MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Leeland Paul Runkel,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 3, 2023

Court of Appeals Case No. 23A-CR-99

Appeal from the Blackford Superior Court

The Honorable John Nicholas Barry, Judge

Trial Court Cause No. 05D01-2203-F6-121

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] Leeland Paul Runkel appeals his convictions, following a jury trial, for Level 6 felony possession of methamphetamine, Class A misdemeanor possession of marijuana, and Class B misdemeanor possession of paraphernalia. He asserts that the trial court erred in denying his motion to suppress evidence found during a warrantless stop of the vehicle he was driving and that the evidence presented at trial was insufficient to prove that he possessed the items found in the vehicle.

[2] We affirm.

Facts & Procedural History

[3] At 12:40 a.m. on April 4, 2021, Blackford County Sheriff's Deputy Zach Stephens conducted a traffic stop of a pickup truck in Hartford City for an obstructed license plate caused by a ball hitch that was "bolted to the bumper" and "sticking up right in front of the license plate." *Transcript* at 31. Runkel was the driver and only occupant in the vehicle. Deputy Stephens explained to Runkel why he had been pulled over, and Runkel provided a valid driver's license and registration. The registration check revealed that the vehicle was registered to a Dixie Stover, who had the same address as Runkel. As Deputy Stephens was checking the documents, other officers arrived on the scene.

[4] Upon returning the documents to Runkel, Deputy Stephens asked Runkel to step out of the vehicle as Deputy Stephens suspected Runkel may have been impaired, based on Runkel's behavior during their conversations. Initially,

Runkel refused to exit the pickup but, upon further requests, complied. Following some field sobriety tests, Deputy Stephens handed Runkel's keys back to him but requested that Runkel find someone else to drive him home as Runkel had reported being very tired from work, and Deputy Stephens "didn't feel like it was safe for him to drive home." *Id*. at 37.

[5] Runkel returned to the pickup, retrieved his phone, and made a call. While talking on the phone, Runkel walked a short distance, toward the front of his vehicle, leaving the driver's side door open. At that time, Deputy Stephens was standing outside of his patrol vehicle. While Runkel was still on the phone, Deputy Stephens walked back toward the truck with a flashlight and observed, in a compartment of the open door, what he believed through training and experience to be a methamphetamine pipe with residue in it. Deputy Stephens advised the other officers what he had seen and then placed Runkel in handcuffs. Runkel denied knowledge of the pipe and told Deputy Stephens that he (the deputy) "must have put it there." *Transcript* at 49. Deputy Stephens asked Runkel if there was methamphetamine in the truck and Runkel replied, "no but there might be a little weed." *Id*. at 72. Officers searched the vehicle, finding suspected marijuana and methamphetamine.

[6] On March 29, the State charged Runkel with possession of Level 6 felony methamphetamine (Count 1), Class A misdemeanor possession of marijuana (Count 2), and Class B misdemeanor possession of paraphernalia (Count 3). The matter proceeded to jury trial on November 16, 2022.

[7] Deputy Stephens testified that, on the night in question, the pickup truck was traveling in front of him. When asked if he was able to see the license plate, Deputy Stephens responded, "Not fully no." *Id*. at 31. A photograph that Deputy Stephens took of the license plate at the conclusion of the traffic stop, and while he was positioned behind the truck and "crouched down" to be at a level that he would have been in his police vehicle, was admitted at trial without objection. *Id*. at 32; *State's Exhibit 1*. Deputy Stephens acknowledged that, looking at the picture, he could "for the most part" read the numbers on the license plate, but explained that, when looking at the plate while driving in his police car, the license plate was obstructed and that is why he stopped the vehicle. *Transcript* at 33. Deputy Stephens acknowledged that, at the time he saw the meth pipe, Runkel had been told he was free to leave and was on the phone calling a friend.

