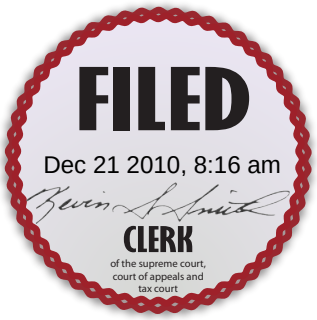

ATTORNEY FOR APPELLANT:

ADAM G. FORREST
Boston Beer Klinge Cross & Chidester
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TYRONE L. TOWNSELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A01-1005-CR-232
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Charles K. Todd, Jr., Judge
Cause No. 89D01-0411-FD-118

December 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Tyrone L. Townsell appeals his conviction for class D felony possession of marijuana.[1]

We affirm.

ISSUES

1. Whether the trial court erred in admitting evidence.

2. Whether sufficient evidence supports Townsell's conviction.

FACTS

On November 20, 2004, K-9 Officer Curt Leverton of the Richmond Police Department was on patrol near mile marker 144 of Interstate 70. At approximately 10:00 p.m., he observed a maroon Chevy Blazer that was following a semi-tractor trailer too closely. When the Chevy passed him, Leverton observed that the driver -- later identified as Townsell -- continued to "stay[ ] approximately one car length behind the semi," despite having the opportunity to pass it safely. (Tr. 180). Leverton also noted that the Chevy did not have a visible license plate. He pulled into traffic, "caught up to [the Chevy] and followed it briefly." (Tr. 181). He then observed a temporary dealership tag on the rear window; however, due to the dark tint of the window, he could not read it.

Leverton initiated a traffic stop near mile marker 148. When he approached the Chevy, Townsell lowered his window "only about a third of the way down," making it "hard [for Leverton] to hear" him. (Tr. 187). Leverton later testified that in his

[1] Ind. Code § 35-48-4-11(1).

experience as a law enforcement officer, motorists typically lower their windows very slightly when "they don't want [officers] to know or see what's inside the vehicle." (Tr. 187). Leverton smelled the odors of raw marijuana and cologne emanating from Townsell's vehicle. He later testified that in his experience, it is "very common" for motorists to "try[ ] to hide the odor of whatever . . . they want to hide" with fragrance. (Tr. 191). Townsell provided Leverton with his driver's license and a bill of sale indicating that he had purchased the Chevy in Iowa, approximately one week earlier on November 13, 2004.

Leverton returned to his squad car with Townsell's documents. A computer inquiry revealed that Townsell had an active Illinois warrant. The warrant urged "caution," designating Townsell as "armed and dangerous." (Tr. 195). Leverton returned to Townsell's vehicle and instructed him to exit. When the door of the vehicle opened, a very strong odor of raw marijuana rushed out. Leverton conducted a pat-down[2] search for weapons, and handcuffed and placed Townsell into the squad car. He later testified, "I told [Townsell] why I was detaining him. That he had a warrant . . . and we would wait and determine whether or not Illinois would want us to hold him . . . ." (Tr. 197).

"While [Leverton] was waiting for the confirmation," he retrieved his canine partner, Rex, and conducted a canine sweep around the exterior of Townsell's vehicle. (Tr. 197). Rex "alerted" to the presence of narcotics inside the Chevy. (Tr. 197). Leverton then searched the passenger compartment of the Chevy and recovered a white

[2] The pat-down search yielded a roll of currency -- later determined to be $710.00 -- in Townsell's left front pants pocket. Leverton returned the money to Townsell at the scene.

plastic bag containing 106.62 grams of marijuana from the center console. Subsequently, Leverton "received [verification] that [the warrant] was a valid warrant, however, it was only an in-State warrant, it was not extraditable out of state," meaning that "if [Townsell was] not located in the State of Illinois, not to arrest him on that warrant." (Tr. 409).

