

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANT

Valerie K. Boots
Joshua Vincent
Marion County Public Defender Agency
Appellate Division
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Jennifer Anwarzai
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

T.T.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 14, 2023

Court of Appeals Case No.
23A-JV-1274

Appeal from the Marion Superior
Court

The Honorable Danielle P.
Gaughan, Judge

The Honorable Tara Y. Melton,
Magistrate

Trial Court Cause No.
49D15-2301-JD-762

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] T.T. appeals his adjudication as delinquent for committing dangerous possession of a firearm. We affirm.

Facts and Procedural History

- [2] At about 5:30 p.m. on January 26, 2023, Indianapolis Metropolitan Police Officer Kyle Jones was in the 3600 block of Kenwood Avenue and observed a “known juvenile” exit a residence and approach a silver sedan that had the rear hatch “taped down” parked on the other side of the street. Transcript Volume II at 63. The juvenile spoke to the driver for a short time, walked to the passenger side, and handed a black Glock with an extended magazine on the firearm and a large amount of marijuana to “someone in the back passenger seat.” *Id.* at 64.
- [3] That same day, Indianapolis Metropolitan Police Officer Frank Gunn observed the silver vehicle fail to signal as it turned eastbound on 38th Street and initiated a traffic stop. After the vehicle stopped, Officer Gunn approached the driver side, asked the driver for her license, and asked the three other occupants, including T.T. who sat in the back seat behind the driver and Jalen Davis who sat in the back seat behind the front passenger, for their information because they were not wearing their seatbelts. Indianapolis Metropolitan Police Officers Brandon Brown and Robert Camphor arrived at the scene and approached the passenger side of the vehicle.

[4] As he retrieved their information, Officer Gunn smelled the odor of raw marijuana emitting from the vehicle. He returned to his vehicle to “check them through [the] BMV database.” *Id.* at 12. Meanwhile, Officer Brown asked the driver if there were any firearms in the vehicle, and she answered affirmatively. Officer Brown asked where the firearms were located and “[t]hey were pretty much right near her vicinity.” *Id.* at 20. Specifically, Officer Brown was able to observe two firearms that “were, where she was seated and where the center console is, is where two firearms were sitting behind her back” and “[t]hey were just kind of like leaned up against her back.” *Id.* at 20-21. Officer Brown retrieved the firearms and placed them on top of the vehicle. After T.T. stepped out of the vehicle, Officer Brown noticed a forty caliber firearm “on the floorboard of the back passenger driver side.” *Id.* at 22. Officer Brown searched the vehicle and located a scale “back by where [T.T.] was sitting,” a smoking pipe in the sunglass holder, and a ten-millimeter caliber extended magazine in the “seat back pocket of the back passenger seat.” *Id.* at 23.

[5] After the occupants exited the vehicle, Officer Camphor observed the firearm on the passenger side floorboard, marijuana blunts “in the back passenger on the driver side, like door area like the little cubby hole and then two bags of two plastic baggies containing marijuana on the passenger floor board behind the . . . passenger seat.” *Id.* at 48. Officer Camphor retrieved the firearm from behind the driver’s seat.

[6] On January 28, 2023, the State filed a petition alleging T.T. to be a delinquent for committing acts which would constitute dangerous possession of a firearm

as a class A misdemeanor as well as possession of marijuana as a class B misdemeanor and possession of paraphernalia as a class C misdemeanor if committed by an adult. The State later moved to dismiss the allegation involving possession of marijuana, which the court granted.

[7] On March 20 and April 10, 2023, the court held a hearing. The State presented the testimony of Officers Gunn, Brown, Camphor, and Jones. It also introduced and the court admitted multiple photographs that depicted the interior of the vehicle.

[8] After the State rested, Davis testified that he owned a “Glock twenty-two, forty caliber” and he had the firearm with him on January 26th. *Id.* at 71. He testified that he entered the car with the gun and was “confused on where the part came from that the gun was passed” to him. *Id.* at 72-73. He indicated that he was in the back seat on the passenger side, that he had the gun on his lap when the vehicle was stopped, he placed the gun “on the floor” when the officer “walked back to the car,” and that T.T. did not do anything with his gun. *Id.* at 74. He indicated that he spoke with Officer Jones at the scene about the gun belonging to him. He also stated that he “didn’t put it by [T.T.’s] foot” and he “put it on the side of my foot.” *Id.* at 85. On redirect examination, he indicated that T.T. did not touch or handle the gun.

