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.

FILED
Jul 21 2009, 9:33 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

STEPHEN GERALD GRAY
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JENNIFER A. NOSTRAND,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 30A01-0904-CR-174
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Dan E. Marshall, Judge
Cause No. 30D02-0805-CM-792

July 21, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jennifer Nostrand ("Nostrand") was convicted in Hancock Superior Court of Class A misdemeanor possession of marijuana, Class B misdemeanor public intoxication, and Class C misdemeanor illegal possession of an alcoholic beverage by a minor. Nostrand appeals and claims that the evidence was insufficient to prove: (1) that the substance found in her purse was marijuana, and (2) that she constructively possessed the marijuana. We affirm.

Facts and Procedural History

On May 20, 2008, Hancock County Sheriff's Department Deputy Patrick Lindsay ("Deputy Lindsay") and Deputy Robert Harris ("Deputy Harris") responded to a report of a suspicious vehicle parked in the middle of a county road. Both deputies arrived on the scene and saw the vehicle in the middle of the road. They both activated their emergency lights and pulled up behind the car. Deputy Lindsay approached the vehicle and noticed that the car was running and the car stereo was playing loudly. Nostrand was slumped over in the driver's seat, apparently unconscious. Deputy Lindsay attempted to arouse Nostrand by banging on the car window. After a few minutes, Nostrand rolled down her car window. Deputy Lindsay then smelled alcohol on Nostrand's breath, and Nostrand appeared to be intoxicated.

Deputy Harris administered three field sobriety tests that Nostrand failed. Deputy Lindsay took Nostrand's purse out of the car, and Deputy Harris asked her if she had any weapons or drugs in her purse. Nostrand replied, "no." Tr. p. 29. Deputy Harris then placed Nostrand in handcuffs and took her to jail. At the jail, Deputy Harris observed the intake officers empty the content of Nostrand's purse. In the purse they found a clear

plastic bag containing a green, leafy substance which appeared to Deputy Harris to be marijuana. Deputy Harris administered a field test on this substance, which tested positive for marijuana.

On May 21, 2008, the State charged Nostrand with Class A misdemeanor possession of marijuana, Class B misdemeanor public intoxication, and Class C misdemeanor illegal possession of an alcoholic beverage by a minor. A bench trial was held on December 18, 2008, at the conclusion of which the court found Nostrand guilty as charged. At a sentencing hearing held on January 26, 2009, the trial court sentenced Nostrand to an aggregate term of 365 days suspended to probation. Nostrand now appeals.

Standard of Review

On appeal, Nostrand claims that the State presented insufficient evidence to support her conviction for possession of marijuana. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility. Vasquez v. State, 741 N.E.2d 1214, 1216 (Ind. 2001). Instead we consider only the evidence which supports the conviction, along with the reasonable inferences to be drawn therefrom. Id. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

I. Identity of Marijuana

Nostrand first claims that the State failed to adequately prove that the substance found in her purse was marijuana. The identity of a drug can be proven by circumstantial

evidence. Halsema v. State, 823 N.E.2d 668, 673 n.1 (Ind. 2005) (citing Clifton v. State, 499 N.E.2d 256, 258 (Ind. 1986)). In the absence of expert testimony based on chemical analysis, this may include the "testimony of someone sufficiently experienced with the drug indicating that the substance was indeed a dangerous drug." Id. (quoting Slettvet v. State, 258 Ind. 312, 316, 280 N.E.2d 806, 808 (1972)). "Although chemical analysis is one way, and perhaps the best way, to establish the identity of a compound, persons experienced in the area may be able to identify cigarette smoke, *marijuana*, and even toluene. This is true even if every citizen may not be up to that task." Vasquez, 741 N.E.2d at 1216-17 (emphasis added).

In Vasquez, two police officers testified that, based upon their observations and experience, the substance at issue in that case smelled and looked like toluene. 741 N.E.2d at 1217. Both officers had years of experience, and one testified that police officers routinely identify toluene by its smell and appearance. Id. From this, the Vasquez court held, the trial court could conclude that the substance at issue did contain toluene. Id.

Similarly, in Halsema, a co-defendant argued that the identity of the substance he was accused of possessing was not scientifically determined to be methamphetamine. 823 N.E.2d at 673 n.1. On appeal, the court noted that the investigating officer testified that he had received special training concerning the production, manufacture, and distribution of methamphetamine. At trial, the officer identified the substance in question as "methamphetamine." Id. The court held that this testimony was sufficient to establish that the substance was methamphetamine. Id. See also McConnell v. State, 540 N.E.2d

100, 103-04 (Ind. Ct. App. 1989) (testimony of officer who was familiar with marijuana that substance at issue appeared to be marijuana was sufficient to establish that it was marijuana).

