MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.S.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

July 8, 2022

Court of Appeals Case No. 21A-JV-2392

Appeal from the Marion Superior Court

The Honorable Geoffrey Gaither, Judge

Trial Court Cause No. 49D09-2107-JD-6296

Robb, Judge.

Case Summary and Issues

[1] D.S. was adjudicated a delinquent child for committing dangerous possession of a firearm, a Class A misdemeanor. D.S. appeals the adjudication, raising three issues for our review that we consolidate and restate as: 1) whether the juvenile court erred in admitting evidence obtained as a result of an allegedly unconstitutional seizure; 2) whether there was sufficient evidence to support the adjudication; and 3) whether the case should be remanded for the dispositional order to be corrected. We conclude the juvenile court did not err in admitting evidence because neither the Fourth Amendment to the United States Constitution nor Article 1, section 11 of the Indiana Constitution was violated, and we further conclude there was sufficient evidence that D.S. constructively possessed a firearm. Therefore, we affirm D.S.'s adjudication as a delinquent. We also agree with D.S. and the State that the dispositional order and Chronological Case Summary ("CCS") contain errors and we therefore remand for the juvenile court to correct those errors as explained herein.

Facts and Procedural History

[2] On the night of July 26, 2021, Officers Austin Kirby and Dante Granger of the Indianapolis Metropolitan Police Department were on duty in full uniform and driving fully marked police vehicles when they responded to a dispatch reporting shots fired from the second-floor balcony of apartment J9 at a complex on East 38th Place. The building in which apartment J9 is situated has four apartments on the first floor and four apartments on the second floor.

The exterior door to the building opens into a two-story common area with stairs to the second floor to the left of the door. The second-floor hallway is open to the common area below and the doors to all second-floor apartments are visible from the first-floor common area. The anonymous call that reported the shots provided no further details as to the number, age, or description of the suspects.

[3] The officers arrived at the apartment building within minutes of receiving the dispatch. Walking toward the building, Officer Kirby observed one male sitting outside and then saw several other males start to exit the building. When those individuals saw Officer Kirby, they immediately turned and went back inside. As Officer Kirby approached the open door, he saw several males in the second-floor hallway trying to get into apartment J9. He testified that he "heard a heavy item hit the floor . . . as I approached the doorway [and t]hat's when I drew my weapon." Transcript of Evidence, Volume II at 27. Officer Kirby immediately told the males to "put your f**king hands up now!" The Exhibits – Media/Audio, Volume II at 2 (State's Exhibit 6, DVD at 0:02:04). Standing in the open doorway, Officer Kirby saw several males in the upstairs hallway with their backs to him. With his weapon drawn, Officer Kirby commanded the males to get on the ground and show their hands. "[O]nly some of them were putting their hands up[,]" so Officer Kirby more aggressively commanded them to do so. Tr., Vol. II at 17; Ex., Vol. II at 2 (State's Ex. 6, DVD at 0:02:20 (Officer Kirby yelling, "Put your f**king hands up before you get shot!")). Officer Granger also drew his weapon for "officer

safety" because "it was obvious[] that the kids were attempting to avoid" the officers. Tr., Vol. II at 61.[1] Eventually, all the males complied and were then ordered to come down the stairs one at a time with their hands raised and were each handcuffed.[2]

[4] The officers had their guns trained on D.S. and his companions for approximately three and one-half to four minutes from the time Officer Kirby drew his weapon until all the males had exited the building. During that time, additional officers arrived, and Officer Kirby and other officers loudly and repeatedly expressed their orders for the males to keep their hands up. Twice, someone inside apartment J9 opened the door and was instructed to shut the door and go back inside.