[9] On cross-examination, when asked where he purchased the gun, he stated that he could not go in the store because he was only eighteen years old but “just [knew he] can carry,” he “had someone run in the store” for him, he did not

remember where the store was located, and he did not remember the real name of the person who purchased the gun for him. *Id.* at 79. When asked if “that random person” gave him the paperwork for the gun, he answered in the negative. *Id.* When asked if he had any proof of ownership, he answered: “Dang, no, ma’am.” *Id.* at 80.

[10] On April 17, 2023, the court held a hearing and entered a Ruling Order finding the allegation involving dangerous possession of a firearm to be true and the allegation involving possession of paraphernalia to be not true. On May 15, 2023, the court held a dispositional hearing. T.T.’s counsel asked the court to reconsider the true finding and referenced Davis’s testimony. The court stated that it would stand by its decision and: “I’ve heard all the evidence. I, I judge credibility. I judge everything. So all of it comes into play. So that’s what, that’s the bottom line.” *Id.* at 111. That same day, the court entered a dispositional decree finding that T.T. committed dangerous possession of a firearm. The court placed T.T. on standard conditions of probation, ordered continued participation in mentoring, and discharged him to the custody of his mother.

Discussion

[11] The issue is whether the evidence is sufficient to support the juvenile court’s true finding that T.T. committed a delinquent act which would constitute dangerous possession of a firearm. T.T. argues the evidence established only that he was in close proximity to the handgun. He asserts there was no evidence that he saw the gun and, even if he had, the State did not present

evidence that Davis was prohibited from possessing a handgun. He also contends that, without some movement or action by him demonstrating intent to maintain dominion or control over the gun, proximity and knowledge of its presence were not enough to support an inference of intent.

[12] “In reviewing the sufficiency of the evidence in a juvenile adjudication, ‘we neither re-weigh the evidence nor judge the credibility of the witnesses. Rather, we look only to the evidence most favorable to the trial court’s judgment and to the reasonable inferences to be drawn from that evidence.’ *K.S. v. State*, 849 N.E.2d 538, 543 (Ind. 2006) (quoting *Vance v. State*, 640 N.E.2d 51, 57 (Ind. 1994)). We affirm if there is substantial probative evidence to support the conclusion. *Id.*

[13] The offense of dangerous possession of a firearm as a class A misdemeanor is governed by Ind. Code § 35-47-10-5 which provides in part that “[a] child who knowingly, intentionally, or recklessly possesses a firearm for any purpose other than a purpose described in section 1 of this chapter commits dangerous possession of a firearm, a Class A misdemeanor.”

[14] It is well-established that possession of an item may be either actual or constructive. *See Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997), *modified on reh’g*, 685 N.E.2d 698 (Ind. 1997). Constructive possession occurs when a person has: (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it. *Id.* The capability element of constructive possession is met when the State shows that the

defendant is able to reduce the contraband to the defendant's personal possession. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

- [15] The intent element of constructive possession is shown if the State demonstrates the defendant's knowledge of the contraband's presence. *Id.* A defendant's knowledge may be inferred from either the exclusive dominion and control over the premises containing the contraband, or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of contraband. *Id.* These additional circumstances may include: “(1) a defendant's incriminating statements; (2) a defendant's attempting to leave or making furtive gestures; (3) the location of contraband like drugs in settings suggesting manufacturing; (4) the item's proximity to the defendant; (5) the location of contraband within the defendant's plain view; and (6) the mingling of contraband with other items the defendant owns.” *Gray v. State*, 957 N.E.2d 171, 175 (Ind. 2011). The State is not required to prove all additional circumstances when showing that a defendant had the intent to maintain dominion and control over contraband. *See Gee v. State*, 810 N.E.2d 338, 344 (Ind. 2004) (explaining that the additional circumstances “are not exclusive” and that “the State is required to show that whatever factor or set of factors it relies upon in support of the intent prong of constructive possession, those factors or set of factors must demonstrate the probability that the defendant was aware of the presence of the contraband and its illegal character”).

[16] To the extent T.T. cites *Henderson v. State*, 715 N.E.2d 833 (Ind. 1999), we find that case distinguishable. In *Henderson*, Anthony Henderson was riding in a car driven by his friend Jamal Finch. 715 N.E.2d at 834. After a stop, Finch told a law enforcement officer that there were guns in the vehicle. *Id.* at 834-835. The officer could see a pistol on the transmission hump in the middle of the car and the handle of a revolver under the front passenger seat. *Id.* at 835. Finch owned both guns and had a permit for each. *Id.* On appeal from a conviction of carrying a firearm on or about his person without a license, the Indiana Supreme Court observed that Henderson “was convicted of non-exclusive constructive possession upon proof of . . . proximity and plain view.” *Id.* at 836. The Court addressed the question of “whether one can have constructive possession of a firearm when someone else has legal, actual, and simultaneous possession of the same weapon” and observed that “[w]e rarely encounter possession cases in which anybody on the scene actually has a lawful permit.” *Id.* at 836. The Court discussed a number of cases including *Taylor v. State*, which it described as follows:

In *Taylor v. State*, 482 N.E.2d 259 (Ind. 1985), a strikingly similar case, we affirmed a conviction involving constructive possession of a firearm. The police stopped a vehicle that had just run through a red light. Two men (one of them Taylor) exited the vehicle as an officer approached. Upon inspecting the car the police found two firearms—a revolver and a semi-automatic. Both were in plain view with one gun in the middle of the front seat and the other on the floor directly in front of the front passenger seat. Neither man had a permit for either weapon. Taylor testified that he had been in the car for about fifteen minutes and did not know of the presence of either gun in the

car. Relying on *Woods* [*v. State*, 471 N.E.2d 691 (Ind. 1984), *reh'g denied*], we concluded that Taylor had constructive possession. *Taylor*, 482 N.E.2d at 262. We noted that Taylor “had primary control over the .45 lying between his feet and was in the best position to gain actual control of the weapon[,] . . . but it would be difficult, if not impossible, for the driver to reach.” *Id.* at 261.

Id. at 836-837.

[17] The Court observed that “[t]o be sure, [Henderson] knew it was at his feet and could have picked it up,” while “[o]n the other hand, driver Jamal Finch owned the gun, had a permit for it, and was likewise within reach of the gun.” *Id.* at 838. The Court held: “Without evidence of any movement or action to suggest Henderson exercised dominion, we conclude the evidence was insufficient to sustain his conviction.” *Id.*

[18] The record here reveals that, while Davis testified that he owned the firearm, he also testified that he did not remember where the store was located or the name of the person who purchased the gun for him. Unlike in *Henderson* where the other occupant in the vehicle had a permit for the firearm, Davis acknowledged that the individual who gave him the gun did not give him any paperwork for the gun and that he did not have any proof of ownership. We also note that Davis’s testimony that he “didn’t put it by [T.T.’s] foot” and he “put it on the side of my foot” conflicts with the testimony of the officers and the photographs of the interior of the vehicle. Transcript Volume II at 85.

[19] The evidence most favorable to the challenged true finding reveals the following exchange during the direct examination of Officer Brown:

Q: And who, who was just so we can clarify who was sitting in the back passenger behind the driver?

A: So [T.T.] was behind the driver in the back seat and then that small cubby down on the bottom the floorboard area is where the third gun would have been located.

Q: So that was at his feet?

A: Correct his right foot.

Id. at 22. In describing State’s Exhibit 8, a photograph of the back seat of the vehicle, Officer Brown testified that “this is the area where [T.T.] was seated. There’s a scale on the floor where his feet would have been. . . . And then there’s the black handgun that would have been at his right foot, the forty caliber.” *Id.* at 26. On cross-examination, T.T.’s counsel asked if the firearm in the back seat could be described as being located at the foot of the individual in the back passenger side seat, and Officer Brown answered: “In a sense, no, because of the divider between the back seat passenger, there’s a divider that goes from where, um, every occupant could put their feet at and then the center a little hump.” *Id.* at 30. On redirect examination, when asked if he had any trouble seeing “one or the other gun,” he answered: “[F]rom outside the passenger side, it was just kind of dark in there. So that’s why I walked around to the driver’s side, but I couldn’t, I could see it clearly from the driver’s side.” *Id.* at 35. Officer Brown testified that he noticed the firearm “on the floorboard

of the back passenger driver side,” *id.* at 22, and Officer Camphor indicated that he retrieved the firearm from “the back passenger behind the driver’s seat.” *Id.* at 50. The record also includes photographs of the firearm located in the footwell of the back seat passenger on the driver’s side of the vehicle. We also note that Officer Jones testified that a black Glock with an extended magazine was handed to someone in the back seat prior to the stop. When asked approximately how long between him observing the exchange with the gun and the time he arrived at the traffic stop, Officer Jones indicated “probably . . . twenty-five minutes.” *Id.* at 65. Under these circumstances, we find that this case is more like *Taylor* than *Henderson*. Based upon the record and mindful of our standard of review, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find that T.T. committed dangerous possession of a firearm.

[20] For the foregoing reasons, we affirm the juvenile court’s adjudication of T.T. as a delinquent.

[21] Affirmed.

Vaidik, J. and Bradford, J., concur.