On November 23, 2004, the State filed an information charging Townsell with possession of marijuana, as a class D felony. On May 3, 2006, Townsell filed a motion to suppress the marijuana. The trial court conducted a hearing on October 18, 2006. Leverton testified to the foregoing facts, as well as his extensive training in the detection of narcotics. On July 13, 2007, the trial court denied Townsell's motion.

Townsell's jury trial commenced on March 15, 2010. At the start of trial, he renewed his motion to suppress, which was denied. Townsell testified in his defense, disputing Officer Leverton's account of the circumstances surrounding his arrest. Specifically, he testified that the canine sweep occurred after Leverton learned that he could not be arrested on the Illinois warrant. On March 17, 2010, the jury found Townsell guilty as charged. On April 13, 2010, the trial court imposed a two and one-half year sentence. Townsell now appeals.

DECISION

Townsell argues that the trial court erred in denying his motion to suppress, and that the evidence is insufficient to support his conviction.

1. Admission of Evidence

Townsell argues[3] (1) Officer Leverton had "no basis for the initial traffic stop"; (2) "the traffic stop should have concluded before Officer Leverton conducted a canine sweep of [his] vehicle," because Leverton lacked a proper basis for detaining him further upon learning that Townsell could not be arrested on the Illinois warrant; and (3) Leverton lacked probable cause to search his vehicle. Townsell's Br. at 13. We cannot agree.

Because Townsell challenges the evidentiary ruling following a completed trial, the issue on appeal is properly framed as whether the trial court abused its discretion by admitting the challenged evidence at trial. *Taylor v. State,* 891 N.E.2d 155, 158 (Ind. Ct. App. 2008). Our standard of review of a trial court's determination as to the admissibility of evidence is for an abuse of discretion. *Smith v. State,* 754 N.E.2d 502, 504 (Ind. 2001). We will reverse only if a trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* We will not reweigh the evidence, and we consider any conflicting evidence in favor of the trial court's ruling. *Id.* However, we must also consider the uncontested evidence favorable to the defendant. *Id.* Although a trial court's determination of historical facts is entitled to deferential review,

[3] Townsell also invokes Article 1, section 11 of the Indiana Constitution; however, inasmuch as he makes no separate argument and analysis as to the state constitution, we confine our analysis to his Fourth Amendment claim only. Accordingly, any separate state constitutional claim is waived due to his failure to make a cogent argument under that provision. *See Francis v. State,* 764 N.E.2d 641, 646-67 (Ind. Ct. App. 2002) (Indiana courts interpret and apply Article 1, section 11 independently from federal Fourth Amendment jurisprudence, and failure by a defendant to provide separate analysis waives any claim of error.).

we employ a *de novo* standard when reviewing the trial court's ultimate determinations of reasonable suspicion and probable cause. *Id*.

a. Stop

The Fourth Amendment protects persons from unreasonable search and seizure:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. Unless one of a few specifically established and well delineated exceptions[4] applies, law enforcement officers must obtain a warrant based on probable cause before executing a search or a seizure. *State v. Hobbs*, 933 N.E.2d 1281, 1284 (Ind. 2010).

The Fourth Amendment is not violated by a brief, investigatory stop based upon a reasonable, articulable suspicion, under the totality of the circumstances, that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 30 (1968); *Sellmer v. State*, 842 N.E.2d 358, 360 (Ind. 2006). It is well-settled that a police officer may briefly detain someone whom the officer believes has committed a traffic infraction. *State v. Harris*, 702 N.E.2d 722, 726 (Ind. Ct. App. 1998); *see* I.C. § 34-28-5-3 (a police officer may stop a vehicle for minor traffic violations). Our Supreme Court has held that in order to make a valid traffic stop, the officer "must possess at least reasonable suspicion that a traffic law has

[4] The State bears the burden of demonstrating that a warrantless search or seizure falls within one of the exceptions. *State v. Carlson*, 762 N.E.2d 121, 127 (Ind. Ct. App. 2002).

been violated or that other criminal activity is taking place." *Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009). An officer's decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking occurred. *Id*. at 870.

