

STATEMENT OF THE CASE

Mattie L. King, Jr., appeals his conviction for Possession of Cocaine, as a Class C felony, following a jury trial.¹ King presents a single issue for review, namely, whether the evidence is sufficient to support his conviction for possession of cocaine.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 7, 2007, Terre Haute Police Officer Dan Armentrout inspected his police vehicle for damage and items that might have been left by previous passengers. Finding nothing in his search, Officer Armentrout began his patrol at approximately 11:00 p.m. After midnight, Officer Armentrout observed King running in the area of Nineteenth Street and Third Avenue. King was wearing shorts and a white t-shirt. Officer Armentrout radioed for assistance and attempted to follow King.

Officer Armentrout followed King in his police vehicle, occasionally using his police lights or spot light to track King. When King eventually emerged from between two trees, Officer Armentrout ordered him to stop. The officer observed King “staggering” toward the police vehicle, Trial Transcript at 61,² and noted that King “smelled heavily of alcoholic beverage,” *id.* at 62. Officer Armentrout did a quick pat-down search of King’s waistband for weapons, handcuffed him, and placed him in the back seat of his police vehicle. Officer Brad Rumsey then arrived to assist.

¹ The jury also found King guilty of Public Intoxication, as a Class B misdemeanor, but King does not appeal that conviction.

² The transcript submitted on appeal is comprised of several volumes. Each volume is paginated starting at page one and contains the transcript for a separate stage of the proceeding below. Thus, we identify the volume by the nature of the proceeding.

After placing King in the back of the patrol car, Officer Armentrout searched the nearby area where King had been and found a wallet containing King's Indiana identification card. During the area search, Officers Armentrout and Rumsey observed King "moving around in the back" of the patrol car in an unusual way, causing the car to rock. Trial Transcript at 67. Concerned that King might have been attempting to rid himself of hidden contraband, Officer Armentrout searched inside King's shoes and socks and looked inside King's shirt and shorts and asked King to exit the back seat of the car. When King had exited the back seat, Officer Armentrout observed the top of a plastic bag sticking up about one-third of the way in the crack between the seat cushion and the seat back where King had been sitting. The officer retrieved the plastic bag, which field-tested positive for cocaine.

The State charged King with possession of cocaine, as a Class C felony, and public intoxication, as a Class B misdemeanor. A jury found King guilty as charged, and the court entered a judgment of conviction accordingly. The court sentenced King to six years for possession of cocaine and eighteen months for public intoxication, to be served concurrently. King now appeals his possession of cocaine conviction.

DISCUSSION AND DECISION

King contends that the evidence is insufficient to support his conviction for possession of cocaine. Specifically, he argues that the evidence is insufficient because "[a]t no time was [King] ever found or observed to be in possession of cocaine." Appellant's Brief at 6. 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 verdict 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.

The State charged King with possession of cocaine, as a Class C felony. To convict King of that offense, the State was required to prove, beyond a reasonable doubt, that King knowingly or intentionally possessed cocaine in an amount more than three grams. See Ind. Code § 35-48-4-6(a), (b). Evidence of constructive possession is sufficient if the State shows that the defendant had both the capability and the intent to maintain dominion and control over the contraband. Hardister v. State, 849 N.E.2d 563, 573 (Ind. 2006).

King argues that there are “a million reasons that could explain the presence of cocaine in the backseat of a Police squad car” aside from King’s having placed it there. Appellant’s Brief at 12. But the State was only required to show possession, either actual or constructive, beyond a reasonable doubt. See Jones, 783 N.E.2d at 1139. Officer Armentrout testified that he had inspected his vehicle before his patrol and found nothing in the back seat. He further testified that the seat had been empty when he had placed King there; King had been moving in the back seat, making the car rock; and thereafter

the officer had observed between the seat back and cushion the partially exposed plastic bag containing cocaine.

King concedes that it is “possible” that the cocaine “might have been in [his] possession when he was placed in the back of the squad car and [that] he removed it from its hiding place and stuck it in the crack of the backseat of the squad car[.]” Appellant’s Brief at 13. King’s contention that the State failed to prove his constructive possession of cocaine amounts to a request that we reweigh the evidence, which we cannot do. See id. Thus, King’s contention must fail.

Affirmed.

MAY, J., and ROBB, J., concur.