[5] After the males were handcuffed, Officer Kirby went upstairs and found a firearm (Taurus G2c 9mm) on the floor at the top of the stairs and a second firearm (Smith & Wesson M&P Shield 9mm) in the fire extinguisher box on the wall to the left of the door to apartment J9. During the three-to-four minutes the males were on the second floor, Officer Kirby had seen D.S. standing directly in front of that fire extinguisher box and had also seen D.S. sitting near

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[1] Officer Granger's attention was primarily directed to the individual who was outside the apartment building and who was also ordered to get on the ground. After this individual laid on the ground, Officer Granger saw his arms move and heard the sound of metal hitting and sliding across the ground. A later search of the area discovered a firearm under a pickup truck in the parking lot near where the individual had been sitting.

[2] In all, one adult and six juveniles were ultimately arrested.

the top of the stairs. However, he did not see D.S. holding a gun, throwing a gun, or hiding a gun. No fingerprints or DNA were found on the firearms.

[6] IMPD Officer Mitchell Hubner, who had responded to the scene when backup was requested, took D.S. to his patrol car "because of the crowd that had . . . gathered" and searched him incident to arrest. *Id.* at 71. Officer Hubner found five live rounds of 9mm ammunition that had "a gold tip with a greyish steel casing" in D.S.'s left front pants pocket and one live round of 9mm ammunition that was "red tipped [and] totally different from the other five" in D.S.'s right front pants pocket. *Id.* at 74. Officer Huber described D.S.'s demeanor when he found the bullets as seeming surprised, "like a, 'oh, whoops forgot about those'" reaction. *Id.* at 72.

[7] The State filed a delinquency petition alleging D.S. had committed the delinquent act of dangerous possession of a firearm, a Class A misdemeanor, and carrying a handgun without a license, a Class A misdemeanor if committed by an adult. A fact-finding hearing was held at which D.S. moved to suppress[3] "any further testimony or evidence" after Officer Kirby testified he had unholstered his gun and ordered the males to get on the floor and raise their hands, arguing the investigatory stop converted to a warrantless arrest requiring probable cause at that point. *Id.* at 17. The juvenile court heard argument on

[3] D.S.'s counsel informed the court at the beginning of the hearing that D.S. would be making a motion to suppress, and the parties had agreed to litigate that issue during the fact-finding hearing rather than at a pre-trial hearing. *See id.* at 4.

the motion and denied it. The fact-finding hearing continued with the juvenile court noting D.S.'s continuing objection to the admission of evidence. Officers Kirby, Granger, and Hubner testified to the events described above.

[8] At the conclusion of the hearing, the juvenile court announced its decision:

> The Court: . . . Court having heard the evidence in this matter and testimony presented, as to . . . Count I, dangerous possession of a firearm a class A misdemeanor, I'm going to enter a true finding. Count II, carrying a handgun without a license, class A misdemeanor, I'm going to enter a true finding.
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> * * *
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> [Defense counsel]: I would object on the basis of double jeopardy.
>
> The Court: Yeah . . . for the purpose of disposition I'm going to merge the matters and . . . actually let me – let me back up and show the true finding as to Count I and close out Count II.

Id. at 85. Following a dispositional hearing, the juvenile court issued a dispositional order stating:

> The child having entered an admission to have [sic] committed of [sic] the delinquent act(s) alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. To wit:
>
> a) Dangerous Possession of a Firearm MA.
>
> b) Carrying a Handgun Without a License MA.

Appealed Order at 1-2.[4] The juvenile court discharged D.S. to the custody of Transitions Academy to participate in services there and closed the case. D.S. now appeals.

Discussion and Decision

I. Admission of Evidence

A. Standard of Review

[9] The juvenile court has broad discretion in ruling on the admissibility of evidence. *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). However, when a challenge to the admissibility of evidence is predicated on the constitutionality of a search or seizure, our review is de novo. *Id*. Similarly, determinations of reasonable suspicion and probable cause are reviewed de novo. *Myers v. State*, 839 N.E.2d 1146, 1150 (Ind. 2005).

