

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Maurice Bishop,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 29, 2021

Court of Appeals Case No.
21A-CR-350

Appeal from the St. Joseph County
Superior Court

The Honorable David C.
Chapleau, Judge

Trial Court Cause No.
71D06-1902-CM-00594

May, Judge.

- [1] Michael Maurice Bishop appeals his conviction¹ of Class A misdemeanor carrying a handgun without a license.² Bishop argues the State did not present sufficient evidence to prove he constructively possessed a handgun. We affirm.

Facts and Procedural History

- [2] On February 9, 2019, Officer Ryan Rush of the South Bend Police Department observed the driver of a vehicle fail to signal a turn. Officer Rush also noticed the vehicle had an expired license plate and no license plate light. Relying on these violations, Officer Rush initiated a traffic stop. Bishop was driving the vehicle and had two passengers in the car. Lieutenant Kyle Dombrowski of the South Bend Police Department's Strategic Focus Unit arrived to assist Officer Rush with the stop. Both Officer Rush and Lieutenant Dombrowski noticed the smell of marijuana inside the vehicle. As Lieutenant Dombrowski conversed with Bishop, he watched Bishop reach toward the floorboard of the vehicle below his seat with his left hand.
- [3] Lieutenant Dombrowski had Bishop and his passengers exit the vehicle. All three persons were detained while Lieutenant Dombrowski searched the vehicle. The search revealed a green leafy substance in the center console. The substance tested positive for marijuana. The search also revealed a semi-

¹ Bishop was also convicted of Class B misdemeanor possession of marijuana, Ind. Code § 35-48-4-11(a)(1), but he does not appeal that conviction.

² Ind. Code § 35-47-2-1.

automatic handgun beneath the driver's seat where Bishop had been seated. The gun was positioned with the handle toward the front of the car and the barrel facing the backseat. The officers also found a bag behind the driver's seat blocking anyone in the backseat from having access to the area where the gun was found. The officers ran a check that revealed Bishop did not have a permit to carry a handgun.

[4] The officers brought Bishop to the police department. Officer Bayne Bennett read Bishop his *Miranda*³ rights before interviewing him. Officer Bennett asked Bishop if he knew of the gun and if it was his. Bishop acknowledged the gun belonged to him. Officer Bennett also asked Bishop to describe the gun, and Bishop accurately described the black .40 caliber gun found in the car. Bishop then exercised his right to terminate the interview.

[5] On February 11, 2019, the State charged Bishop with Class A misdemeanor carrying a handgun without a license; Class B misdemeanor possession of marijuana; Class A misdemeanor dealing in marijuana;⁴ and Class A misdemeanor possession of a controlled substance.⁵ On June 24, 2020, the trial court held a bench trial. At the conclusion of the bench trial, the trial court found Bishop guilty of Class A misdemeanor possession of a handgun without a license and Class B misdemeanor possession of marijuana. The trial court

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), *reh'g denied*.

⁴ Ind. Code § 35-48-4-10(a)(2).

⁵ Ind. Code § 35-48-4-7(a).

found Bishop not guilty of Class A misdemeanor dealing in marijuana and dismissed the charge of Class A misdemeanor possession of a controlled substance.

Discussion and Decision

[6] When reviewing the sufficiency of evidence, we consider only the evidence, and inferences reasonably drawn therefrom, that support the conviction. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We do not reweigh evidence or assess the credibility of witnesses. *Id.* It is the fact finder’s responsibility, not ours, to evaluate the evidence and decide whether it supports a conviction. *Drane v. State*, 868 N.E.2d 144, 146 (Ind. 2007). We will affirm if the probative evidence and reasonable inferences drawn therefrom could have led a reasonable fact finder to find each element proven beyond a reasonable doubt. *McHenry*, 820 N.E.2d at 126.