Here, the State presented evidence that Officer Leverton stopped Townsell after Townsell committed two traffic violations. Leverton testified that over a distance of approximately four miles on I-70, Townsell drove approximately one car-length behind a semi-tractor trailer, which was too close. *See* I.C. § 9-4-1-73(a) ("The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent[.]"). Leverton also testified that the temporary dealer registration tags on Townsell's vehicle were improperly displayed and illegible. *See* I.C. § 9-18-2-26 (prescribing the appropriate manner in which license plates should be displayed); *see also Meredith*, 906 N.E.2d at 872-73 (finding that interim dealership tags must be mounted in the same manner as permanent license plates, and that improper display of registration may constitute reasonable suspicion for a traffic stop); *and see English v. State*, 603 N.E.2d 161, 163 (Ind. Ct. App. 1992) (finding probable cause for a traffic stop for improperly displayed registration tags).

The foregoing facts constitute evidence that Townsell's vehicle was being driven contrary to the laws governing the operation of motor vehicles. Thus, Officer Leverton had a reasonable and objectively justifiable basis for making the initial traffic stop.

b. Detention

Next, Townsell argues that Officer Leverton detained him for an unreasonable period of time and lacked reasonable suspicion of criminal activity to justify further detention beyond the initial traffic stop. Contradicting Officer Leverton's testimony that the canine sweep occurred after Leverton detected the odor of marijuana and while he awaited verification of the warrant, Townsell testified that Leverton already knew that Townsell could not be arrested on the Illinois warrant when he conducted the canine sweep and subsequent search that yielded the marijuana. Thus, Townsell argues, he was illegally detained and the trial court erred in denying his motion to suppress any and all evidence obtained pursuant to his illegal detention. We cannot agree.

In support of his claim, Townsell cites to *Best v. State*, 817 N.E.2d 685 (Ind. Ct. App. 2004); however, his reliance on *Best* is misplaced. In *Best*, the defendant was detained on warrants from Adams County and Jennings County. He answered the Adams County charges; however, Jennings County declined to act on the outstanding warrant. Subsequently, Best was twice detained on the Jennings County warrant. Each time, he was released when Jennings County refused to take action; however, Jennings County failed to revoke the warrant and it remained in force. When Best was detained for a third time on the Jennings County warrant, police recovered a handgun from his person. He was subsequently charged with carrying a handgun without a license. At trial, he moved to suppress the handgun, which motion was denied.

In reversing the trial court, we found that the Jennings County warrant had been satisfied the first time Best was detained pursuant to it and, thereafter, "lost its validity as a proper basis for future arrests." *Id*. at 689. Finding that Best's seizure was based upon an invalid warrant, we deemed his arrest unlawful and concluded that the trial court erred in denying his motion to suppress the handgun.

Unlike the warrant in *Best*, the instant warrant served a legal purpose. There is no evidence that the Illinois warrant was invalid; nor does Townsell so allege. At trial, the State presented Officer Leverton's testimony that he received verification of the "valid" warrant after he conducted the canine sweep. (Tr. 409). In *Best*, we opined that warrants that lack legal purpose contravene due process. Because the evidence established that the instant warrant was valid, we find *Best* inapposite.

Officer Leverton's detention and subsequent arrest of Townsell did not contravene Fourth Amendment principles. It is well-settled that "[o]nce the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable and articulable suspicion that criminal activity was afoot." *U.S. v. Hill*, 195 F.3d 258, 264 (6th Cir. 1999) (emphasis added). At trial, Officer Leverton testified that when Townsell lowered his window, he perceived the odors of raw marijuana and cologne emanating from Townsell's vehicle. Officer Leverton – a trained narcotics expert – suspected that Townsell was attempting to mask the odor of marijuana with fragrance as is common in Leverton's experience as a law enforcement officer. The foregoing facts and Leverton's discovery that Townsell

had an outstanding Illinois warrant that designated Townsell "armed and dangerous," gave rise to Leverton's reasonable and articulable suspicion that criminality was afoot. (Tr. 195). Accordingly, Leverton's decision to further detain Townsell did not violate Townsell's Fourth Amendment rights.