B. Fourth Amendment

[10] D.S. contends his warrantless arrest was unreasonable under the Fourth Amendment to the United States Constitution because the anonymous call did not give rise to probable cause, D.S.'s behavior upon seeing police did not constitute flight, and when responding officers held D.S. at gunpoint, the interaction went beyond a permissible investigatory stop and became an arrest

[4] The August 16, 2021, entry on the CCS for the fact-finding hearing also states that D.S. was adjudicated delinquent on both counts. *See* Appellant's Appendix, Volume II at 8.

requiring probable cause. He therefore argues the juvenile court abused its discretion when it admitted evidence obtained as a result of an unlawful arrest.

[11] The Fourth Amendment protects against unreasonable searches and seizures. *Combs v. State*, 168 N.E.3d 985, 991 (Ind. 2021), *cert. denied*, 142 S.Ct. 1125 (2022). The touchstone of a Fourth Amendment analysis "is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) (internal quotation omitted). A warrantless search or seizure is per se unreasonable, and the State must prove that one of the well-delineated exceptions to the warrant requirement applies. *Combs*, 168 N.E.3d at 991.

[12] Two such exceptions are the investigatory, or *Terry*, stop and a warrantless arrest with probable cause. In a *Terry* stop, an officer may stop and briefly detain a person for investigative purposes if the officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "A *Terry* stop, thus, is permissible without a warrant or probable cause if the officer has reasonable suspicion to justify the stop." *Kelly v. State*, 997 N.E.2d 1045, 1051 (Ind. 2013). Alternatively, an officer may arrest a person if the officer has probable cause the person has committed a criminal act. *Id.* "Probable cause to arrest exists where the facts and circumstances within the knowledge of an officer are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to

be arrested committed it." *State v. Stevens*, 33 N.E.3d 1200, 1204-05 (Ind. Ct. App. 2015), *trans. denied*.

[13] The parties agree (at least for the sake of argument) the encounter began as an investigatory stop. *See* Brief of Appellant at 26 ("Assuming without agreeing D.S.'s actions were sufficient to justify an investigatory stop, his actions did not justify an arrest[.]"); Brief of Appellee at 13 ("[L]aw enforcement had reasonable suspicion to conduct an investigatory stop of D.S. and to detain him."). And indeed, the phone call reporting shots fired off the balcony of a specific apartment coupled with the presence of several young men at that address who tried to avoid the officers by retreating to that same apartment warranted a brief investigatory stop. But D.S. contends that once the officers pulled their guns, the stop was converted into an arrest for which they did not have probable cause. The State argues an arrest was effectuated only after officers found guns near where D.S. had been, at which point they had probable cause for his warrantless arrest.

[14] In *Kelly*, our supreme court acknowledged the "blurr[y]" line between a *Terry* stop and a full-blown custodial arrest. 997 N.E.2d at 1051. "The typical *Terry* stop is a relatively brief encounter" whereas "an arrest occurs when a police officer interrupts the freedom of the accused and restricts his liberty of movement." *Id.* (internal quotations omitted). As part of a valid *Terry* stop, the investigating officer is entitled to take reasonable steps to ensure his or her own safety, such as ordering a person out of a vehicle, *Reinhart v. State*, 930 N.E.2d 42, 46 (Ind. Ct. App. 2010), or placing a person in handcuffs, *Payne v. State*, 854

N.E.2d 1199, 1204-05 (Ind. Ct. App. 2006), *trans. denied*. But "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).

[15] D.S. analogizes his case to *Kelly* and *Reinhart*, among others. In *Kelly*, the defendant was a passenger in her own car that was being driven by her cousin to a drug deal arranged by a private citizen that the citizen then reported to police. Police approached the vehicle with their guns drawn, ordered the driver and the defendant to exit the vehicle, and immediately handcuffed them. The police then searched the defendant's car and subjected her to questioning. During the questioning, the defendant asked if she could leave, and the officer told her "to sit down before he put her down." *Kelly*, 997 N.E.2d at 1051 (internal quotation marks and alterations omitted). Our supreme court held, "[T]hese circumstances, taken together, constitute an arrest that must be supported by probable cause." *Id.* The court further explained that the totality of the circumstances included "the stop at gunpoint, the cuffing, the search of the car, the tone and scope of the interrogation, and the refusal to allow [the defendant] to leave when she asked to do so." *Id.* at 1052 n.3. Ultimately, the court found the officers did not have probable cause to arrest the defendant and reversed the denial of her motion to suppress. *Id.* at 1052, 1055.