[7] “[A] person shall not carry a handgun in any vehicle or on or about the person’s body without being licensed under this chapter to carry a handgun.” Ind. Code § 35-47-2-1(a). A person who knowingly or intentionally carries a handgun in violation of Indiana Code section 35-47-2-1 commits a Class A misdemeanor. Ind. Code § 35-47-2-1(e). Possession can be actual or constructive. *Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997), *modified on reh’g on other grounds*, 685 N.E.2d 698 (Ind. 1997). Because Bishop did not have physical possession of the handgun at the time of the traffic stop, he was not in actual possession of the handgun. *See Tate v. State*, 835 N.E.2d 499, 511 (Ind. Ct. App. 2005)

(defining actual possession as “direct and physical control over” the object), *trans. denied*. Therefore, the State needed to prove he had constructive possession.

[8] For the State to prove that Bishop had constructive possession, it must prove he had the intent and the capability to maintain dominion and control over the handgun. *See Lampkins*, 682 N.E.2d at 1275 (State holds the burden of proving the defendant has “(i) the intent to maintain dominion and control and (ii) the capability to maintain dominion and control over the contraband”). Bishop argues the State did not provide sufficient evidence demonstrating he had dominion and control over the handgun. The State can prove a defendant’s dominion and control over contraband in a number of different ways. For instance, the State may use: (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) the defendant’s proximity to the contraband, (4) the location of the contraband within the defendant’s view, and (5) the mingling of the contraband with other items the defendant owns. *Henderson v. State*, 715 N.E.2d 833, 836 (Ind. 1999).

[9] During the interview with Officer Bennett, Bishop admitted the handgun found under his seat was his. Officer Bennett also asked Bishop to describe the gun, and Bishop was able to accurately describe it “as a black .40 caliber glock.” (Tr. Vol. II at 82.) Bishop also engaged in furtive movements during the traffic stop. Officer Dombrowski testified that during the traffic stop Bishop made movements with his left hand toward the floorboard of the car. Officer Dombrowski testified that at the time of the traffic stop, he did not know why

Bishop was reaching underneath the seat. However, officers later found the gun underneath the seat. See *Bradshaw v. State*, 818 N.E.2d 59, 63 (Ind. Ct. App. 2004) (finding that the defendant engaged in furtive movements by reaching under his seat).

[10] Bishop was also in close proximity to the gun. The gun was directly under his seat with the handle positioned toward the front of the seat making it possible for Bishop to grab the gun by its handle. Bishop was also the individual with the readiest access to the gun. During the search of the car, the officers found a bag behind the driver's seat where Bishop had been seated. When asked about the location of the bag and a passenger's ability to access the area under the driver's seat from the backseat of the car, Officer Dombrowski testified that "[i]t appears it would prevent or severely pose a – I guess a challenge for someone to put something under there." (Tr. Vol. II at 41-2.)

[11] Bishop is correct in noting that we have previously recognized "that mere presence of a passenger in a car in which a handgun is being transported is insufficient to find that passenger guilty of carrying a handgun in a vehicle or on or about his person." *Klopfenstein v. State*, 439 N.E.2d 1181, 1185 (Ind. Ct. App. 1982) (emphasis in original). However, in *Klopfenstein*, we went on to hold that "[t]he driver of a vehicle, however, is in violation of the statute if he conveys a handgun in the vehicle regardless of whether it is on or about his person." *Id.* Here, Bishop was the driver of the car. The handgun was not on or about Bishop's person, but the State presented evidence demonstrating Bishop's constructive possession of the handgun. See *Lampkins*, 682 N.E.2d at 1275

(State must prove the defendant had “(i) the intent to maintain dominion and control and (ii) the capability to maintain dominion and control over the contraband”).

[12] Bishop testified that he was driving his mother’s car and noticed the gun while searching for money when he and his friends stopped for food earlier that day. He claimed that the gun belonged to his mother’s boyfriend and that he did not intend to possess it. Bishop also testified at trial that he lied to Officer Bennett about his ownership of the gun to prevent his friends and his mom from getting in trouble. Bishop’s alternative explanations regarding the factors supporting constructive possession invite us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005) (“[w]e do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling”), *trans denied*. As we discussed above, the evidence was sufficient to demonstrate Bishop’s constructive possession of the handgun, and we accordingly affirm.

Conclusion

[13] The State presented sufficient evidence to prove Bishop constructively possessed the handgun found under his seat in the car. Accordingly, we affirm his conviction.

[14] Affirmed.

Kirsch, J., and Vaidik, J., concur.