

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Joel M. Schumm
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Erica S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

L.J.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

January 18, 2024

Court of Appeals Case No.
23A-JV-1717

Appeal from the Marion Superior
Court

The Honorable Danielle P.
Gaughan, Judge
The Honorable Peter P. Haughan,
Magistrate

Trial Court Cause No.
49D15-2210-JD-7911

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] Fifteen-year-old L.J. appeals his delinquency adjudication for dangerous possession of a firearm and unlawful carrying of a handgun. Both acts involved L.J.'s constructive possession of a handgun, which police found on the floorboard of L.J.'s seat in a vehicle occupied by two other people. L.J. claims the State presented insufficient evidence to prove he intended to possess the gun. But L.J. admitted that he knew of the gun's presence in the vehicle, and knowledge of the presence of contraband is sufficient to prove intent to possess under Indiana's constructive possession doctrine. We therefore affirm L.J.'s delinquency adjudication but remand with instructions to vacate the true finding for unlawful carrying of a handgun.

Facts

- [2] While investigating a shooting in Lawrence, police stopped a vehicle in which L.J. was the sole rear seat passenger. Police immediately ordered L.J. and the vehicle's two front seat occupants to exit the vehicle, at which time, one of the officers observed L.J. "hunched down with his shoulders kind of forward and his arms down towards like the floorboard, or floormat of the vehicle, making furtive movements" Tr. Vol. II, p. 8. When the occupants finally exited the vehicle, police observed a handgun on the floorboard of L.J.'s seat.
- [3] Police arrested L.J. and transported him to the Lawrence police station, where L.J. and his mother agreed to waive L.J.'s *Miranda* rights. L.J. then admitted to police that he knew there was a handgun in the vehicle on the floorboard of his

seat. Police later conducted DNA testing on the gun and recovered the DNA of four or more individuals, including one of the vehicle's front seat occupants. The testing, however, neither included nor excluded L.J. as one of the DNA contributors.

- [4] The State filed a delinquency petition against L.J., alleging he committed two Class A misdemeanors: (1) dangerous possession of a firearm; and (2) unlawful carrying of a handgun. After a fact-finding hearing, the juvenile court entered true findings as to both alleged acts and adjudged L.J. delinquent. The parties waived a dispositional hearing, and the juvenile court entered a dispositional decree placing L.J. on supervised probation. The court also “Merged” its true finding for unlawful carrying of a handgun with its true finding for dangerous possession of a firearm. App. Vol. II, p. 15.

Discussion and Decision

- [5] On appeal, L.J. challenges the sufficiency of the evidence to support his delinquency adjudication. He also claims the juvenile court erred by merging, but not vacating, its true finding for unlawful carrying of a handgun finding.

I. Sufficiency of the Evidence

- [6] L.J. claims the State presented insufficient evidence to prove he constructively possessed the handgun found on the floorboard of his seat. “In order to prove constructive possession, the State must show 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). According to L.J., the State failed to prove he had the requisite intent.

- [7] To prove the intent element of constructive possession, “the State must demonstrate the defendant’s knowledge of the presence of the contraband.” *Id.* Such knowledge often must be inferred through circumstantial evidence, such as incriminating statements, attempted flight, or furtive gestures. *Gee v. State*, 810 N.E.2d 338, 341 (Ind. 2004). But in this case, the trier of fact had direct evidence of L.J.’s knowledge—he admitted to knowing the handgun was in the vehicle on the floorboard of his seat. Thus, the State sufficiently proved L.J.’s intent to maintain dominion and control of the gun under the constructive possession doctrine.

II. Merger of True Findings

- [8] As for L.J.’s claim that the juvenile court erred by merging, but not vacating, its true finding for unlawful carrying of a handgun, the State agrees that the finding should be vacated. We therefore remand with instructions for the juvenile court to vacate its true finding for unlawful carrying of a handgun.

Conclusion

- [9] We affirm L.J.’s delinquency adjudication based on the juvenile court’s true finding for dangerous possession of a firearm. However, we remand with

instructions for the court to vacate its true finding for unlawful carrying of a handgun.

Altice, C.J., and Kenworthy, J., concur.