[16] Similarly, in *Reinhart*, a police officer stopped the defendant's vehicle to investigate a possible drunk driver. The officer drew his weapon and instructed the defendant to exit the vehicle. Still pointing his weapon at the defendant, the

officer ordered him to walk to the back of the vehicle and get on his knees with his hands on the back of his head and then ordered the defendant to lie flat on his stomach with his arms out to the side. After several minutes, a second officer arrived, handcuffed the defendant, and conducted a pat-down search. We held that "what may have begun as a *Terry* investigatory stop was quickly converted to an arrest requiring probable cause." *Reinhart*, 930 N.E.2d at 47.[5]

[17] In so holding, the *Reinhart* court discussed *Willis v. State*, 907 N.E.2d 541, 545 (Ind. Ct. App. 2009), a case in which we had concluded an investigatory stop was *not* converted to an arrest even though officers held the defendant at gunpoint and handcuffed him. *Reinhart* described *Willis* as follows:

> [P]olice officers responded to a dispatch of an altercation between two African-American males, one of whom was reported to have been holding a gun to the head of the other. When officers arrived at the scene, they saw the defendant, who was African-American, standing on the sidewalk with another African-American male. Officers drew their guns, approached the men, ordered the men to kneel with their hands raised, and handcuffed the men before conducting pat-down searches for weapons. Under those facts, the police had a reasonable belief that the defendant was armed, and therefore we concluded that it would be unreasonable to expect a police officer to approach the suspect without his gun drawn because the risk to the officer's safety is simply too great. Similarly, the totality of the circumstances justified the use of handcuffs during the brief

[5] The defendant's motion to suppress was denied and the case proceeded to a bench trial at which the defendant objected to admission of evidence obtained following the stop of his vehicle. The objection was overruled, and the defendant was convicted of operating a vehicle while intoxicated and possession of marijuana. We reversed the convictions. *Id.* at 44-45, 48.

> detention *only* to permit the officers to determine if the suspect was, in fact, concealing a weapon.

Reinhart, 930 N.E.2d at 46-47 (citations omitted). The *Reinhart* court noted that the officers in *Willis* "faced unique circumstances quite distinguishable from those circumstances faced by the officers in the instant case." *Id.* at 46. In contrast, although the initial officer in *Reinhart* testified he was concerned for his safety, there was no evidence from which to reasonably infer the defendant was armed or dangerous and therefore, the officer's action of ordering the defendant to exit the vehicle at gunpoint was excessive. *Id.* at 47; *see Taylor v. State*, 464 N.E.2d 1333, 1335 (Ind. Ct. App. 1984) (agreeing with defendant that being held at gunpoint constituted an arrest under circumstances including that there was no reason to believe the defendant was armed).

[18] In *J.G. v. State*, this court addressed facts it described as falling "somewhere between those of *Reinhart* and *Willis* on the Fourth Amendment continuum." 93 N.E.3d 1112, 1122 (Ind. Ct. App. 2018), *trans. denied*, *abrogated on other grounds by K.C.G.*, 156 N.E.3d 1281 (Ind. 2020). Officers received a dispatch reporting suspicious persons pacing back and forth in front of a restaurant in a strip mall at closing time. The responding officer knew there had been several attempted robberies at that restaurant and in that area. Upon the officer's arrival, the owner of the restaurant told him two African American males wearing black jackets had run behind the strip mall. The responding officer relayed that information to other officers, one of whom spotted two African American juveniles wearing black jackets in a nearby apartment complex. That

officer told the males to stop and held them at gunpoint until other officers could arrive. He did so for his safety because there had been "a rash of robberies" in the area and he "didn't know if weapons were involved[.]" *Id.* at 1116. A second officer arrived and held the two juveniles at gunpoint while the first officer handcuffed them.

