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IN THE
COURT OF APPEALS OF INDIANA

A.W.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

July 29, 2022

Court of Appeals Case No.
22A-JV-150

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge

The Honorable Duane E.
Merchant, Magistrate

Trial Court Cause No.
49D09-2107-JD-5869

Najam, Judge.

Statement of the Case

[1] A.W. challenges his juvenile delinquency adjudications for possession of a machine gun, a Level 5 felony if committed by an adult, and dangerous possession of a firearm, as a Class A misdemeanor.¹ He presents two issues for our review:

1. Whether the State presented sufficient evidence to support his adjudication for possession of a machine gun.
2. Whether his adjudications violate his right to be free from double jeopardy under Article 1, Section 14 of the Indiana Constitution.

[2] We affirm in part and reverse in part.

Facts and Procedural History

[3] On July 13, 2021, two officers with the Speedway Police Department were on patrol when they saw a white Pontiac Grand Prix driving sixty miles per hour in a thirty-five-mile-per-hour zone on High School Road. The officers pursued the car with the lights and siren activated, and the Grand Prix eventually stopped. At that point, a young man later identified as A.W., age seventeen, exited the car from a rear passenger seat. A.W. began to run from the scene, and officers saw a gun in his hand. Officer Scott Highland ordered A.W. to stop multiple times, but A.W. continued to run. Finally, A.W. tripped over

¹ The juvenile court made additional true findings, but A.W. only appeals these two findings.

something and, as he started to fall to the ground, he tossed the gun towards a house. The gun struck a window, breaking the glass, and landed in the yard.

[4] Officer Highland arrested A.W., and, during a pat down search, Officer Highland found a phone and a “large sum of money” in A.W.’s pants pocket. Tr. at 11. Sergeant Hodges² recovered the gun, which was identified as a Glock fitted with a laser pointer and an extended magazine. Officer Highland recognized the Glock as being “essentially” the same as his own firearm, except something was “different” about A.W.’s Glock. *Id.* at 12.

[5] On July 14, the State filed a delinquency petition alleging that A.W. had committed conduct which, if committed by an adult, amounted to three Class A misdemeanors, namely, carrying a handgun without a license, resisting law enforcement, and criminal mischief. And the State alleged that A.W. committed dangerous possession of a firearm, as a Class A misdemeanor. The State later discovered that the Glock A.W. had possessed had been converted from a semiautomatic weapon to an automatic weapon through the addition of an after-market device known as a “Glock switch,” which is a square black box about the size of a quarter that attaches to the rear slide of the gun. *Id.* at 21. Accordingly, on August 5, the State amended the delinquency petition to add a count of possession of a machine gun, a Level 5 felony if committed by an adult. Following a factfinding hearing, the juvenile court entered a true finding

² Sergeant Hodges’ first name is not in the record.

that A.W. had committed each of the offenses as alleged in the amended petition. The trial court placed A.W. on probation and released him to his father's custody. This appeal ensued.

Discussion and Decision

Issue One: Sufficiency of the Evidence

[6] A.W. challenges the sufficiency of the evidence to sustain the court's true finding of possession of a machine gun. Specifically, he contends that the State presented insufficient evidence to demonstrate that he knew that the Glock in his possession had been converted to a machine gun. Our standard of review is well settled:

We neither reweigh the evidence nor judge the credibility of witnesses. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. We will affirm if there exists substanti[al] evidence of probative value to establish every material element of the offense. Further, it is the function of the trier of fact to resolve conflicts in testimony and to determine the weight of the evidence and the credibility of the witnesses.

J.C. v. State, 131 N.E.3d 610, 612 (Ind. Ct. App. 2019) (citation omitted). We will affirm a juvenile delinquency adjudication unless no reasonable factfinder could have found the respondent guilty beyond a reasonable doubt. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018).

[7] To prove that A.W. was a juvenile delinquent for possession of a machine gun, the State was required to prove that he knowingly or intentionally owned or possessed a machine gun. *See* Ind. Code § 35-47-5-8 (2022). A.W. does not dispute that he possessed the Glock found at the scene. But he contends that he did not know that the Glock had been modified with a Glock switch to convert the firearm from a semiautomatic weapon to a machine gun. And he asserts that the State did not present any evidence that would support a reasonable inference that he knew it was a machine gun.

[8] Knowledge and intent are both mental states and, absent an admission by the defendant, the trier of fact must resort to reasonable inferences from both the direct and circumstantial evidence to determine whether the defendant had the requisite knowledge or intent to commit the offense in question. *Stokes v. State*, 922 N.E.2d 758, 764 (Ind. Ct. App. 2010), *trans. denied*. Accordingly, knowledge or intent may be proven by circumstantial evidence, and it may be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points. *Id.* Indiana courts have repeatedly found that exclusive possession of contraband supports an inference that the person "knows of the contraband's presence and of its forbidden character." *Carnes v. State*, 480 N.E.2d 581, 586 (Ind. Ct. App. 1985).

[9] Here, A.W. had exclusive possession of the machine gun while the officers were chasing him. That evidence supports a reasonable inference that A.W. knew the gun was a machine gun. *See id.* Further, the juvenile court found that A.W.'s conduct, namely, his flight from the traffic stop, supported an inference

that he knew that the gun was a machine gun. *See Stokes*, 922 N.E.2d at 764. A.W.’s contention to the contrary amounts to a request that we reweigh the evidence, which we cannot do. The juvenile court did not err when it entered a true finding that A.W. possessed a machine gun.

Issue Two: Double Jeopardy

[10] A.W. next contends that the true findings for possession of a machine gun and dangerous possession of a firearm violate the Indiana Constitution’s prohibition against double jeopardy. A.W. asserts that the dangerous possession of a firearm finding was both an inherently included lesser offense and a factually included lesser offense to his possession of a machine gun finding.