[8] During trial, and out of the jury's presence, Runkel's counsel orally moved to suppress the evidence that was found in the vehicle, arguing that (1) the initial stop was not a valid stop because the license plate was not actually obstructed, and (2) because Deputy Stephens was using a flashlight at the time he observed what he believed to be a methamphetamine pipe, it was not in plain view and, rather, constituted a search for which there was no probable cause. Deputy Stephens explained that he did not run a license plate check while following in his vehicle – and instead ran it after stopping the pickup and getting the paper registration from Runkel – because he could not fully read one or more of the numbers on the plate when he was behind it. The State urged that the stop was

justified, as Deputy Stephens stated he could not fully see the plate while he was driving in his police vehicle, and that the suspected pipe was in plain view from the outside of the truck. The trial court denied the motion to suppress, explaining that Deputy Stephens was "in a place that he had a right to be," namely "on a public road after a traffic stop," when he saw what he believed to be a methamphetamine pipe in the open door. *Id*. at 44. Further, the court did not consider the "use of a flashlight [] to create more light" to be a search. *Id*.

[9] Trial resumed, and Deputy Stephens testified that he recovered a "Tylenol or something bottle with . . . black tape around it" – also described as a "little white vile [sic]" – from "down on the floor board" in the front, near the "console area" of the truck. *Id*. at 52, 53, 54, 56. The bottle contained a white crystal substance that was later determined to be methamphetamine. Laying near the white vial was a hoodie sweatshirt, inside of which officers found a baggie that contained what was later determined to be marijuana. *Id*. at 56. The items found in the truck were admitted over Runkel's objection. On cross-examination, Deputy Stephens agreed that there were "a lot of items in the floorboard" area, including miscellaneous food wrappers and trash, the sweatshirt, and a cigarette pack. *Id*. at 67.

[10] Upon a juror's question, the court asked Deputy Stephens if he knew either the size of the sweatshirt or who it belonged to. The deputy testified that he did not, but testified to his opinion that "[i]t was a fairly large sweatshirt." *Id*. at 105. Deputy Stephens had previously testified on direct examination that he

knew the truck's registered owner, Stover, who he described as an "[e]lderly female" about five feet tall and "maybe a hundred and five pounds." *Id.* at 36.

[11] The jury found Runkel guilty as charged, and the trial court later sentenced him to an aggregate sentence of two and one-half years. Runkel now appeals. Additional facts will be provided as needed.

Discussion & Decision

I. Admissibility of Evidence Found During Search

[12] During trial, Runkel made an oral motion to suppress the items found in the vehicle, which the trial court denied. He now appeals following a completed trial. Under these circumstances, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Cox v. State*, 160 N.E.3d 557, 560 (Ind. Ct. App. 2020). We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. *Bell v. State*, 81 N.E.3d 233, 236 (Ind. Ct. App. 2017), *trans. denied*. We also consider the uncontested evidence favorable to the defendant. *Id*.

[13] However, "when an appellant's challenge to such a ruling is predicated on an argument that impugns the constitutionality of the search or seizure of the evidence, it raises a question of law, and we consider that question de novo." *Guilmette v. State*, 14 N.E.3d 38, 41 (Ind. 2014).

> In other words, when a trial court has admitted evidence alleged to have been discovered as the result of an illegal search or seizure, we generally will assume the trial court accepted the evidence presented by the State and will not reweigh that evidence, but we owe no deference as to whether that evidence established the constitutionality of a search or seizure.

Johnson v. State, 992 N.E.2d 955, 957 (Ind. Ct. App. 2013), *trans. denied*.

[14] Because a traffic stop is a seizure under the Fourth Amendment, law enforcement must possess at least reasonable suspicion that a traffic law has 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.'" *Miller v. State*, 188 N.E.3d 871, 875 (Ind. 2022) (quoting *Meredith*, 906 N.E.2d at 870). Ind. Code § 9-18.1-4-4(b) requires a license plate be "free from foreign materials and in a condition to be clearly legible" and "not obstructed or obscured by . . . accessories, or other opaque objects."

[15] Runkel contends that the pickup's license plate was not obstructed, and thus the stop was not valid. In support, he relies on the photograph of the license plate that Deputy Stephens took, while crouching behind the truck, at the end of the traffic stop. Deputy Stephens acknowledged at trial that, for the most part, he could see the plate in the photograph. However, Runkel overlooks Deputy Stephens's testimony that, when following the truck in his police vehicle, he could not fully see the plate due to the obstruction. Runkel's claim that the

plate was not obstructed is contrary to Deputy Stephens's testimony and is a request to reweigh the evidence, which we will not do.