[19] We held the totality of the circumstances – the juveniles' suspicious behavior in a high crime area after midnight coupled with the fact the officer who stopped the juveniles was alone when he encountered them – justified holding them at gunpoint and handcuffing them while their suspicious behavior was investigated. Therefore, the "officers' use of force did not convert the investigatory stop into an arrest without probable cause" and the Fourth Amendment was not violated. *Id.* at 1122; *see also Billingsley v. State*, 980 N.E.2d 402, 406-07 (Ind. Ct. App. 2012) (acknowledging the "fine line" between a *Terry* stop and an arrest when the officer has drawn his weapon and concluding the decision is "dependent on whether the totality of the facts and circumstances before the officer at that time demonstrated a specific and reasonable belief that the suspect may be armed with a weapon"), *trans. denied*.

[20] This case, too, falls on the continuum between *Reinhart* and *Willis*, but is even more to the *Willis* side of the scale than *J.G.* Officers Kirby and Granger arrived at the apartment complex to investigate a report of shots fired from the balcony of apartment J9. Although the report offered no further details, upon arriving, the officers almost immediately encountered several people who started to exit the building before seeing the officers and retreating inside and up the stairs to

where apartment J9 was located. Officer Kirby heard a heavy object hit the floor and due to the males having their backs to him, he drew his weapon and ordered them to get on the ground and show their hands. Officer Granger also drew his weapon and expressed concern for officer safety due to the individuals' behavior. Once the individuals' hands were in sight, they were brought down from the hallway one-by-one and handcuffed. After clearing the hallway, Officer Kirby ascended the stairs and found two firearms.

[21] Given the totality of the circumstances – specifically the fact the officers were responding to a report of gunshots and therefore had reason to believe one or more of the males were armed, *see Willis*, 907 N.E.2d at 546, and were outnumbered which increased concern for officer safety, *see J.G.*, 93 N.E.3d at 1122 – we conclude it was reasonable for officers to hold the individuals, including D.S., at gunpoint until the situation in the upstairs hallway was under control and to handcuff them while they investigated the report that someone had fired a gun in the area.[6]

[6] We do acknowledge the officers' body camera footage and the officers' testimony present slightly different pictures – not from the standpoint of *what* occurred, which is consistent in both forms, but from the standpoint of how *quickly* it occurred. A matter of just seconds elapsed between Officer Granger seeing the males start to exit the building and drawing his weapon. Also, although the transcript records the aggressive words the officers used when instructing the males to put their hands up and get on the ground, the body camera footage also demonstrates the aggressive *tone* they repetitively used. Viewing both the paper record and the body camera footage, this is a closer call than if we had only the paper record. Nonetheless, for the reasons stated herein, namely the initial report of gunshots and the number of individuals at the scene, we find this particular encounter falls short of an unreasonable warrantless arrest.

C. Article 1, Section 11

[22] D.S. also contends his warrantless arrest was unreasonable under Article 1, section 11 ("section 11") of the Indiana Constitution. Section 11 must be liberally construed to protect Hoosiers from unreasonable police activity in private areas of their lives. *Marshall v. State*, 117 N.E.3d 1254, 1261 (Ind. 2019), *cert. denied*, 140 S.Ct. 113 (2019). Although section 11 contains language nearly identical to the Fourth Amendment, we interpret section 11 independently. *Shotts v. State*, 925 N.E.2d 719, 726 (Ind. 2010). Rather than looking to federal requirements such as warrants and probable cause when evaluating section 11 claims, we place the burden on the State to show that under the totality of the circumstances its intrusion was reasonable. *Collins v. State*, 822 N.E.2d 214, 219 (Ind. Ct. App. 2005), *trans. denied*. The reasonableness of a law enforcement officer's actions requires balancing three factors: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). "Indiana citizens are concerned not only with personal privacy but also with safety, security, and protection from crime. Accordingly, . . . reasonableness under the totality of circumstances also includes considerations of protecting citizens from crime." *Washburn v. State*, 121 N.E.3d 657, 662 (Ind. Ct. App. 2019) (internal quotation omitted), *trans. denied*.

