

STATEMENT OF THE CASE

Debra Collins appeals her conviction for Possession of a Controlled Substance, as a Class D felony, following a bench trial. Collins presents a single issue for review, namely, whether the evidence is sufficient to support her conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 5, 2009, Officer Christopher Shaw of the Indianapolis Metropolitan Police Department was driving eastbound on 18th Street in Indianapolis when he observed a van turn south onto Rural Street without signaling. The van was also missing a back windshield, and the hole was covered with a black trash bag. For both violations, Officer Shaw initiated a traffic stop, pulling the van over on the east side of Rural and Brookside Parkway, North Drive. In the van were a male driver and a female passenger, Collins. The neighborhood of the stop contains a “few houses that are high narcotic houses and prostitution houses.” Transcript at 6.

When Officer Shaw approached the van on foot, he asked the driver for identification. The driver replied that he did not have any identification and was from Florida. Officer Shaw’s suspicion was raised because of the driver’s lack of identification and out-of-state address, so he asked the driver for permission to search the van and the driver. The driver consented. The officer also asked permission for a female officer to search Collins. Collins consented as well.

Officer Shaw “pull[ed] the driver out so [he] could search him and the vehicle and [he] observed the passenger [Collins] to [be] reaching down between the passenger seat

and the door.” Id. at 8. Having observed Collins’ “furtive movements,” Officer Shaw worried for his safety, and he asked what Collins was doing. Collins replied that she was taking off her seatbelt. But Officer Shaw saw that her seatbelt was not fastened and was “already up on the door frame.” Id. at 9. Moreover, the seatbelt locking mechanism was located on the left side of the passenger seat, not on the right side by the passenger door. Officer Shaw also heard a rattling noise while Collins’ hand was down between her seat and her door.

Officer Shaw quickly finished handcuffing the driver and asked him to wait at the back of the van. The officer then went around to the passenger side and, as he was opening up the door, “observed her hand coming up from the area where she was reaching down at. And then when [he] had the door all the way open, [he] observed a [sic] orange plastic pill bottle.” Id. at 10. The bottle contained pills that later tests revealed to be hydrocodone. Collins denied that the bottle belonged to her and stated that she did not know the bottle was in the van. Officer Shaw arrested and mirandized Collins.

The State charged Collins with possession of a controlled substance, as a Class D felony. Following a bench trial, the court found Collins guilty. The court sentenced Collins to 365 days, with 361 days suspended and credit for two days served. Collins now appeals.

DISCUSSION AND DECISION

Collins contends that the evidence is insufficient to support her conviction for possession of a controlled substance. Specifically, she argues that the State failed to

prove that she actually or constructively possessed the hydrocodone found in the orange pill bottle. We must disagree.

When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove the offense of possession of a controlled substance, as a Class D felony, the State was required to prove beyond a reasonable doubt that Collins, without a valid prescription, knowingly or intentionally possessed a controlled substance, namely hydrocodone. See Ind. Code § 35-48-4-7. A conviction for possession of contraband may rest upon proof of either actual or constructive possession. Goffinet v. State, 775 N.E.2d 1227, 1230 (Ind. Ct. App. 2002), trans. denied. Actual possession occurs when a person has direct physical control over the item. Id. To prove constructive possession, the State had to show that Collins “had both the capability and the intent to maintain dominion and control over the contraband.” Mitchell v. State, 745 N.E.2d 775, 788, 789 (Ind. 2001) (internal quotation marks and citation omitted). The capability to maintain dominion and control can be shown by “proof of a possessory interest in the premises where the contraband was found[.]” Id.

Here, Officer Shaw testified that he heard a rattling sound, not made by the driver, at the same time that Collins was reaching between the passenger seat and the passenger door. When he reached the passenger side of the van and opened the door, he observed the pill bottle containing hydrocodone between Collins' seat and the passenger door. Reasonable inferences from the evidence are sufficient to show Collins' actual possession of the hydrocodone.

Still, Collins argues that "intent to maintain control over an item . . . cannot be established merely on the basis of the defendant's proximity to the item where the defendant is not in exclusive possession of the place the item is found." Appellant's Brief at 4. In essence, Collins argues that the State did not prove that she constructively possessed the hydrocodone. But we have already determined that reasonable inferences from the evidence are sufficient to show that Collins was in actual possession of the hydrocodone. And we find the evidence sufficient to show constructive possession as well.

Where possession is non-exclusive, constructive possession may be inferred from circumstances pointing to the defendant's knowledge of the presence of the contraband. See Massey v. State, 816 N.E.2d 979, 989 (Ind. Ct. App. 2004) (internal quotation marks and citation omitted). Again, Officer Shaw pointed to Collins' "furtive movements" of reaching between the passenger seat and the passenger door and the simultaneous rattling sound as well as the orange pill bottle he found immediately thereafter between the passenger seat and the passenger door. Further, Collins' statement that she was attempting to unfasten her seatbelt was indeed specious given that the seatbelt was

already unfastened and the locking mechanism was located on the opposite side of the seat from where she was reaching. Thus, the evidence is also sufficient to show Collins' constructive possession of the hydrocodone.

Affirmed.

VAIDIK, J., and BROWN, J., concur.