

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

S.F.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

August 31, 2023

Court of Appeals Case No.
22A-JV-3067

Appeal from the Marion Superior
Court

The Honorable Marshelle
Broadwell, Judge

The Honorable Pauline A. Beeson,
Magistrate

Trial Court Cause No.
49D16-2208-JD-6435

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] The juvenile court adjudicated S.F. a delinquent for committing acts that would be, if committed by an adult, Level 2 felony dealing in a Schedule II controlled substance, namely, fentanyl, Level 6 felony possession of methamphetamine, and Class A misdemeanor unlawful carrying of a handgun. S.F. appeals the dealing and possession true findings, asserting that the State failed to present sufficient evidence that he constructively possessed the pills containing fentanyl and methamphetamine that were found in the center console of the vehicle he was driving.¹

[2] We affirm.

Facts & Procedural History

[3] Around 8:00 a.m. on August 8, 2022, Indianapolis Metropolitan Police Department Officer Amanda Clark responded to a report of a vehicle collision with a light pole on Post Road. When she arrived, two other officers were already on the scene. Sixteen-year-old S.F., the vehicle's only occupant, was in the driver's seat of the four-door Chevrolet sedan. The airbags had been deployed, and officers began rendering medical aid until the ambulance arrived. S.F. was transported from the scene for head and back pain.

¹ The true finding for unlawful carrying of a handgun is not challenged in this appeal.

[4] Officer Clark “call[ed] a wrecker . . . to pick up the car” and began an inventory search. *Transcript* at 60. She opened the center console of the vehicle and found a clear plastic baggie containing blue pills, which she suspected to be narcotics based on how they were packaged and how they appeared, that is, “not in any sort of pill bottle” and “kind of powdery in the bag.” *Id.* at 64-65. Behind the driver’s seat, she found a backpack containing a video gaming console and a baggie containing a green leafy substance that she believed to be marijuana. Underneath the backpack, on the floor, were “male clothing items,” including a pair of jeans and high-top sneakers, and a navy or black “full face covering mask.” *Id.* at 69, 74. Officer Clark discovered a Glock .40 caliber handgun wrapped inside the jeans. Officer Clark also recovered from the backseat area an electronic digital scale, which in her experience was consistent with a scale used for “weighing out drugs.” *Id.* at 67. In the trunk, Officer Clark found another backpack, which contained a high-school-issued laptop and other school items. Also in the trunk was at least one box of clear plastic baggies, which Officer Clark stated was consistent with drug packaging.

[5] The vehicle was registered to S.F.’s mother. When she arrived at the scene, officers advised her that S.F. had been transported to Community East Hospital. She asked if she could take possession of the vehicle or retrieve items from the vehicle, but officers told her that she could not.

[6] Subsequent forensic testing by the Marion County Forensic Services Agency revealed that there were 222 pills in total with an aggregate weight of 29.9358 grams. Most were “very similar” in appearance, blue in color and with “M30

on them.” *Id.* at 91, 92. One of those was tested and found to contain fentanyl. According to Armando Vargas, who conducted the testing, the blue M30 tablets are “supposed to look like” Oxycodone and, in his experience, are “the most commonly counterfeited” pill. *Id.* at 97, 98. He also tested two other pills, which were “different” in imprint and shape from the others, and each of those contained methamphetamine. *Id.* at 92.

[7] The State filed a petition in August 2022, later amended in October 2022, alleging that S.F. committed the following nine delinquent acts: Level 6 felony dealing in a Schedule II narcotic (Count I); Class A misdemeanor dangerous possession of a firearm by a child (Count II); Class A misdemeanor unlawful carrying a handgun (Count III); Class A misdemeanor dealing in marijuana (Count IV); Class A misdemeanor possession of a controlled substance (Count V); Class B misdemeanor possession of marijuana (Count VI); Level 2 felony dealing in a Schedule II narcotic (Count VII); Level 3 felony possession of a narcotic drug (Count VIII); and Level 6 felony possession of methamphetamine (Count IX).

[8] At the factfinding hearing on November 2, 2022,² Officer Clark and Vargas testified for the State consistent with the above. The juvenile court found as true the five counts not previously dismissed. After merging some counts, the court entered true findings on Counts III, VII, and IX. The court held a

² The State dismissed Counts I, IV, and VI at the beginning of the hearing, and dismissed Count V at the conclusion of the evidence.

dispositional hearing on November 30, 2022, at which S.F. was placed on probation with a suspended commitment to the Indiana Department of Correction. S.F. now appeals.

Discussion & Decision

- [9] S.F. contends that the State failed to present sufficient evidence that he constructively possessed the pills in the console of the car, which was registered to his mother. When we review a juvenile adjudication, we apply the same sufficiency standard we use in criminal cases. *A.E.B. v. State*, 756 N.E.2d 536, 540 (Ind. Ct. App. 2001).

[W]e do not reweigh the evidence or judge witness credibility. We consider only the evidence favorable to the judgment and the reasonable inferences supporting it. We will affirm a juvenile-delinquency adjudication if a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt.

B.T.E. v. State, 108 N.E.3d 322, 326 (Ind. 2018) (citations omitted).

- [10] The State alleged that S.F. “did knowingly or intentionally possess with intent to deliver Fentanyl” and “did knowingly or intentionally possess methamphetamine.” *Appendix* at 57. Thus, each charge requires that S.F. possessed the illegal drug. Ind. Code §§ 35-48-4-2(a), -6.1(a).

- [11] Possession can be either actual or constructive. *Shorter v. State*, 151 N.E.3d 296, 305 (Ind. Ct. App. 2020), *trans. denied*; *Parks v. State*, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018). Actual possession occurs when a person has direct physical control over the item. *B.R. v. State*, 162 N.E.3d 1173, 1176 (Ind. Ct. App.