[23] Here, the degree of suspicion weighs in favor of the State. "In evaluating the officers' degree of suspicion, we consider all the information available to them at the time of the search or seizure." *Hardin v. State*, 148 N.E.3d 932, 943 (Ind. 2020) (internal quotation omitted), *cert. denied*, 141 S.Ct. 2468 (2021). Officer Kirby responded to a report of shots fired from a specific apartment. When he arrived at the building, several males saw him and immediately retreated and tried to enter that apartment. Therefore, Officer Kirby had a reasonably high degree of suspicion that one or more of those males was armed or could access a weapon within that apartment.

[24] As for the degree of intrusion, "we consider the intrusion into both the citizen's physical movements and the citizen's privacy[,]" and do so from the citizen's point of view. *Id.* at 944. We also consider *how* the search or seizure was conducted. *Id.* at 945. Here, considering all the circumstances, the seizure of D.S. resulted in a high degree of intrusion, in that the officers' conduct of pulling their weapons and aggressively giving commands restricted his physical autonomy and undoubtedly engendered fear and anxiety. We do note, however, that the seizure occurred in a common area, not inside a private apartment or a car, and only after D.S. and his companions tried to evade the officers by retreating into the apartment from which shots had reportedly been fired.

[25] When determining the extent of law enforcement needs, we consider the nature and immediacy of the governmental concern. *Masterson v. State*, 843 N.E.2d 1001, 1007 (Ind. Ct. App. 2006), *trans. denied*. We look to the needs of the

officers to act in a general way, such as to enforce traffic laws or combat drug trafficking, and also "in the particular way and at the particular time they did." *Hardin*, 148 N.E.3d at 946-47. The needs of law enforcement were high, as there is a general need to address and stem gun violence as well as a particular and immediate need of securing the safety of the officers and other residents of the apartment building. Moreover, D.S. was not alone, but one of a group of six or seven. And although the intrusion lasted over three minutes, given the high degree of suspicion that at least one of the males was armed and the fact the officers were outnumbered seven to two, it was a reasonable amount of time to hold them for the justifiable reason of waiting for backup to arrive.

[26] Balancing these factors, we find this seizure reasonable under section 11. The degree of suspicion and extent of law enforcement needs were high, outweighing the intrusion on D.S.'s activities.

[27] Finding no violation of the Fourth Amendment or section 11, we affirm the juvenile court's admission of the evidence obtained following the seizure.

II. Sufficiency of the Evidence

[28] D.S. next contends the evidence was insufficient to support his adjudication of dangerous possession of a firearm. On review of a juvenile adjudication, we apply the same sufficiency standard we use in criminal cases. *A.E.B. v. State*, 756 N.E.2d 536, 540 (Ind. Ct. App. 2001). We do not reweigh the evidence or judge the credibility of witnesses. *D.R. v. State*, 729 N.E.2d 597, 599 (Ind. Ct.

App. 2000). Instead, we look only to the evidence of probative value and the reasonable inferences that support the determination. *Id*.

[29] To prove D.S. committed dangerous possession of a firearm, the State had to prove D.S. was less than eighteen years of age and "knowingly, intentionally, or recklessly possesse[d] a firearm for any purpose other than a purpose described in section 1 of this chapter[.]" Ind. Code § 35-47-10-3 (defining "child") and -5(a) (defining offense); *see also* Ind. Code § 35-47-10-1 (describing exemptions for things such as attending a firearms safety course or engaging in an organized competition). D.S. argues the State did not prove he constructively possessed either the firearm found at the top of the stairs or the firearm found in the fire extinguisher box.