In addition, Townsell argues that the canine sweep violated his Fourth Amendment rights. "It is well settled that a canine sweep is not a search within the meaning of the Fourth Amendment." *Bradshaw v. State*, 759 N.E.2d 271, 273 (Ind. Ct. App. 2001). "While a canine sweep is not a search, upon the completion of a traffic stop, an officer must have reasonable suspicion of criminal activity in order to proceed thereafter with an investigatory detention." *Id*. A canine sweep, however, that is conducted before a traffic stop is completed does not constitute a violation of the Fourth Amendment. *Myers v. State*, 839 N.E.2d 1146, 1149-50 (Ind. 2005).

In *Bradshaw v. State*, 759 N.E.2d 271, 273-74 (Ind. Ct. App. 2001), we held that the trial court is in the best position to decide whether the traffic stop was concluded at the time of the canine sweep, and that we will not second-guess its determination. "In assessing whether a detention is too long in duration, we examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly." *Kenner v. State*, 703 N.E.2d 1122, 1127-28 (Ind. Ct. App. 1999) (quoting *United States v. Sharpe*, 470 U.S. 675, 686, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985)).

During the suppression hearing, the trial court heard Officer Leverton's testimony that after he had observed (1) Townsell's unusual conduct in barely lowering his window; (2) the very strong odor of raw marijuana emanating from Townsell's vehicle; and (3) Townsell's apparent attempt to mask the very strong odor of raw marijuana with cologne, he learned of the outstanding warrant designating Townsell as possibly being armed and dangerous, and he then detained Townsell for further investigation. He testified further that while he awaited verification of whether Townsell was extraditable, he conducted a canine sweep of the exterior of Townsell's vehicle. The trial court subsequently found that Leverton's detention was not unreasonably long in duration, concluding that the canine sweep was permissibly completed before the conclusion of the traffic stop.

In deference to the trial court's sound discretion, we cannot say that Leverton's detention was unreasonably long; rather, under the totality of the circumstances, the evidence supports the finding that in conducting the canine sweep, Officer Leverton acted reasonably and "diligently pursued a means of investigation that was likely to confirm or dispel [his] suspicions quickly." *Kenner*, 703 N.E.2d at 1127-28. As such, we find no Fourth Amendment violation stemming from Officer Leverton's detention of Townsell and his decision to conduct a canine sweep before the completion of the traffic stop.

c. Probable Cause to Search

Next, Townsell argues that Officer Leverton lacked probable cause to search his car. The "automobile exception" to the warrant requirement allows police to search a vehicle without obtaining a warrant if they have probable cause to believe evidence of a

crime will be found in the vehicle. *Hobbs*, 933 N.E.2d at 1285. "Facts necessary to demonstrate the existence of probable cause for a warrantless search are not materially different from those which would authorize the issuance of a warrant if presented to a magistrate." *Masterson v. State*, 843 N.E.2d 1001, 1004 (Ind. Ct. App. 2006) (quoting *Gibson v. State*, 733 N.E.2d 945, 952 (Ind. Ct. App. 2000)). "Probable cause to issue a search warrant exists where the facts and circumstances would lead a reasonably prudent person to believe that a search would uncover evidence of a crime." *Masterson*, 843 N.E.2d at 1004-05.

