

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael T. Owens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 5, 2022

Court of Appeals Case No.
21A-CR-1943

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-1811-F4-40458

Crone, Judge.

Case Summary

- [1] Michael T. Owens appeals his conviction for level 4 felony unlawful possession of a firearm by a serious violent felon (SVF), arguing that it is unsupported by sufficient evidence. Finding sufficient evidence, we affirm.

Facts and Procedural History

- [2] One afternoon in November 2018, Indianapolis Metropolitan Police Department Officer Adam Moss was on patrol and observed a Dodge Charger fail to signal at least 200 feet before making a turn and exceeding the speed limit. Officer Moss attempted to make a traffic stop by activating his emergency lights and briefly sounding his siren, but the Charger sped away. Officer Moss kept his emergency lights activated, fully activated his siren, and pursued the Charger, which failed to stop at stop signs and reached speeds of fifty or sixty miles per hour in a thirty-five-mile-per-hour zone. At one point, Officer Moss saw an arm extend from the driver's-side window and observed that the driver was wearing a large black coat. Officer Moss noticed that the driver held a handgun, which the driver threw into a yard. Officer Moss was able to read the address of the yard the gun landed in and reported it on his radio.
- [3] Officer Moss continued to follow the Charger, which slowed down at times, such that the officer believed that the driver was trying to find a place to flee on foot. Officer Moss pursued the Charger about eight or nine minutes before the Charger finally came to a complete stop. The driver, identified as Owens, was wearing a black coat consistent with what Officer Moss had observed on the

arm of the person who threw the gun from the vehicle. The person in the front passenger seat was identified as Candiance Day.

[4] Meanwhile, police went to the address reported by Officer Moss and found the handgun, the baseplate of a magazine, and at least one bullet. DNA samples were recovered from the handgun, and a DNA buccal swab was taken from Owens. The partial DNA profile from the slide stop, safety, and front and rear sights of the handgun matched Owens's DNA profile. The probability of this profile occurring randomly in an individual unrelated to Owens was 1 in 350 trillion. Tr. Vol. 3 at 25.

[5] The State charged Owens with level 4 felony unlawful possession of a firearm by a SVF and level 6 felony resisting law enforcement. A bifurcated trial was held. In the first phase, Day testified that she was the owner of the Charger, that she did not carry a gun, that she did not have a gun in her car that day, that she did not throw a gun out the car window, and that she did not see Owens throw a gun out the window. *Id.* at 6-7. A jury found Owens guilty of resisting law enforcement and found that he knowingly possessed a firearm. In the second phase, the trial court found him guilty of unlawful possession of a firearm by a SVF. The trial court sentenced Owens to nine years for the SVF conviction, with eight years executed and one year on home detention, and a concurrent term of two years executed for the resisting law enforcement conviction. This appeal ensued.

Discussion and Decision

- [6] Owens challenges the sufficiency of the evidence supporting his SVF conviction. 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.
- [7] To convict Owens of unlawful possession of a firearm by a SVF, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally possessed a firearm and had been previously convicted of a serious violent felony. Ind. Code § 35-47-4-5(c). Owens challenges only the possession element. A conviction for unlawful 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* (2019). “Actual possession is the direct physical control of the gun,” whereas constructive possession occurs when the defendant “has (1) the capability to maintain dominion and control over the item, and (2) the intent to maintain dominion and control over it.” *Id.* at 1269-70.

[8] Owens frames the issue as one of constructive possession and argues that something more is necessary than the few seconds he held the handgun to establish that he had the intent and capability to exert dominion and control over it. The State argues that constructive possession is not at issue because Owens had actual possession of the firearm. We agree. We note that there is no dispute that Owens was driving the Charger, that his DNA was on the recovered handgun, that he and Day were the only two people in the Charger, that Day owned the Charger, that she did not carry a gun, and that to her knowledge there was no firearm in her vehicle. Given these circumstances, Officer Moss's observation that Owens was holding the handgun and threw it out the car window is sufficient evidence that Owens actually possessed the handgun. *See Williams v. State*, 834 N.E.2d 225, 229 (Ind. Ct. App. 2005) (finding sufficient evidence of possession where defendant's daughter testified that she saw defendant holding firearm and quickly hide it under mattress, firearm was found under that mattress, and mattress was in room where only defendant slept).

[9] Owens contends that the DNA analysis revealed one other unidentified individual's DNA on the handgun, the evidence does not show that Owens was aware that the firearm was in the vehicle before the pursuit began, and the State failed to ask Day whether anyone else with access to a handgun had access to the vehicle. Owens's argument is merely a request to reweigh the evidence, which we must decline.

[10] Affirmed.

Vaidik, J., and Altice, J., concur.