

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Riley Alan Gilliland,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 4, 2024

Court of Appeals Case No.
23A-CR-1636

Appeal from the Hendricks Superior Court
The Honorable Rhett M. Stuard, Judge

Trial Court Cause No.
32D02-2109-F5-127

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Riley Alan Gilliland was convicted in Hendricks Superior Court of Level 5 felony carrying a handgun without a license, Level 6 felony possession of methamphetamine, Level 6 felony possession of a narcotic drug, Class A misdemeanor driving while suspended, Class A misdemeanor operating a vehicle while intoxicated, and he was adjudicated a habitual offender. The trial court imposed an aggregate eleven-year sentence. Gilliland appeals his felony convictions, arguing that the State did not present sufficient evidence to prove that he constructively possessed a handgun, methamphetamine, and narcotics found in a vehicle.

[2] We affirm.

Facts and Procedural History

[3] On September 29, 2021, at approximately 11:30 p.m., Hendricks County Sheriff's Deputy Damen Owens observed a vehicle run a red light. The deputy also saw the vehicle swerve left of center from the southbound lane to the northbound lane of the roadway. Deputy Owens initiated a traffic stop of the vehicle and identified the driver and sole occupant of the vehicle as Gilliland. Gilliland did not own the vehicle.

[4] Gilliland admitted to Deputy Owens that his driver's license was suspended, and he gave the deputy his identification card. During their interaction, the deputy observed that Gilliland's eyes were bloodshot and his speech was slower than what the deputy considered to be normal. Deputy Owens believed that

Gilliland was intoxicated and asked him to exit the vehicle. The deputy asked Gilliland to complete several field sobriety tests. Gilliland failed two of the three tests. Deputy Owens then put Gilliland in handcuffs and placed him in his squad car.

- [5] Deputy Kyle Schaefer arrived on the scene with his canine while Deputy Owens was conducting the field sobriety tests. The canine conducted a free-air sniff around the vehicle and alerted to the possible presence of contraband inside the vehicle. Therefore, the officers began to search the vehicle.
- [6] Deputy Owens began his search on the driver's side of the vehicle. As he leaned into the vehicle and looked down at the driver's side floorboard near the gas pedal and center console, he saw one to three inches of a barrel of a pistol. Tr. Vol. 2, pp. 142-43, 177. The rest of the handgun was underneath the "plastic piece that separates basically the foot compartment from wiring and everything for the heating, cooling, radio and all that stuff." *Id.* at 143. The barrel of the gun was approximately two to three inches from the gas pedal. *Id.* at 148.
- [7] Deputy Schaefer then pulled on the plastic panel of the console where it was loose at the bottom and a bag of pills fell out of the console. Subsequent testing established that the bag contained gabapentin, Xanax, fentanyl, and methamphetamine. The officers also discovered two additional firearms inside a briefcase in the back seat of the vehicle.
- [8] Deputy Owens believed that Gilliland was intoxicated on a substance other than alcohol because his portable breath test was negative for alcohol. Gilliland

initially agreed to submit to a chemical test but later withdrew his consent. Therefore, Deputy Owens applied for and received a warrant to obtain a blood sample for chemical testing. During the blood draw, Gilliland admitted that he had used Xanax and Clonazepam earlier that evening. Tr. Vol. II, p. 163. Gilliland's blood sample tested positive for amphetamine, methamphetamine, and an active metabolite of clonazepam.

[9] The State charged Gilliland with Level 5 felony carrying a handgun without a license, Level 6 felony possession of a narcotic drug, Level 6 felony possession of methamphetamine, Class A misdemeanor driving while suspended, and Class A misdemeanor operating a vehicle while intoxicated. The State also alleged that Gilliland was a habitual offender.

[10] Gilliland's jury trial commenced on September 30, 2022. Gilliland failed to appear for the second day of his jury trial, and the court issued a warrant for his arrest. The jury found him guilty as charged. After several continuances, Gilliland's sentencing hearing was held on June 19, 2023. The trial court imposed an aggregate eleven-year sentence executed in the Department of Correction.

[11] Gilliland now appeals.

Standard of Review

- [12] Gilliland challenges the sufficiency of the evidence supporting his felony handgun, methamphetamine, and narcotics possession convictions.¹ In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

Discussion and Decision

- [13] Gilliland argues that the State did not present sufficient evidence to prove that he knowingly or intentionally possessed the handgun, methamphetamine, and narcotics found in the vehicle. Possession can be either actual or constructive. *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. *Griffin v. State*, 945 N.E.2d 781, 783 (Ind. Ct. App. 2011). Constructive possession occurs when the person has (1) the capability to maintain dominion and control over the

¹ Gilliland does not argue that the evidence was insufficient to convict him of driving while suspended and operating a vehicle while intoxicated.

item and (2) the intent to maintain dominion and control over it. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). Gilliland did not have direct physical control over the handgun and drugs, and therefore, we must consider whether the State presented sufficient evidence to prove constructive possession.

[14] To prove the “capability” element of constructive possession, the State must show “that the defendant is able to reduce the [contraband] to the defendant’s personal possession.” *Shorter v. State*, 151 N.E.3d 296, 305 (Ind. Ct. App. 2020), *trans. denied*. To satisfy the intent element, the State must demonstrate that the individual had knowledge of the presence of the contraband. *Id.* at 306. Where the accused has exclusive possession of the vehicle where the contraband is found, an inference is permitted that the person knew of its presence and was capable of controlling it. *See Griffin*, 945 N.E.2d at 784.