[11] Our Supreme Court has recently made clear that Article 1, Section 14 of the Indiana Constitution prohibits multiple convictions for the same act, and, where there is an allegation that one act is being punished under multiple statutes, we are to consider whether one of those offenses “is an included offense of the other (either inherently or as charged).” *Wadle v. State*, 151 N.E.3d 227, 248 (Ind. 2020). If one offense is not included within the other, “there is no violation of double jeopardy.” *Id.* However, there is a double jeopardy violation if one offense is factually included within the other and the defendant’s actions were “so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction.” *Id.* at 253. Thus, in applying the *Wadle* test, we first determine under our included-offense statutes whether one charged offense encompasses another charged offense. *Id.* Second, we must look at the underlying facts—as alleged in the

information and as adduced at trial—to determine whether the charged offenses are the “same.” *Id.*

[12] Here, we have a single act supporting the two findings, namely, A.W.’s possession of the machine gun for approximately thirty seconds before he was apprehended. We disagree with A.W. that the dangerous possession of a firearm is an inherently included offense to possession of a machine gun. The former can only be committed by a child, *see* Ind. Code § 35-47-10-5, and the latter does not include that material element, *see* I.C. § 35-47-5-8.

[13] However, as our Supreme Court made clear in *Wadle*, “[a]n offense is ‘factually included’ when ‘the charging instrument alleges that *the means used* to commit the crime charged include all of the elements of the alleged lesser included offense.’” 151 N.E.3d at 251 n.30 (quoting *Young v. State*, 30 N.E.3d 719, 724 (Ind. 2015) (emphasis omitted)) (emphasis added). In other words, as we stated in *Phillips v. State*, two offenses “could be factually included depending on the manner in which the State charged the defendant and the evidence produced at trial.” 174 N.E.3d 635, 647 (Ind. Ct. App. 2021). “[A] prosecutor cannot secure two convictions for the same act using the exact same evidence.” *Id.*

[14] As charged and as proven at A.W.’s hearing, unlawful possession of the same firearm was the means used to commit both offenses. Thus, the two offenses are factually included. And, given that the facts demonstrated one thirty-second episode of possession, the two offenses were obviously “so compressed in terms of time, place, singleness of purpose, and continuity of action as to

constitute a single transaction.” *Wadle*, 151 N.E.3d at 253. The bottom line is that A.W. was found culpable twice for possession of the same weapon at the same time where possession of that weapon was the means used to commit both crimes. Accordingly, we hold that these two true findings violate Indiana’s prohibition against double jeopardy, and the true finding that A.W. committed dangerous possession of a firearm cannot stand. We therefore reverse that finding.

Conclusion

[15] We affirm the juvenile court’s true finding that A.W. committed possession of a machine gun, a Level 5 felony if committed by an adult. We reverse the court’s true finding that A.W. committed dangerous possession of a firearm because that finding violates his right to be free from double jeopardy under Article 1, Section 14 of the Indiana Constitution. A.W. does not challenge the court’s other true findings.

[16] Affirmed in part and reversed in part.

Bailey, J., concurs.

Bradford, C.J., concurs in part and dissents in part with separate opinion.

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Bradford, Chief Judge, concurring in part and dissenting in part.

[17] Because I agree with the majority that the State presented sufficient evidence to support the adjudication that A.W. knowingly or intentionally possessed a machine gun but disagree that his adjudications for dangerous possession of a firearm and possession of a machine gun constitute a double-jeopardy violation, I must concur in part and dissent in part.

[18] I agree with the majority that it is clear that these offenses are not inherently included; however, I differ from the majority as to whether these offenses are factually included in one another. Based on the charging information and the evidence adduced at trial, I cannot conclude that this is the case. An offense is factually included if the charging information alleges “that the means used to

commit the crime charged include all of the elements of the alleged lesser included offense.” *Norris v. State*, 943 N.E.2d 362, 368–69 (Ind. Ct. App. 2011), *trans. denied*. To evaluate such a claim, we must “examine the facts underlying those offenses, as presented in the charging instrument and as adduced at trial.” *Wadle v. State*, 151 N.E.3d 227, 249 (Ind. 2020). If neither offense is an included offense of the other, there is no substantive double-jeopardy violation, and the inquiry ends. *Id.* at 248.

[19] The charging information for dangerous possession of a firearm alleged as follows: “On or about July 13, 2021, [A.W.] did knowingly, intentionally, or recklessly possess a firearm for any purpose other than a purpose described in Indiana Code Section 35-47-10-1[.]” Appellant’s App. Vol. II p. 60. The charging information for possession of a machine gun alleged as follows: “On or about July 13, 2021, [A.W.] did knowingly or intentionally own or possess a machine gun, to-wit; a fully automatic Glock firearm[.]” Appellant’s App. Vol. II p. 61. The charges overlap only in that they allege that A.W. possessed a firearm, but they do not amount to multiple punishments for one act, as one requires proof that he had the status of a minor who could not lawfully possess the firearm and the required proof that he possessed a machine gun, which no person may lawfully possess, minor or not.

[20] Moreover, the evidence adduced at trial clearly established two separate offenses. As discussed by the majority, the evidence supported a conclusion that A.W. knowingly and intentionally possessed a machine gun. As for the dangerous possession charge, it was proved by evidence that A.W. was a minor

and did not satisfy any of the requirements of Indiana Code section 35-47-10-1, proof of which was not relevant to the machine-gun charge. Given that each charge requires proof of facts that the other does not, I cannot conclude that either is factually included in the other.

[21] Consequently, I concur in part and dissent in part.