[16] Next, Runkel asserts that, even if the initial reason for the stop was valid, Deputy Stephens violated Runkel's rights by conducting a warrantless search of his vehicle "after the initial traffic stop was concluded." *Appellant's Brief* at 9. More specifically, Runkel argues that he had been told he was free to leave and was making a call to a friend – and thus the original encounter had completely ended – by the time Deputy Stephens walked up to the truck and, using a flashlight, discovered the suspected contraband. Runkel argues that, therefore, Deputy Stephens was required to have "reasonable suspicion to approach the vehicle of Mr. Runkel a second time." *Id*.

[17] As the State points out, even if the traffic stop had ended by the time Deputy Stephens walked over to the truck, his observation of what he believed was a methamphetamine pipe did not implicate Runkel's Fourth Amendment rights because the object was in open view. Our courts have distinguished the concept of "open view" from "plain view":

> The plain view doctrine is recognized as an exception to the search warrant requirement. The concept of "plain view" is used when an officer is making a lawful search in a constitutionally protected area and discovers an item in plain view.
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> * * *
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> Often confused with the plain view doctrine is the concept of "open view," which is used in situations in which a law

> enforcement officer sees contraband from an area that is not constitutionally protected, but rather is in a place where the officer is lawfully entitled to be. In such situations, anything that is within "open view" may be observed without having to obtain a search warrant because making such "open view" observations does not constitute a search in the constitutional sense.

McAnalley v. State, 134 N.E.3d 488, 500-01 (Ind. Ct. App. 2019) (quoting *Justice v. State*, 765 N.E.2d 161, 164-65 (Ind. Ct. App. 2002), *clarified on reh'g*), *trans. denied* (internal citations omitted).[1]

[18] Here, after being told he was free to leave, Runkel remained on the scene of the original stop, talking on his phone steps from the truck with the door fully open. Deputy Stephens was standing in the road – i.e., a place he was lawfully entitled to be – when he saw the suspected pipe in the open door of the pickup. We agree with the trial court that his use of a flashlight at 12:40 a.m. to provide light did not thereby transform his actions into a search. *See Boggs v. State*, 928 N.E.2d 855, 864 (Ind. Ct. App. 2010) (officer's use of flashlight to look into defendant's vehicle that was parked in driveway did not transform officer's observations into a search), *trans. denied*. The trial court did not err when it

[1] The *Justice* court further recognized that "in order to lawfully seize items in 'open view,' it may be necessary to obtain a search warrant or be able to justify a warrantless seizure under an exception to the warrant requirement." 765 N.E.2d at 165. To justify a warrantless seizure from an automobile, an officer must have probable cause to believe that the property to be seized is connected to criminal activity. *Id.* at 166. "Probable cause requires only that the information available to the officer would lead a person of reasonable caution to believe the items could be useful as evidence of a crime." *Id.* Here, Deputy Stephens testified that, based on his training and experience, the illegal nature of the object he saw in the open door was immediately apparent to him.

admitted into evidence the items found in the pickup truck following Deputy Stephens's discovery of contraband in open view.

II. Sufficiency of the Evidence

[19] When reviewing sufficiency of evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the trial court's decision. *Parks v. State*, 113 N.E.3d 269, 272 (Ind. Ct. App. 2018).

> It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when we are confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the trial court's decision.

Id. at 272-73 (citations omitted).

[20] In order to convict Runkel as charged, the jury must have found, beyond a reasonable doubt, that he knowingly or intentionally possessed methamphetamine, marijuana, and paraphernalia. *See* Ind. Code §§ 35-48-4-6.1(a), -11(a)(1), -8.3(b)(1). Possession can be either actual or constructive. *Parks*, 113 N.E.3d at 273. Actual possession occurs when a person has direct physical control over the item. *Griffin v. State*, 945 N.E.2d 781, 783 (Ind. Ct. App. 2011). Constructive possession occurs when the person has (1) the

capability to maintain dominion and control over the item and (2) the intent to maintain dominion and control over it. *Gray v. State,* 957 N.E.2d 171, 174 (Ind. 2011). Runkel argues that "there is zero evidence that tends to show Mr. Runkel either actually or constructively possessed the items charged." *Appellant's Brief* at 12. Because Runkel did not have direct physical control over the challenged items, we examine whether the State established that he constructively possessed them.