Here, Deputy Harris testified that he had been a Sheriff's Deputy for five years. Before that, he was a reserve Corporal with the New Palestine Police Department for two years and served in the U.S. Air Force Military Police for six years. He received training at the Indiana Law Enforcement Academy in recognizing marijuana. When asked if he had experience in recognizing marijuana, Deputy Harris responded affirmatively. When asked how many times he had come into contact with marijuana, he stated, "Countless, numerous, numerous times." Tr. p. 32. From this evidence, the trial court could reasonably conclude that the substance found in Nostrand's purse was indeed marijuana. See Halsema, 823 N.E.2d at 673 n.1; Vasquez, 741 N.E.2d at 1216-17.

Further, Deputy Harris testified that he performed a field test on the substance found in Nostrand's purse which indicated that the substance was marijuana. Nostrand claims that this evidence is insufficient because Deputy Harris "could not state the science behind the test, whether other police agencies besides his were using the test or whether it was an accepted test within the scientific community or considered reliable." Appellant's Br. p. 7.

A similar argument was before our supreme court in Houston v. State, 553 N.E.2d 117 (Ind. 1990). In that case, the defendant claimed that there was insufficient evidence to establish that the substance found in a package was marijuana. Specifically, the defendant claimed "that there was no evidence establishing that the field test conducted

upon the substance was conclusive, and he challenges the qualifications of the police officer who conducted the test." Id. at 119. In rejecting this claim, the Houston court wrote:

> The Chief Deputy of the Clinton County Sheriff's Department testified that he had made arrests for the possession of marijuana and had conducted several field tests on marijuana in the past. He explained the process of conducting a field test and stated that the green leafy substance found under the shelf tested positively for marijuana. Additionally, the package contained several cigarette rolling papers.

Id. The court concluded, "the qualifications of the Chief Deputy in performing the test were presented to the jury and went to the weight of his testimony. We find that sufficient evidence supported the jury's conclusion that the substance found under the shelf was marijuana." Id.

Similarly, here, Deputy Harris testified that he received training at the Indiana Law Enforcement Academy regarding how to perform this particular field test, that he retrieved his testing kit from the police laboratory, and that he had come into contact with marijuana numerous times. As in Houston, this evidence is sufficient to support a reasonable inference that the green, leafy substance found in Nostrand's purse was indeed marijuana. In short, Deputy Harris's testimony was sufficient evidence to establish that the substance found in Nostrand's purse was marijuana.

II. Constructive Possession

A conviction for possession of marijuana may be supported by proof of constructive possession. State v. Emry, 753 N.E.2d 19, 21 (Ind. Ct. App. 2001). Constructive possession of items found in an automobile may be imputed to the driver of

the vehicle. Id. at 21-22. In order to prove constructive possession, the State must show that the defendant has both the intent to maintain dominion and control and the capability to maintain dominion and control over the contraband. Id. at 22.

Here, Nostrand does not deny that she had the capability to maintain dominion and control over the marijuana found in her purse. Instead, she claims that there is no evidence of her knowledge of the presence of the marijuana which would establish her intent to maintain dominion and control over the marijuana. To prove the intent to maintain dominion and control, the State must demonstrate the defendant's knowledge of the presence of the contraband. Id. The defendant's knowledge of the presence of contraband may be inferred from her exclusive dominion and control over the premises containing the contraband. Id.

Here, Nostrand was the sole person in the vehicle at the time the purse containing the marijuana was removed from the car. From this, the trial court could reasonably infer that Nostrand knew of the presence of the marijuana in her purse, and thus had the intent to maintain dominion and control over the marijuana. Therefore, the State presented sufficient evidence to establish that Nostrand constructively possessed the marijuana. See id. (evidence was sufficient to establish defendant's constructive possession of marijuana found in a jacket on the floorboard of the backseat of a vehicle where defendant was the only person in the vehicle at the time it was stopped).

Conclusion

For all of these reasons, we conclude that the State presented sufficient evidence to establish that the substance found in Nostrand's purse was indeed marijuana, and the

State presented sufficient evidence to establish that Nostrand constructively possessed this marijuana.

Affirmed.

RILEY, J., and KIRSCH, J., concur.