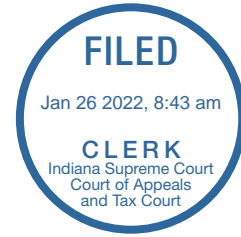


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Brian David Coles, Jr.,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

January 26, 2022

Court of Appeals Case No.
21A-CR-1097

Appeal from the
Madison Circuit Court

The Honorable
David A. Happe, Judge

Trial Court Cause No.
48C04-2008-F4-1865

Vaidik, Judge.

Case Summary

- [1] Brian David Coles, Jr. appeals his conviction for unlawful possession of a firearm by a serious violent felon, arguing the State failed to present sufficient evidence. We affirm.

Facts and Procedural History

- [2] On August 15, 2020, Officer Andrew Lanane of the Anderson Police Department noticed a red Cavalier being driven by Coles. Officer Lanane ran a registration check on the car, which showed the registration belonged to a 2012 Kia and was expired. Officer Lanane then initiated a traffic stop. During the traffic stop, Officer Lanane asked Coles and his female passenger for their identifications and ran a “warrant check” on them. Appellant’s App. Vol. II p. 89. The warrant check revealed there was an active warrant for Coles’s arrest, so Officer Lanane asked Coles to step out of the car and arrested him. During the search incident to arrest, Officer Lanane found a single .380 caliber bullet marked “SIG” in Coles’s front pocket. Tr. p. 137. Officer Lanane then searched the car and, under the driver’s seat, found a .380 caliber handgun loaded with ammunition. Two of the bullets were .380 caliber bullets marked “RP,” and the rest were .380 caliber bullets marked “SIG,” which “match[ed] that of the round found in [Coles’s] front pocket.” *Id.* at 162; Appellant’s App. Vol. II p. 89.

[3] Because Coles had a 2009 conviction for burglary, the State charged him with Level 4 felony unlawful possession of a firearm by a serious violent felon. At the jury trial, both parties focused on the element of possession. Officer Lanane testified the handgun was found under Coles's seat and it would have been "difficult" for his passenger to reach the gun. Tr. p. 152. Detective Trent Chamberlain, a certified firearms instructor for the Anderson Police Department, testified he examined the handgun and its ammunition, most of which were .380 caliber bullets marked "SIG." *Id.* at 167. Detective Chamberlain also testified .380 caliber bullets are "one of the most widespread civilian rounds." *Id.* at 169.

[4] The jury found Coles guilty as charged.

[5] Coles now appeals.

Discussion and Decision

[6] Coles contends the evidence is insufficient to sustain his conviction for unlawful possession of a firearm by a serious violent felon. In determining whether there is sufficient evidence to support Coles's conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Schaaf v. State*, 54 N.E.3d 1041, 1043 (Ind. Ct. App. 2016). We do not reweigh the evidence or assess witness credibility. *Id.* We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

[7] To convict Coles of unlawful possession of a firearm by a serious violent felon, the State had to prove Coles, a serious violent felon, knowingly or intentionally possessed a firearm. *See* Ind. Code § 35-47-4-5. Coles argues the evidence is not sufficient to prove he knowingly or intentionally possessed the handgun. To satisfy these elements, the State may prove he had actual or constructive possession of the handgun. *Griffin v. State*, 945 N.E.2d 781, 783 (Ind. Ct. App. 2011). Actual possession occurs when a defendant has direct physical control over an item. *Id.* Absent actual possession, constructive possession may support a conviction. *Id.* Here, Coles did not have direct physical control over the handgun found under the driver’s seat. The question then is whether he constructively possessed it.

[8] Constructive possession requires proof that “the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband.” *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). Coles does not dispute that he was physically capable of maintaining dominion and control over the handgun, only whether the State proved that he had the intent to do so. To show the intent element, the State must demonstrate the defendant had knowledge of the contraband. *Erickson v. State*, 68 N.E.3d 597, 601 (Ind. Ct. App. 2017), *trans. denied*. This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband, or, if the control is non-exclusive, with evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband. *Id.* Evidence of additional circumstances

includes: (1) incriminating statements 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. *Id.*

[9] Here, the presence of additional circumstances supports the inference Coles had knowledge of the handgun. Officer Lanane found the handgun under the driver's seat, which Coles occupied until Officer Lanane asked him to step out. Although there was also a passenger in the car, Officer Lanane testified it would have been "difficult" for her to reach the handgun under Coles's seat. Furthermore, the type of bullet found in Coles's pocket matched the majority of bullets in the handgun, and all of the bullets were .380 caliber, which matched the caliber of the handgun. This evidence is sufficient to support the inference that Coles knew the handgun was there. *See Bradshaw v. State*, 818 N.E.2d 59, 63 (Ind. Ct. App. 2004) (finding sufficient evidence of constructive possession in part because handgun was located underneath the seat the defendant occupied); *Woods v. State*, 471 N.E.2d 691, 694 (Ind. 1984) (noting as an "additional circumstance[]" showing the defendant's knowledge of the presence of the gun that the defendant was found with compatible ammunition). Coles acknowledges this evidence but argues it is "circumstantial" because a ".380 caliber round is one of the most common in the world" and "there were multiple different types of rounds located in the magazine." Appellant's Br. pp. 6, 10. But this is merely a request to reweigh evidence, which we do not do.

[10] The State presented sufficient evidence to prove Coles constructively possessed the handgun.

[11] Affirmed.

Najam, J., and Weissmann, J., concur.