[21] With regard to the "capability" element of constructive possession, the State must show "that the defendant is able to reduce the controlled substance to the defendant's personal possession." *Shorter v. State*, 151 N.E.3d 296, 305 (Ind. Ct. App. 2020), *trans. denied*. In order to satisfy the intent element, the State must demonstrate that the individual had knowledge of the presence of the contraband. *Id*. at 306; *Griffin*, 945 N.E.2d at 784. In cases where the accused has exclusive possession of the premises on which contraband is found, an inference is permitted that the person knew of its presence and was capable of controlling it. *Griffin*, 945 N.E.2d at 784.

[22] When possession of the premises is not exclusive, the inference is not permitted absent "evidence of additional circumstances pointing to the [accused]'s knowledge of the presence of the contraband." *Shorter*, 151 N.E.3d at 306. Our Supreme Court has identified a non-exhaustive list of "additional circumstances" that bear on whether an individual knew of the presence of contraband, for purposes of constructive possession:

> (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant.

Gray, 957 N.E.2d at 175. "The State is not required to prove all additional circumstances when showing that a defendant had the intent to maintain dominion and control over contraband." *Canfield v. State*, 128 N.E.3d 563, 573 (Ind. Ct. App. 2019), *trans. denied*. Rather, "the State is required to show that whatever factor or set of factors it relies upon in support of the intent prong of constructive possession, those factors or set of factors must demonstrate the probability that the defendant was aware of the presence of the contraband and its illegal character." *Gee v. State*, 810 N.E.2d 338, 344 (Ind. 2004).

[23] Here, Runkel was the driver and sole occupant of the car, and thus he had exclusive possession of it. *See Whitney v. State*, 726 N.E.2d 823, 826 (Ind. Ct. App. 2000) (trial court could reasonably conclude defendant "was in exclusive possession of the vehicle" where he was the driver and sole occupant). To the extent that Runkel claims that his possession was not exclusive because the car was registered to Stover, "[o]ur Supreme Court has stated that in the context of exclusive possession, the issue is not ownership but possession." *Jones v. State*, 924 N.E.2d 672, 675 (Ind. Ct. App. 2010) (citing *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)); *see also Whitney*, 726 N.E.2d at 826 (rejecting defendant's

argument that, although the sole driver and occupant of the vehicle, he was not in exclusive possession of it because he had borrowed it).

[24] Runkel argues that there was "no evidence presented" to show that he had knowledge of the challenged items except that he "happened to be in the same vehicle" as them. *Appellant's Brief* at 7, 12. We disagree and find that additional circumstances support an inference that Runkel knew of the presence of the contraband. For instance, evidence was presented that this was not the only occasion that Runkel had driven the vehicle, as Runkel mentioned to Deputy Stephens that he "had been pulled over before" because the license plate light was too dim and that he "tries to keep it clean" so "they can see the license plate." *Transcript* at 49. Runkel also acknowledged to Deputy Stephens his awareness that there "may be a little weed" in the truck, which in fact there was. *Id*. at 72. The baggie of marijuana was discovered inside a pocket of a sweatshirt that was on the front floorboard area. The sweatshirt was "fairly large," and Stover was not, suggesting that it did not belong to her. *Id*. at 105. The sweatshirt was near the pill bottle/vial that contained methamphetamine, and the methamphetamine pipe was in the driver's door, in close proximity to Runkel.

[25] In light of these circumstances, it was reasonable for the factfinder to find that Runkel constructively possessed the methamphetamine pipe, marijuana, and methamphetamine. Accordingly, the State presented sufficient evidence to support the convictions for Level 6 felony possession of methamphetamine,

Class A misdemeanor possession of marijuana, and Class B misdemeanor possession of paraphernalia.

[26] Judgment affirmed.

May, J. and Foley, J., concur.