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ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J. T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JEFFREY HAVVARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1103-CR-109
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven J. Rubick, Magistrate
Cause No. 49F19-1011-CM-085725

October 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jeffery Havvard appeals his conviction for Class A misdemeanor possession of marijuana. Havvard contends there is insufficient evidence to support his conviction because the State failed to prove that he had constructive possession and knowledge of the marijuana in his car. However, the strong odor of burnt marijuana emanating from the car and the presumption that the odor was not a result of the only other occupant of the vehicle, Havvard's five or six-year-old nephew, indicate knowledge and constructive possession of the contraband. The elements of possession of marijuana were sufficiently proven by the State at trial. We therefore affirm Havvard's conviction.

Facts and Procedural History

On November 11, 2010, an Indianapolis Metropolitan Police Officer conducted a traffic stop of Havvard's vehicle after noticing impermissibly-tinted windows. When Havvard rolled down his window, the officer noticed the "strong and distinct odor of burnt marijuana." Tr. p. 8. Havvard's five or six-year-old nephew was in the backseat of the car.

The officer ordered Havvard out of the car and placed him in handcuffs. A search of Havvard's vehicle turned up a video game and a package of cigars with a green leafy substance on top of the video game. Chemical testing indicated that the green leafy substance was 0.01 grams of marijuana. *Id.* at 37.

The State charged Havvard with Class A misdemeanor possession of marijuana. A bench trial was held, following which Havvard was found guilty. The trial court

sentenced Havvard to 365 days in jail with the executed portion of his sentence for time already served.

Havvard now appeals.

Discussion and Decision

Havvard contends that the evidence is insufficient to support his conviction for possession of marijuana because the State failed to show that he had constructive possession and knowledge of the 0.01 grams of marijuana.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 923 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh'g denied*, *trans. denied*. We consider only the evidence most favorable to the judgment and the reasonable inferences draw therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*. Reversal is appropriate only when a reasonable trier of fact would not be able to form inferences as to each material element of the offense. *Id.*

Class A misdemeanor possession of marijuana occurs when the defendant "knowingly or intentionally possesses (pure or adulterated) marijuana" in an amount less than thirty grams. Ind. Code § 35-48-4-11. A conviction for possession of contraband may rest upon proof of either actual or constructive possession. *Washington v. State*, 902 N.E.2d 280, 288 (Ind. Ct. App. 2009), *trans. denied*. Actual possession occurs when a person has direct physical control over the substance, *Walker v. State*, 631 N.E.2d 1, 2 (Ind. Ct. App. 1994), while constructive possession occurs when the defendant has both

(1) the intent and (2) the capability to maintain dominion and control over the subject contraband. *Atwood v. State*, 905 N.E.2d 479, 484 (Ind. Ct. App. 2009), *trans. denied*.

To prove the intent element of constructive possession, the State must demonstrate the defendant's knowledge of the presence of the contraband. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). Knowledge may be inferred from either exclusive control over the premises where the substance is found, or, if the control is non-exclusive, evidence of additional circumstances pointing to knowledge of the presence of the contraband. *Id.* The capability element is met when the State shows the defendant was able to reduce the controlled substance to his personal possession. *Id.*

Havvard argues that the State failed to show that he had constructive possession of the marijuana because it was not shown that he was the owner of the car. He also contends that there was insufficient evidence that he knew the marijuana was in the car. We disagree.

The evidence adduced at trial shows that Havvard had the intent to possess the marijuana. He had knowledge of the presence of contraband in the vehicle over which he had exclusive control because of the "strong and distinct odor of burnt marijuana." Tr. p. 8. The obvious smell emanating from the car, combined with the location of the contraband in the backseat, make it clear that Havvard knew that the marijuana was in the vehicle.

Havvard also had the capability to maintain dominion and control over the marijuana. The contraband was located in the backseat of the car and could readily be reduced to his personal possession. Havvard was also the only individual in the car other

than his five or six-year-old nephew, and the obvious smell of the burnt marijuana presumably did not result from the young child.

Despite Havvard's arguments that he did not make incriminating statements, he did not attempt to flee the scene when the officer pulled him over, and the State did not show that he was the owner of the vehicle, the State has sufficiently met its burden in proving that Havvard knowingly possessed the marijuana in the car.

This evidence is sufficient to support Havvard's conviction for possession of marijuana. We therefore affirm the trial court.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.