989); Robles v. State, 510 N.E.2d 660, 663 (Ind. 1987) (holding that “mere possession of a searched item does not confer automatic standing to challenge the search on Fourth Amendment grounds, albeit that possession, as in this case, is sufficient to establish criminal culpability”); Campos v. State, 867 N.E.2d 676, 681 (Ind. Ct. App. 2007), trans. pending. Thus, the trial court properly denied Payton’s motion to suppress because he did not have standing to challenge the search of the vehicle and properly admitted the marijuana into evidence at trial.²

II. Sufficiency

Payton next argues that the evidence is insufficient to support his conviction. When reviewing the sufficiency of the evidence, we will affirm unless, considering only the evidence and reasonable inferences favorable to the judgment and without reweighing the evidence or assessing witness credibility, we can conclude that no reasonable factfinder could find the elements of the crime proved beyond a reasonable doubt.

² Payton also argues that the State is collaterally estopped from arguing that he has no standing because it bases its case on the fact that he constructively possessed the marijuana. Collateral estoppel does not apply, however, because there is no adjudication from another suit barring relitigation. Jennings v. State, 714 N.E.2d 730, 732 (Ind. Ct. App. 1999) (holding that collateral estoppel bars “relitigation of an issue or fact where the issue or fact was adjudicated in a former suit and the same issue or fact is presented in a subsequent suit”).

Carroll v. State, 744 N.E.2d 432, 433 (Ind. 2001). To convict Payton as charged, the State was required to prove that he knowingly or intentionally possessed marijuana. I.C. § 35-48-4-11.

Constructive possession may support a conviction for a drug offense. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). To prove constructive possession, the State must demonstrate that the defendant had both (1) the intent to maintain dominion and control 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. Donnegan v. State, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004). This knowledge may be inferred from circumstances pointing to the defendant's knowledge of the contraband, such as proximity of the defendant to the drugs, drugs in plain view, and the location of the drugs in close proximity to items owned by the defendant. Id. The capability requirement is met when the State demonstrates that the defendant was able to reduce the controlled substance to his personal possession. Goliday, 708 N.E.2d at 6. Possession of the drugs by the defendant need not be exclusive, inasmuch as contraband can be possessed jointly. Massey v. State, 816 N.E.2d 979, 989 (Ind. Ct. App. 2004).

Here, the State offered evidence establishing that Officer Horn found the marijuana sitting in plain view on the console located between the front driver's and passenger's seats of the vehicle. Tr. p. 42, 45. Payton had been sitting in the front passenger's seat. The trial court did not err by inferring Payton's knowledge of the presence of and capability to maintain dominion and control over the marijuana from the evidence proving that it was in plain view and in close proximity to where he had been

sitting in the vehicle. Thus, we find that the evidence is sufficient to support Payton's conviction.

The judgment of the trial court is affirmed.

NAJAM, J., and SHARPNACK, Sr.J., concur.