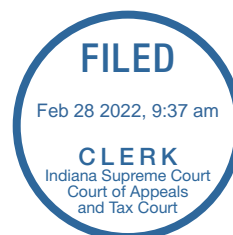


MEMORANDUM DECISION

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

Charles Allen Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2022

Court of Appeals Case No.
21A-CR-1455

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

The Honorable Stanley E. Kroh,
Magistrate

Trial Court Cause No.
49D29-2012-F4-37951

Vaidik, Judge.

Case Summary

- [1] Charles Allen Jackson appeals his conviction for Level 4 felony unlawful possession of a firearm by a serious violent felon, arguing the evidence is insufficient to prove possession. We affirm.

Facts and Procedural History

- [2] Jackson has a prior conviction that prohibits him from possessing a firearm. In April 2020, Jackson moved into the home of his fiancée, Darla Guffey, who lived on Draper Street in Indianapolis with her father and sons. Darla and Jackson shared a bedroom; the bedroom had a desk and two dressers, one for each of them. In June, Darla purchased a Ruger 9mm semiautomatic pistol, which she kept in her dresser in her underwear drawer.
- [3] On December 19, Jackson’s brother, Jerold Jackson, went to the house on Draper Street, and Jackson and Jerold got into an argument outside. During the argument, Jerold called 911 and told the 911 operator, “My brother pointed a gun at me and shot that bit**. He hit with brass knuckles and then shot the godda** gun. He is a fu**ing felon and he ain’t even supposed to have a gun.” Ex. 3 (file “IM34”).¹ In addition, Jerold told the 911 operator that he had a gun but had left it in his car. *Id.* Meanwhile, Jackson went back inside the house.

¹ Ex. 3 contains a second file, “IM28,” which is a 911 call by a neighbor. The trial court didn’t admit this 911 call into evidence, *see* Tr. Vol. II pp. 51-59, 183; therefore, we do not consider it.

Officers from the Indianapolis Metropolitan Police Department responded and interviewed Jackson. During the interview, Jackson said, “I don’t have a gun.” Ex. 14. He also said that although Jerold had a gun, he didn’t pull it during their argument. When officers asked Jackson about a report of a shot being fired in the area, Jackson responded he “would not do that to [his] brother,” his own “flesh and blood.” *Id.* Jackson admitted there “are” guns in the house but said he just learned about them “maybe two weeks ago.”² *Id.* Jackson knew his prior conviction meant there couldn’t be any guns in the house. A search warrant was obtained. During the search of Darla and Jackson’s bedroom, officers found the Ruger in Darla’s dresser in her underwear drawer and brass knuckles in the desk, which was next to Darla’s dresser. Ex. 11. The Ruger was “dusted” for fingerprints, but none were found. Tr. Vol. II p. 221. The Ruger was also swabbed for DNA, but there was an “insufficient data sample” so no “comparisons could be made.” Ex. 20, p. 48. However, “[a] male component was observed.” *Id.*

[4] The State charged Jackson with Level 4 felony unlawful possession of a firearm by a serious violent felon.³ A jury trial was held in June 2021. Although Jerold

² Additional guns were found in a locked gun safe and in Darla’s father’s bedroom, but those guns are not at issue in this case. *See* Tr. Vol. III p. 66 (State explaining during closing argument that it didn’t charge Jackson in connection with the other guns).

³ The State also charged Jackson with Level 6 felony pointing a firearm, Level 6 felony domestic battery, and Class A misdemeanor battery, but the State dismissed these charges the day before trial because Jerold wasn’t going to testify at trial. *See* Appellant’s App. Vol. II p. 114 (“Essential Civilian Witness Not Present”).

didn't testify at trial, the trial court admitted his 911 call into evidence as an excited utterance, and it was played for the jury. The jury found Jackson guilty.

[5] Jackson now appeals.

Discussion and Decision

[6] Jackson contends the evidence is insufficient to support his conviction. When reviewing such claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We only consider the evidence supporting the verdict and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[7] To convict Jackson of Level 4 felony unlawful possession of a firearm by a serious violent felon, the State had to prove he was a “serious violent felon who knowingly or intentionally possesse[d] a firearm.” Ind. Code § 35-47-4-5(c). The only element Jackson challenges on appeal is possession. “A conviction for possession of a firearm may rest upon proof of either actual or constructive possession.” *Smith v. State*, 113 N.E.3d 1266, 1269 (Ind. Ct. App. 2018), *trans. denied*. Actual possession is “the direct physical control of the gun,” whereas constructive possession is “when somebody has the intent and capability to maintain dominion and control over the” gun. *Id.* at 1269-70.

[8] Jackson argues the evidence is insufficient to prove constructive possession because officers found the Ruger in Darla's dresser, not his. The State responds the evidence is sufficient to prove actual possession because, according to the 911 call, Jackson had direct physical control of a gun that he pointed at Jerold and shot. We agree with the State.

[9] The record shows Jerold called 911 to report that Jackson had hit him with brass knuckles, pointed a gun at him, and fired the gun. Ex. 3 (file "IM34"). When officers arrived on the scene, Jackson didn't have a gun on his person but admitted there were guns in the house. During the search of Darla and Jackson's bedroom, officers found the Ruger in Darla's dresser and brass knuckles in the desk next to Darla's dresser. That these items were found in Darla and Jackson's bedroom corroborates Jerold's 911 call that Jackson had a gun and brass knuckles during their argument. Moreover, male DNA was found on the Ruger. As this Court has held, a defendant can be in actual possession of a gun that is not found on his person. *See McCoy v. State*, 153 N.E.3d 363, 367 (Ind. Ct. App. 2020) (holding that even though a gun was found in a shopping basket at a grocery store after the defendant left, "the State presented sufficient evidence which permitted a reasonable inference that [the defendant] exercised direct physical control over the firearm before he discarded it into the shopping basket," thereby establishing actual possession). Based on the above evidence, a reasonable inference is that Jackson had direct physical control of a gun that he pointed at Jerold and shot. We therefore affirm

Jackson's conviction for Level 4 felony unlawful possession of a firearm by a serious violent felon.

[10] Affirmed.

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