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ATTORNEY FOR APPELLANT:

**KAREN CELESTINO-HORSEMAN**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ARTHUR THADDEUS PERRY**  
Special Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVIS BATTS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee.

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No. 49A02-0511-CR-1095

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APPEAL FROM THE MARION SUPERIOR COURT, CRIMINAL DIVISION 14  
The Honorable David Shaheed, Judge  
The Honorable Scott Devries, Master Commissioner  
Cause No. 49G14-0407-FD-128970

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**October 10, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SULLIVAN, Judge**

Following a bench trial, Appellant, Davis Batts, was convicted of Carrying a Handgun Without a License as a Class A misdemeanor,<sup>1</sup> and Possession of Marijuana as a Class A misdemeanor.<sup>2</sup> Upon appeal, Batts argues that the evidence is insufficient to support his conviction for carrying a handgun without a license.

We affirm.

On July 15, 2004, at approximately 2:30 a.m., Officer Shawn Holmes and Officer Freddie Haddad, both officers with the Indianapolis Police Department, were westbound on 16th Street at the intersection of Lafayette Road in Indianapolis when they observed a mini-van approaching the intersection without its headlights on. Officer Haddad was following Officer Holmes in a separate marked police car. After the mini-van turned north on Lafayette Road, Officer Holmes pulled in behind it and initiated a traffic stop by activating his overhead emergency lights. Officer Haddad provided back-up support. As Officer Holmes approached the driver's side of the mini-van, he observed in a mesh pouch behind the driver's seat what appeared to be individually wrapped baggies of marijuana. Officer Holmes then approached the driver and requested his driver's license.

Eventually, Officers Holmes and Haddad removed the three individuals who were in the mini-van. Batts was sitting in a seat in the back of the mini-van behind the driver's seat. Officer Holmes then returned to the van to retrieve the marijuana which he had seen, but it was no longer in the mesh pouch behind the driver's seat. Officer Holmes

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<sup>1</sup> Ind. Code § 35-47-2-1 (Burns Code Ed. Repl. 2004); Ind. Code § 35-47-2-23(c) (Burns Code Ed. Repl. 2004).

<sup>2</sup> Ind. Code § 35-48-4-11 (Burns Code Ed. Repl. 2004).

found the marijuana which he had seen behind the driver's seat in an open, plastic storage compartment below the window.

At some point, Officer Haddad began to search the mini-van where he discovered a loaded handgun. Officer Holmes recovered the handgun from the same compartment where he had found the marijuana. Officer Holmes gave Miranda warnings to each of the three individuals, and then he asked each of them, "is this your marijuana?" Transcript at 65. Batts admitted that the marijuana was his. After the handgun was discovered, Officer Holmes again asked each of the individuals who it belonged to, and again, Batts admitted that the handgun was his.

On July 16, 2004, the State charged Batts with possession of marijuana as a Class D felony and carrying a handgun without a license as a Class A misdemeanor. A bench trial was held on July 26, 2005 and August 23, 2005. On September 30, 2005, the trial court found Batts guilty of possession of marijuana as a Class A misdemeanor and guilty of carrying a handgun without a license as a Class A misdemeanor. On October 18, 2005, the trial court sentenced Batts to 365 days with 353 days suspended, on each count, and ordered the sentences to run concurrently.<sup>3</sup> Batts was placed on probation for 353 days. On November 18, 2005, Batts filed a motion requesting permission to file a belated appeal, which the trial court granted the same day.

Upon appeal, Batts challenges only the sufficiency of the evidence as it relates to his conviction for carrying a handgun without a license. When reviewing a challenge to

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<sup>3</sup> Batts was given six days credit for time served and six days as good time credit.

the sufficiency of the evidence, this court will neither reweigh evidence nor judge witness credibility, but instead, considering only the evidence which supports the conviction along with the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable jury could have concluded that the defendant was guilty of the charged crime beyond a reasonable doubt. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied.

In arguing that the evidence is insufficient to support the handgun conviction, Batts directs us to the testimony of his witnesses which he asserts is in conflict with Officer Holmes's testimony that Batts admitted that the handgun belonged to him. Both witnesses, who were also occupants of the mini-van, testified that they did not recall Officer Holmes asking them or Batts about ownership of the handgun. One of Batts's witnesses also testified as to who he believed was the true owner of the gun. Batts also asserts that while Officer Haddad testified that he heard Batts admit that the marijuana was his, Officer Haddad did not testify that he heard Batts admit to owning the handgun. Finally, Batts asserts that the State never introduced fingerprint evidence connecting Batts to the handgun.

Batts's argument and many assertions thereunder are simply requests for us to reweigh the evidence and judge the credibility of the witnesses, tasks which this court does not undertake upon appeal. That Officer Haddad did not hear Batts admit to ownership of the handgun is not inconsistent with Officer Holmes's testimony to that effect. To be sure, Officer Haddad testified that he was not privy to all that was said between Officer Holmes and Batts, as his attention was at times focused elsewhere. As

to the conflict in the testimony of Officer Holmes and Batts's two witnesses, such was for the trier of fact to resolve. Here, the trial court, as the trier of fact, chose to believe Officer Holmes's testimony that Batts admitted ownership of the handgun found in the mini-van in which Batts was riding. The trial court was equally free to disbelieve the other two witnesses' claims that Batts did not admit to ownership of the handgun or that the gun belonged to someone else. Finally, we note that in addition to Batts's admission, further supporting the court's conclusion is the fact that the handgun was found in the same location as the marijuana which Batts admitted was his, a location within reach of where Batts was sitting. Given the forgoing, we conclude that the evidence is sufficient to support Batts's conviction for carrying a handgun without a license.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.