

Case Summary

Tiffany Shelman was convicted of class A misdemeanor possession of marijuana. On appeal, she contends that the trial court erred in admitting the marijuana, which was seized without a warrant during a traffic stop. She also challenges the sufficiency of the evidence supporting her conviction. Finding no error and the evidence sufficient, we affirm.

Facts and Procedural History

The facts most favorable to the trial court's judgment indicate that shortly after midnight on November 20, 2009, Indianapolis Metropolitan Police Department Officer Richard Wilkerson saw Shelman run a red light in her Oldsmobile Aurora. He followed her car, which made several quick turns in what appeared to be an effort to evade him. Officer Wilkerson activated his emergency lights, and Shelman pulled over. He approached and told her why he had stopped her car. She told him that she believed her license was suspended and admitted that she had attempted to evade him. He detected a faint odor of what he believed to be burning marijuana and asked her to step out of her car. She complied. He ran a check on her driver's license, which was indeed suspended.

Officer Wilkerson informed Shelman that her license was suspended, told her that he smelled marijuana, and asked if there was anything illegal in her car. She said no and offered to let him search her car. Before he entered the car, he "could smell the odor of marijuana stronger." Tr. at 22. He found a small bag of marijuana in the center console and a partially smoked marijuana cigarette in the open ashtray, both of which were within twelve to sixteen inches of the driver's seat.

The State charged Shelman with class A misdemeanor possession of marijuana. On May 25, 2010, the trial court found her guilty as charged.

Discussion and Decision

I. Admission of Marijuana

At trial, Shelman moved to suppress the marijuana seized during the traffic stop. On appeal, she contends that the trial court erred in denying her motion to suppress. Because she appeals following her conviction, the issue is properly framed as whether the trial court erred in admitting the evidence at trial. *Shell v. State*, 927 N.E.2d 413, 418 (Ind. Ct. App. 2010). Whether the challenge is made by a pretrial motion to suppress or by trial objection, our standard of review of such rulings is essentially the same. *Id.*

Our standard of review of a trial court's determination as to the admissibility of evidence is for an abuse of discretion. We will reverse only if a trial court's decision is clearly against the logic and effect of the facts and circumstances. We will not reweigh the evidence, and we consider any conflicting evidence in favor of the trial court's ruling. However, we must also consider the uncontested evidence favorable to the defendant.

Lindsey v. State, 916 N.E.2d 230, 238 (Ind. Ct. App. 2009) (citations omitted), *trans. denied* (2010).

Shelman asserts that the marijuana was seized in violation of Article 1, Section 11 of the Indiana Constitution, which says,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Shelman observes that in *Pirtle v. State*, the Indiana Supreme Court held that

a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent. This right, of course, may be waived, but the burden will be upon the State to show that such waiver was explicit

263 Ind. 16, 29, 323 N.E.2d 634, 640 (1975). Shelman contends that because she “was in custody and she was neither advised of her rights nor explicitly waived her rights, the search of her vehicle was in violation of” Article 1, Section 11 pursuant to *Pirtle*. Appellant’s Br. at 5.

Leaving aside the question of whether Shelman was in custody, we agree with the State that *Pirtle* is inapposite because Officer Wilkerson did not ask Shelman for consent to search her vehicle. The evidence most favorable to the trial court’s ruling indicates that Shelman offered to let Officer Wilkerson search her vehicle, and she does not specifically contend that her offer was coerced or that he was required to advise her of her right to counsel prior to accepting her offer to search the car. As such, we find no abuse of discretion in the trial court’s admission of the marijuana seized during the search of Shelman’s car.

II. Sufficiency of Evidence

The State alleged that Shelman knowingly possessed less than thirty grams of marijuana. *See* Appellant’s App. at 14 (charging information); Ind. Code § 35-48-4-11. Shelman challenges the sufficiency of the evidence supporting her conviction for class A misdemeanor marijuana possession. Our standard for reviewing such claims is well settled. We consider only the probative evidence and reasonable inferences supporting the judgment. *Boggs v. State*, 928 N.E.2d 855, 864 (Ind. Ct. App. 2010), *trans. denied*. We do not reweigh the evidence or assess witness credibility, and we consider conflicting evidence most

favorably to the trial court's ruling. *Id.* "We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is not necessary that the evidence overcome every reasonable hypothesis of innocence." *Id.* (citation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. *Id.* "A conviction may be based upon circumstantial evidence alone." *Id.*

Because Shelman did not have the marijuana on her person, the State had to prove that she constructively possessed it. To prove constructive possession, the State must show that the defendant had both the intent and the capability to maintain dominion and control over the contraband. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

To prove the intent element, the State must demonstrate the defendant's knowledge of the presence of the contraband. This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband.

Id. (citation and quotation marks omitted). Because Shelman "was the only person in the vehicle when police stopped it," her "exclusive possession of the vehicle was sufficient to raise a reasonable inference of intent." *Id.*

"The capability requirement is met when the [S]tate shows that the defendant is able to reduce the controlled substance to the defendant's personal possession." *Id.* Here, Officer Wilkerson testified that he found a small bag of marijuana in the car's center console and a partially smoked marijuana cigarette in the open ashtray, both of which were within easy reaching distance of the driver's seat. Based on the foregoing, we conclude that the State

presented sufficient evidence that Shelman constructively possessed the marijuana. Her arguments to the contrary are merely invitations to reweigh the evidence and assess witness credibility in her favor, which we may not do. Therefore, we affirm.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.