2021). When actual possession cannot be shown, such as in S.F.’s case, then the conviction may instead rest on proof of constructive possession. *Shorter*, 151 N.E.3d at 305 (citing *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011)). A person constructively possesses an item when the person has (1) the capability to maintain dominion and control over the item and (2) the intent to maintain dominion and control over it. *Sargent v. State*, 27 N.E.3d 729, 733 (Ind. 2015) (quotations omitted). S.F. does not dispute that he had the capability to maintain dominion and control.³ His sole claim is that “the State did not prove intent.” *Appellant’s Brief* at 9.

[12] In order to satisfy the intent element, the State must demonstrate that the individual had knowledge of the presence of the contraband. *Shorter*, 151 N.E.3d at 306; *Griffin v. State*, 945 N.E.2d 781, 784 (Ind. Ct. App. 2011). In cases where the accused has exclusive possession of the premises on which contraband is found, an inference is permitted that the person knew of its presence and was capable of controlling it. *Griffin*, 945 N.E.2d at 784. When possession of the premises is not exclusive, the inference is not permitted absent “evidence of additional circumstances pointing to the [accused]’s knowledge of the presence of the contraband.” *Shorter*, 151 N.E.3d at 306. Our Supreme Court has identified a non-exhaustive list of “additional circumstances” that

³ The capability requirement is met when the State shows the defendant can reduce the contraband to the defendant's personal possession. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

bear on whether an individual knew of the presence of contraband, for purposes of constructive possession:

(1) incriminating statements made 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.

Gray, 957 N.E.2d at 175 (citing *Gee v. State*, 810 N.E.2d 338, 341 (Ind. 2004)).

[13] Here, S.F. was the driver and sole occupant of the car, and thus he had exclusive possession of it. *See Goliday*, 708 N.E.2d at 6 (finding that defendant had “exclusive possession of the vehicle” where he “was the only person in the vehicle when police stopped it”); *Whitney v. State*, 726 N.E.2d 823, 826 (Ind. Ct. App. 2000) (trial court could reasonably conclude defendant “was in exclusive possession of the vehicle” where he was the driver and sole occupant). S.F. urges that, even if he was the only person in the car when it crashed, the vehicle was registered to his mother and, further, the State “offered no evidence regarding how long S.F. had been in possession of the vehicle.” *Appellant’s Brief* at 10.

[14] In support, S.F. cites to *Jones v. State*, 924 N.E.2d 672, 675 (Ind. Ct. App. 2010), where a panel of this court stated that “where the driver does not have exclusive possession of the vehicle for a long period of time before the [item] is found, we are hesitant to impute possession . . . solely on control of the vehicle as evidence of intent.” In that case, we declined to impute knowledge of a handgun found

under the driver's seat to Jones, who was the driver and sole occupant of a vehicle that he, a mechanic, was "test-driving" for a customer at the time of the traffic stop. *Id.* The State argues that the present case is distinguishable from *Jones* because various items found "throughout the vehicle" – both in the trunk and inside the car – suggest S.F.'s regular use of the car, such as two backpacks, a high-school-issued laptop, a video gaming system, and male clothing.

Appellee's Brief at 10. To the extent that S.F.'s claims that his possession was not exclusive because the car was registered to his mother, "[o]ur Supreme Court has stated that in the context of exclusive possession, the issue is not ownership but possession." *Jones*, 924 N.E.2d at 675; *see also Whitney*, 726 N.E.2d at 826 (rejecting defendant's argument that, although the sole driver and occupant of the vehicle, he was not in exclusive possession of it because he had borrowed it).

[15] Even if we were to agree with S.F. that his possession of the car was not exclusive, other, additional circumstances support an inference that S.F. knew of the presence of the contraband, for instance, S.F.'s proximity to the contraband. The fentanyl and methamphetamine pills were in the center console, immediately next to where S.F. was sitting and to which he had easy access.

[16] S.F. emphasizes that there was no evidence of incriminating statements, attempted flight or furtive gestures, or mingling of the contraband with other items owned by the defendant. However, our Supreme Court has made clear that "[t]he State is not required to prove all additional circumstances when

showing that a defendant had the intent to maintain dominion and control over contraband.” *Canfield v. State*, 128 N.E.3d 563, 573 (Ind. Ct. App. 2019), *trans. denied*. Rather, the Court explained, “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.” *Gee*, 810 N.E.2d at 344.

[17] Here, in addition to being the sole occupant and positioned next to the console, we observe that, although the pills in the console may not have been mingled “with other items owned by” S.F., other items found in the car, including suspected marijuana, a digital scale, clear plastic baggies, and a handgun, *were* mingled with what reasonably could be considered as S.F.’s belongings. Furthermore, the baggies, scale, pills, and handgun when considered together support an inference of dealing. *Cf.*, *Parks*, 113 N.E.3d at 273 (recognizing that messenger bag found behind driver’s seat that contained brick of marijuana, small baggies, and a gun “suggested repackaging of contraband for sale” and that Ind. Code § 35-48-1-18 defines “manufacturing” for offenses involving marijuana to include “packaging and repackaging”).

[18] The evidence need not exclude every reasonable hypothesis of innocence; the evidence is sufficient if an inference reasonably may be drawn from it to support the court’s decision. *Parks*, 113 N.E.3d at 273. Viewing the evidence in the light most favorable to the juvenile court’s judgment, we find that it was reasonable for the factfinder to infer that S.F. knew of the presence of the pills

in the console and intended to possess them. Accordingly, the State presented sufficient evidence to support the true findings for, if committed by an adult, Level 2 felony dealing in a Schedule II controlled substance and Level 6 felony possession of methamphetamine.

[19] Judgment affirmed.

May, J. and Foley, J., concur.