

of Marijuana,¹ a class A misdemeanor, Operating a Motor Vehicle While Privileges are Suspended,² a class A misdemeanor, and Carrying a Handgun Without a License,³ a class C felony. Specifically, Jackson argues that the trial court erred in admitting a redacted version of his driving record and that the evidence is insufficient to support his conviction for carrying a handgun without a license. Finding no error, we affirm the judgment of the trial court.

FACTS

On February 3, 2005, Officer Jason Sunday of the Elkhart County Sheriff's Department initiated a traffic stop in Elkhart County on a vehicle on which he observed two sunburst cracks on the windshield. Upon pulling the vehicle over, Officer Sunday approached the vehicle and asked the driver, later determined to be Jackson, for his license and registration. Jackson gave the officer his name, address, and social security number. Upon checking the information, Officer Sunday learned that Jackson's license was suspended, that he had a prior suspension for failing to pay a traffic ticket, and that there were two valid and outstanding warrants for his arrest.

Officer Sunday instructed Jackson to step out of the vehicle, and after Jackson complied, the officer handcuffed him and began an exterior patdown search. The officer asked Jackson if he had anything such as drugs or weapons that Officer Sunday would need to know about, and Jackson replied that he had marijuana in the front of his pants. Officer

¹ Ind. Code § 35-48-4-11.

² Ind. Code § 9-30-10-16.

Sunday retrieved the marijuana and advised Jackson of his Miranda rights.

The officer next asked Jackson if there was anything else illegal on his person or in the vehicle and Jackson replied that there was a gun in the center console of the vehicle. Officer Sunday asked whether Jackson had a permit to carry the weapon and Jackson stated that he did not, that he needed the gun for protection, and that he had purchased it from a friend a couple of days earlier. Thereafter, the officer reached into the center console of the vehicle and retrieved a .38 Special, which was located within nine inches of where Jackson had been sitting.

On February 7, 2005, the State charged Jackson with class A misdemeanor possession of marijuana, class A misdemeanor driving while suspended, and class C felony carrying a handgun without a license. At Jackson's jury trial, which was held on November 22, 2005, the State entered Jackson's driving record into evidence without objection. Pages five and six of the driving record were labeled "CONVICTIONS" at the top of the page but contained no further information, and every page of the record contained redacted information. On November 22, 2005, the jury found Jackson guilty as charged.

On December 19, 2005, the trial court sentenced Jackson to 180 days for possession of marijuana, to 180 days for driving while suspended, and to five years with three years suspended for carrying a handgun without a license. The trial court ordered the sentences to be served concurrently, for an aggregate executed term of two years. Jackson now appeals.

³ Ind. Code § 35-47-2-1.

DISCUSSION AND DECISION

I. Redacted Driving Record

Jackson first argues that the trial court erred in admitting a redacted version of his driving record into evidence. Essentially, he contends that the redacted record likely caused the jurors to infer that he had numerous prior driving-related convictions and suspensions that had been blacked out. Thus, he argues, the redacted record constituted impermissible character evidence regarding extrinsic offenses.

The admission of evidence is a matter left to the sound discretion of the trial court and may be reversed only upon an abuse of that discretion. Johnson v. State, 671 N.E.2d 1203, 1205 (Ind. Ct. App. 1996). A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it. Id.

Initially, we observe that Jackson has waived appellate review of this claim because he failed to object to the admission of the redacted record or to the redactions made by the prosecutor. See Washington v. State, 808 N.E.2d 617, 625 (Ind. 2004) (holding that a trial court “cannot be found to have erred as to an issue . . . that it never had an opportunity to consider”). Moreover, Jackson has not argued that the admission of the evidence amounted to fundamental error.

Waiver notwithstanding, we observe that a driving record may be redacted so that it can be admitted into evidence. Wilkinson v. State, 743 N.E.2d 1267, 1273; Dumes v. State, 718 N.E.2d 1171, 1174 (Ind. Ct. App. 1999) (“[r]edaction . . . is commonly used to make otherwise inadmissible exhibits admissible”). Here, even if we accept for argument’s sake

that the jurors may have inferred from the redactions that Jackson had accumulated numerous prior driving-related convictions, the record reveals that Jackson testified that he had several prior convictions related to driving and drugs. Tr. p. 114. Thus, it is apparent that any error in admitting the redacted record was harmless, inasmuch as Jackson's own admissions informed the jury of his prior convictions. We conclude, therefore, that the trial court's admission of Jackson's redacted driving record into evidence was not reversible error.

II. Sufficiency of the Evidence

Jackson also argues that the evidence is insufficient to support his conviction for possession of a handgun without a license. Specifically, he argues that there is insufficient evidence supporting a conclusion that he constructively possessed the weapon at issue. When reviewing a claim of insufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Instead, we look only to the evidence most favorable to the verdict together with all reasonable inferences that may be drawn therefrom. Id. If there is substantial evidence of probative value supporting the verdict that could have allowed the factfinder to find the defendant guilty beyond a reasonable doubt, we will not disturb the verdict. Id.

Carrying a handgun without a license is defined by Indiana Code section 35-47-2-1, which provides, in pertinent part, as follows: "a person shall not carry a handgun . . . on or about the person's body, except in the person's dwelling, on the person's property or fixed place of business, without a license issued under this chapter being in the person's possession." Carrying a handgun may be shown by either actual or constructive possession.

Wallace v. State, 722 N.E.2d 910, 913 (Ind. Ct. App. 2000). We have described constructive possession as follows:

Constructive possession occurs when somebody has the intent and capability to maintain dominion and control over the item. Proof of dominion and control of contraband has been found through a variety of means, including attempted flight or furtive gestures and proximity of the contraband to the defendant. Too, constructive possession may be inferred when circumstantial evidence points to the defendant's knowledge of the presence of a weapon, even if his control is not exclusive.

Id. (citations omitted).

Here, the record reveals that Jackson admitted to Officer Sunday that he had a handgun in the center console of the vehicle and that he had purchased the weapon from a friend for protection. Tr. p. 96. Moreover, at the time of the traffic stop, Jackson was the sole occupant of the vehicle and the weapon was located in the center console approximately nine inches from where Jackson had been sitting. Id. at 104-07. Thus, there is sufficient evidence supporting the following conclusions: that Jackson had knowledge of the weapon's presence, that he admitted ownership of the gun, and that he was in close proximity to the weapon and had the ability to reduce it to his control. Jackson's arguments regarding Officer Sunday's testimony and the reconstituted record merely amount to requests for us to reweigh the evidence and judge a witness's credibility, which our standard of review does not permit. Consequently, we conclude that there is sufficient evidence supporting Jackson's conviction for carrying a handgun without a license.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.