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

- (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, 957 N.E.2d at 175.

- [16] “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.” *Canfield v. State*, 128 N.E.3d 563, 573 (Ind. Ct. App. 2019), *trans. denied*. Rather, “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 v. State*, 810 N.E.2d 338, 344 (Ind. 2004).
- [17] Here, Gilliland was the driver and sole occupant of the vehicle, and therefore, he had exclusive possession of it. *See 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). To the extent that Gilliland claims that his possession was not exclusive because he was not the owner of the vehicle, “[o]ur Supreme Court has stated that in the context of exclusive possession, the issue is not ownership but possession.” *Jones v. State*, 924 N.E.2d 672, 675 (Ind. Ct. App. 2010) (citing *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)); *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).

[18] In support of his argument that his possession of the vehicle is not sufficient to prove that he knowingly or intentionally possessed the contraband found in the vehicle, Gilliland relies on *Whitney*. In that case, our court noted that, when the contraband is either concealed or effectively hidden, our court “is hesitant to rely solely on control of the vehicle as evidence of intent.” *Id.* at 826. Like the circumstances presented in this case, Whitney was the driver and sole occupant of a vehicle he had borrowed, and he was stopped for a traffic violation. During the traffic stop, the officer learned that Whitney’s license was suspended and arrested him. The officer smelled the odor of marijuana in the vehicle and saw in plain view a partially smoked marijuana cigarette on the floor of the driver’s compartment. The officer searched the vehicle for other contraband and discovered a panel above the glove compartment that was loose. The officer popped it open and discovered a brown paper bag containing marijuana and cocaine. Whitney was charged with and convicted of possession of marijuana and possession of cocaine. He appealed his conviction for possession of cocaine, arguing that the State failed to prove that he knew that the cocaine was in the vehicle. *Id.* at 825.

[19] First, our court concluded that Whitney’s exclusive possession was “some evidence” from which it might ordinarily be inferred that he was aware of the cocaine in the car. *Id.* However, because the cocaine was hidden in a secret compartment, the court held that “additional evidence of guilty knowledge” was necessary to establish intent. *Id.* The *Whitney* court concluded that such evidence existed, noting that the officer smelled marijuana emanating from the

vehicle, a marijuana cigarette was on the floor of the driver's compartment, the panel behind which the drugs were hidden was popped open on one side, and marijuana was found in the secret compartment. *Id.* The court concluded that, "based on Whitney's use of marijuana and the fact that marijuana was found in the secret compartment, the trier of fact could reasonably infer that Whitney knew the drugs were in the vehicle." *Id.*

[20] In *Jones v. State*, 924 N.E.2d 672 (Ind. Ct. App. 2010), our court relied on *Whitney* but reached the opposite result. Jones was a mechanic who was test driving a customer's vehicle. An officer stopped him for speeding, and the officer observed that Jones appeared to be intoxicated and there were open containers of alcoholic beverages in the vehicle. The officer also learned that Jones's driver's license had been suspended. During the ensuing inventory search of the vehicle, the officer found a handgun under the driver's seat. Jones was convicted of carrying a handgun without a license and he appealed that conviction. *Id.* at 674.

[21] Relying on *Whitney*, our court initially concluded that "Jones's exclusive possession of the Jeep is some evidence from which we might ordinarily find an inference that he was aware of the handgun in the Jeep." *Id.* at 675. Because the handgun was under the driver's seat of a vehicle Jones was test driving for a customer, and Jones had exclusive possession of the vehicle for a short period of time, our court was "hesitant to impute possession of the handgun solely on control of the vehicle as evidence of intent." *Id.* Our court then concluded that the circumstantial evidence was "inadequate to support an inference of intent to

carry a handgun without a license” because it was not in plain view, Jones made no incriminating statements, and Jones’s furtive movements were for the purpose of trying to hide the alcohol in the vehicle from the officers. *Id.* at 675-76.

[22] In this case, Deputy Owens saw a few inches of the barrel of the handgun on the driver’s side floorboard near the gas pedal when he leaned into the vehicle and looked down at the floorboard. The barrel of the handgun was in plain view and easily accessible to Gilliland. The deputy stated that he was able to remove the rest of the handgun from underneath the console by pulling on it. The bag of pills was also hidden in the console, but the bag was easily accessible to Gilliland and in close proximity to him. The bag fell out of the console when Deputy Schaefer pulled on the console’s plastic panel. The bag contained Xanax and Clonazepam, which Gilliland told Deputy Owens that he had taken that day, and methamphetamine. Gilliland’s blood sample was positive for methamphetamine and clonazepam. Gilliland’s exclusive possession of the vehicle when considered with this evidence is sufficient to establish Gilliland’s intent to possess the handgun, methamphetamine and narcotics found in the vehicle.

Conclusion

[23] The State presented sufficient evidence to support Gilliland’s convictions for Level 5 felony carrying a handgun without a license, Level 6 felony possession of methamphetamine, and Level 6 felony possession of a narcotic drug.

[24] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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