Leverton also testified that Rex alerted to the presence of the narcotics from both sides of the vehicle. He testified that he has attended canine and criminal interdiction schools; has made "hundreds" of drug arrests; has undergone training to detect narcotics; and has received annual National Narcotics Detector Dog Association (NNDDA) certifications with his canine partners since 2001. (Tr. 165). Leverton's detection of the raw marijuana odor, coupled with Rex's positive alerts to the presence of contraband inside Townsell's vehicle and Townsell's evasive conduct, supplied the probable cause necessary for further police investigation of the contents of Townsell's vehicle. *See Maryland v. Dyson*, 527 U.S. 465, 466-67, 119 S.Ct. 2013, 2014, 144 L.Ed.2d 442, 445 (1999) (Police officers need not obtain a search warrant before searching a vehicle they have probable cause to believe contains illegal drugs.). *See also Kenner*, 703 N.E.2d at 1125 (canine sweep provided probable cause that the vehicle contained illicit drugs where

the narcotics-trained dog positively alerted to the presence of contraband inside the defendant's vehicle).

Based upon the foregoing, we conclude that the warrantless search of Townsell's vehicle did not violate his Fourth Amendment rights. We regard Townsell's challenge to Officer Leverton's testimony as an invitation that we resolve the conflict between their testimony in his favor; this we cannot do. *See Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001). The trial court did not abuse its discretion in admitting evidence.

2. Sufficiency

Lastly, Townsell argues that the State failed to prove that he knowingly or intentionally possessed the marijuana that was recovered from his car, because the marijuana was not found on his person. We cannot agree.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom, and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*.

Possession of contraband can be characterized as either actual or constructive. *Henderson v. State*, 715 N.E.2d 833, 835 (Ind.1999). Because police did not find the marijuana on Townsell's person, the State was required to prove that he constructively possessed the contraband. A defendant has constructive possession of drugs when

evidence demonstrates that the defendant has both (1) the intent to maintain dominion and control over the drugs and (2) the capability to maintain dominion and control over the drugs. *Gee v. State,* 810 N.E.2d 338, 340 (Ind. 2004).

To establish that the defendant was capable of maintaining dominion and control, the State must demonstrate that the defendant was able to reduce the contraband to his personal possession. *Iddings v. State,* 772 N.E.2d 1006, 1015 (Ind. Ct. App. 2002), *trans. denied.* Here, because the contraband was found in the console located immediately next to Townsell's driver's seat, he does not dispute that he was capable of maintaining dominion and control of the marijuana. Rather, he contends that he lacked the intent to do so.

To prove the element of intent, the State must demonstrate the defendant's knowledge of the presence of the contraband. *Donnegan v. State,* 809 N.E.2d 966, 976 (Ind. Ct. App. 2004), *trans. denied.* Where control of the premises is non-exclusive, knowledge may be inferred from evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. *Holmes v. State*, 785 N.E.2d 658, 660-62 (Ind. Ct. App. 2003). However, where, as here, the accused has exclusive dominion and control of the premises on which the contraband is found, an inference is permitted that he or she knew of the presence of the contraband and was capable of controlling it. *Richardson v. State,* 856 N.E.2d 1222, 1228 (Ind. Ct. App. 2006). Such is the case here.

At trial, the State relied upon Townsell's exclusive control of the vehicle. The record reveals that Townsell purchased the vehicle approximately one week prior to his arrest. He was the lone occupant of the vehicle at the time of the traffic stop. Further, Officer Leverton testified as to the strong odor of marijuana that emanated from Townsell's vehicle even with the window partially open, which odor intensified when Leverton opened the door of the vehicle, despite Townsell's attempt to mask it with fragrance. In light of the foregoing facts, we find that the jury could reasonably infer that Townsell had knowledge of the presence of the 106.62 grams of marijuana in his center console. *See Whitney v. State*, 726 N.E.2d 823, 826 (finding that the jury could reasonably infer that the pervasive odor of marijuana was readily detectable by the defendant and that he therefore had knowledge of its presence). We regard Townsell's claims that he had not inspected the center console since he purchased the vehicle, and that the center console was locked at the time of Leverton's search, as nothing more than invitations that we should reweigh the evidence, which we cannot do. *See Fought*, 898 N.E.2d at 450.

Affirmed.

BRADFORD, J., and BROWN, J., concur.