[30] D.S. was never seen in actual possession of a firearm. When the State cannot show actual possession, a conviction for possessing contraband may rest on proof of constructive possession. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). To prove constructive possession, the State must show the defendant had both the *intent* and the *capability* to maintain dominion and control over the contraband. *Id.*

[31] The capability requirement is met when the State shows the defendant can reduce the contraband to the defendant's personal possession. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). The law infers that a party in possession of premises is capable of exercising dominion and control over all the items on the premises. *Gee v. State*, 810 N.E.2d 338, 340-41 (Ind. 2004). This is so whether

possession of the premises is exclusive or not. *Id.* at 341. Five other males were on the landing with D.S. where the two firearms were later found. But the capability element was established here because the firearm found in the fire extinguisher box was within D.S.'s reach when he stood at the apartment door facing the wall and the firearm found at the top of the stairs was within his reach when he was sitting on the steps. *See Lampkins v. State*, 685 N.E.2d 698, 699 (Ind. 1997) (opinion on rehearing) (holding the "capability element was established because the [contraband] was within reach of defendant"); *cf. Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999) ("When a car has multiple passengers, each with a gun at his feet, and no one has a license for any of them, a jury can find them all guilty" of carrying a handgun without a license under a constructive possession theory).

[32] But to prove intent when possession is not exclusive, the State must show evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. *K.F. v. State*, 961 N.E.2d 501, 510 (Ind. Ct. App. 2012), *trans. denied*. These additional circumstances can include incriminating statements by the defendant; attempted flight or furtive gestures; the defendant's proximity to the contraband; the contraband being within the defendant's plain view; and the contraband being in close proximity to other items owned by the defendant. *Causey v. State*, 808 N.E.2d 139, 143 (Ind. Ct. App. 2004). These enumerated circumstances are non-exhaustive; ultimately, the question is whether a reasonable factfinder could conclude from the

evidence that the defendant knew of the nature and presence of the contraband. *Gray*, 957 N.E.2d at 174-75.

[33] As noted above, D.S. was observed in close proximity to where the two firearms were later found. He had ammunition in his pockets that matched the caliber of both firearms. *See Woods v. State*, 471 N.E.2d 691, 694 (Ind. 1984) (noting fact defendant was found with compatible ammunition was an "additional circumstance" supporting an inference defendant knew of the presence of a gun). When D.S. first noticed the officers, he retreated into the apartment building and attempted to enter the apartment from which shots had reportedly been fired. "Evidence of flight may be considered as circumstantial evidence of consciousness of guilt." *Clark v. State*, 6 N.E.3d 992, 999 (Ind. Ct. App. 2014) (quotation omitted). This evidence is sufficient for a reasonable factfinder to conclude that D.S. knew of the nature and presence of the firearms and therefore committed the offense of dangerous possession of a firearm by a child based on the theory of constructive possession. *See Gray*, 957 N.E.2d at 174-75. D.S.'s argument to the contrary is a request that we reweigh the evidence, which we cannot do. *See D.R.*, 729 N.E.2d at 599.

III. Dispositional Order

[34] At the conclusion of the fact-finding hearing, the juvenile court made a true finding as to Count I, dangerous possession of a firearm, and "close[d] out" Count II, carrying a handgun without a license. Tr., Vol. II at 85. The dispositional order the juvenile court entered, however, stated that D.S.

"entered an admission" to having committed both dangerous possession of a firearm and carrying a handgun without a license. Appealed Order at 1-2. The CCS also reflects that D.S. was adjudicated a delinquent on both counts. *See* Appellant's Appendix, Volume II at 8. We agree with D.S. and the State that the case should be remanded for the juvenile court to amend the dispositional order and CCS to reflect that D.S. was adjudicated a delinquent following a fact-finding hearing and that a true finding was entered only for Count I.

Conclusion

[35] Officers did not violate either the Fourth Amendment or Article 1, section 11, and therefore the juvenile court properly admitted evidence obtained as a result of the search and seizure of D.S. This evidence was sufficient to support the adjudication of D.S. as a delinquent for dangerous possession of a firearm. We therefore affirm D.S.'s adjudication, but remand for the juvenile court to correct the dispositional order and CCS to accurately reflect the circumstances and outcome of the adjudication.

[36] Affirmed and remanded.

Pyle, J., and Weissmann, J., concur.