

Case Summary

Frederick Jackson appeals his conviction for class C felony operating a motor vehicle after his license was forfeited for life. We affirm.

Issues

Jackson raises two issues on appeal, which we restate as follows:

- I. Whether the State presented sufficient evidence to sustain Jackson's conviction for operation of a motor vehicle after his license was forfeited for life; and
- II. Whether the trial court abused its discretion by denying Jackson the opportunity to call a witness who intended to invoke her Fifth Amendment right against self-incrimination.

Facts and Procedural History

The facts most favorable to the jury's verdict indicate that on July 3, 2007, Officer Scott Hessong of the Indianapolis Metropolitan Police Department observed Jackson sitting in the driver's seat of a vehicle stopped at a stop sign at the intersection of 34th Street and Drexel Avenue. Officer Hessong observed that neither Jackson nor the front seat passenger, Kavonya Jones, were wearing seat belts and that the car's license plate was not properly attached. Upon making eye contact with Officer Hessong, Jackson turned onto 34th Street and drove in the opposite direction of the officer. Officer Hessong turned his vehicle around and watched Jackson drive away at a high rate of speed and make a quick turn onto Gladstone Avenue. After activating his lights, Officer Hessong caught up to the vehicle and observed it make a "sudden jerk to the right hand portion of the curb" and then stop. Tr. at 31. Officer Hessong watched through the rear and side windows of the car as Jackson and Jones switched seats with each other. The vehicle then traveled another twenty feet and

stopped again. Officer Hessong approached the vehicle and asked Jackson why he and Jones switched seats. Jackson told him that they had not. Officer Hessong also smelled burning marijuana and later found a small amount in the vehicle's ashtray. After obtaining Jackson's identification, Officer Hessong discovered that he was a habitual traffic violator with his license forfeited for life.

The State charged Jackson with class C felony operating a motor vehicle after his license was forfeited for life and class A misdemeanor possession of marijuana. A jury trial was held on September 20, 2007. At a hearing outside the presence of the jury, Jones, a State's witness, refused to testify by asserting her Fifth Amendment right against self-incrimination. The trial court denied Jackson's request to call Jones as a witness and have her assert her Fifth Amendment rights in the presence of the jury. The jury found Jackson guilty of class C felony operating a motor vehicle after his license was forfeited for life and acquitted him of the remaining charge. This appeal ensued.

Discussion and Decision

I. Sufficiency of Evidence

Jackson challenges the sufficiency of the evidence supporting his conviction. Specifically, Jackson contends that the State failed to establish that he was operating the vehicle. Our standard of review is well settled:

[W]e neither reweigh the evidence nor judge the credibility of witnesses. Rather, we consider only the evidence that is favorable to the [verdict] along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt.

Staten v. State, 844 N.E.2d 186, 187 (Ind. Ct. App. 2006) (citations omitted), *trans. denied*.

“The uncorroborated testimony of a single witness may be sufficient by itself to sustain a conviction on appeal.” *Toney v. State*, 715 N.E.2d 367, 369 (Ind. 1999). Here, Officer Hessong’s testimony established that Jackson was driving prior to the stop. Jackson’s argument to the contrary is simply an invitation to reweigh the evidence in his favor, which we must decline.

II. Exclusion of Witness

Jackson further contends that the trial court erred when it denied his request to call Jones as a witness and have her assert her Fifth Amendment right against self-incrimination in the presence of the jury. The admission or exclusion of evidence is a determination entrusted to the trial court’s discretion. *Farris v. State*, 818 N.E.2d 63, 67 (Ind. Ct. App. 2005), *trans. denied*. “We will reverse a trial court’s decision only for an abuse of discretion. An abuse of discretion occurs when the trial court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before it.” *Id.* (citation omitted).

Our supreme court has held that “defendants do not have a right to force a witness to invoke the Fifth Amendment privilege before the jury.” *Stephenson v. State*, 864 N.E.2d 1022, 1047 (Ind. 2007). Therefore, the trial court did not abuse its discretion by refusing to allow Jackson to compel Jones to appear before the jury simply to invoke Fifth Amendment.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.