

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 30th day of January, 2020.

Present: Lemons, C.J., Goodwyn, Mims, Powell, Kelsey, and McCullough, JJ., and Russell, S.J.

Talik R. King, s/k/a Talik
Rashaun King,

Appellant,

against Record No. 190424
 Court of Appeals No. 0434-18-2

Commonwealth of Virginia,

Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the decision below should be affirmed. Talik R. King was charged with possession of heroin, in violation of Code § 18.2-250. Following a bench trial, King moved to strike the evidence against him. The trial court overruled the motion, found him guilty, and imposed a sentence of ten years. The court suspended all but 30 days of that sentence. He appealed his conviction to the Court of Appeals of Virginia, again contending that the evidence was insufficient as a matter of law. A judge of the Court of Appeals concluded otherwise, finding the evidence sufficed to uphold his conviction. Constrained by the standard of review, we likewise conclude that the evidence presented at trial was sufficient for conviction.

“Since the Commonwealth prevailed in the trial court, we review the evidence and all reasonable inferences arising therefrom in the light most favorable to the Commonwealth.” *Graham v. Commonwealth*, 250 Va. 79, 81 (1995). “This Court will only reverse the judgment of the trial court if the judgment ‘is plainly wrong or without evidence to support it.’ ‘If there is evidence to support the convictions, the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the factfinder at trial.’” *Clark v. Commonwealth*, 279 Va. 636, 640-41 (2010) (citations omitted).

Officer Robert Miller of the Petersburg Police Department, while driving in a marked police car, noticed King because he appeared to be speeding. King was the driver and sole occupant of the car. Officer Miller followed King for less than a minute. King parked his vehicle in front of a house. Officer Miller parked his vehicle and approached King. Officer Miller told King he was driving too fast. King responded by asking Officer Miller why he was “f**king with him” and said he was not driving that fast.

King then walked up to the house and Officer Miller could see him engage in a brief conversation with an 11-year-old girl. It appeared to Officer Miller that the girl who answered the door was nervous and did not recognize King. King told her he was her cousin. She let him in. Officer Miller decided to inquire to make sure the girl was okay, so he knocked on the door. The girl answered and said King was her cousin. She knew his first name was Talik. King volunteered his last name. Satisfied with these answers, Officer Miller returned to his car.

Once back in his car, Officer Miller ran a warrants check. King had an outstanding arrest warrant. Officer Miller placed King under arrest without incident. Officer Miller obtained the keys to the car King had been driving. As Officer Miller approached the car, he could detect a “very strong” odor of burnt marijuana emanating from the vehicle. While searching the car, Officer Miller opened the center console. Inside, he could immediately see a clear plastic bag containing heroin and another plastic bag deeper into the center console that contained marijuana.

In challenging his conviction, King points out the absence of evidence commonly used to secure a conviction. He did not make any incriminating statements. No fingerprints or DNA evidence linked King to the drugs found in the vehicle. Additionally, the Commonwealth offered no evidence concerning the ownership or regular use of the vehicle. He also contends that the evidence does not establish his familiarity with the smell of marijuana. King argues that this record establishes his proximity to the illegal drugs, but nothing more.

To establish criminal possession of a controlled substance, the evidence must demonstrate beyond a reasonable doubt that the defendant “intentionally and consciously possessed [the substance] with knowledge of its nature and character.” *Young v. Commonwealth*, 275 Va. 587, 591 (2008).

We acknowledge the longstanding principle that proximity alone to an illegal substance is not sufficient to convict. *Coward v. Commonwealth*, 48 Va. App. 653, 657 (2006). These facts

show more than mere proximity, however. King was traveling alone in the vehicle. When Officer Miller approached the car, he noticed a strong smell of freshly burned marijuana emanating from the vehicle. A factfinder could plausibly infer from this circumstance that King, the sole occupant of the vehicle, had recently smoked marijuana in the vehicle. A search of the vehicle yielded a baggie containing marijuana. This marijuana was located in the center console beneath a baggie containing heroin. A factfinder could sensibly draw the inference that the marijuana in the vehicle was the marijuana that King, the lone occupant of the vehicle, had freshly smoked—as opposed to drawing the inference that this marijuana was a separate stash left behind by an unknown stranger. Furthermore, if King was aware of the nature and presence of the marijuana in the center console, and that he exercised dominion and control over this illegal substance, the factfinder could likewise deduce that he was aware of the presence and character of the heroin that was located above the marijuana in the center console.

Applying the standard of review, as we must, we conclude that the facts presented were sufficient for a rational trier of fact to find “the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Accordingly, we affirm the judgment of the Court of Appeals of Virginia.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of the City of Petersburg.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read 'DBRW', followed by a horizontal line extending to the right.

Clerk