

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Clinton M. Odom,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 28, 2023

Court of Appeals Case No.
22A-CR-2754

Appeal from the St. Joseph
Superior Court

The Honorable Stephanie E.
Steele, Judge

Trial Court Cause No.
71D01-2106-F4-000028

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] On September 1, 2022, a jury convicted Clinton Odom of unlawful possession of a firearm by a serious violent felon, a Level 4 felony, and possession of cocaine, a Level 6 felony. The trial court sentenced Odom to a total of eight years. Odom now appeals his conviction and presents a single issue for our review: Whether the evidence presented at trial was sufficient to establish Odom possessed a firearm.

[2] We affirm.

Facts and Procedural History

[3] On June 3, 2021, Yvonne Harding called 911 and reported a disturbance at her apartment involving Odom, with whom she was in an on-again, off-again relationship. Carter Thompson, a patrol officer with the South Bend Police Department (“SBPD”), responded to Harding’s call, spoke with both Harding and Odom, and left after strongly advising Odom to leave as well.

[4] Approximately an hour later, Harding called 911 again, and told the 911 operator that Odom was outside her apartment “threatening me with a gun,” State’s Ex. 1 at 0:05–0:10, and that Odom had “a big ol’ gun in his car that he keep [sic] pointing at me,” *id.* at 1:10–1:14. Officer Thompson responded to Harding’s second call. When Officer Thompson arrived at Harding’s apartment, Odom was standing outside near a burgundy GMC Yukon (the

“Vehicle”). Both Odom and Harding informed Officer Thompson that the Vehicle belonged to Odom.

[5] Officer Thompson met first with Harding, who was inside her apartment. After speaking with Harding, Officer Thompson placed Odom in the back of Officer Thompson’s car, advised Odom of his *Miranda* rights, and then interviewed Odom. During this interview, Officer Thompson asked Odom whether he had a firearm, and Odom answered that he did not have a firearm. Officer Thompson also specifically asked Odom whether he had a firearm in the Vehicle, and Odom repeatedly denied having a firearm in the Vehicle. Officer Thompson then looked through the windows of the Vehicle but did not see any weapons in plain view.

[6] Officer Thompson returned to his car to prepare a request for a warrant to search the Vehicle for firearms. Odom was still sitting in Officer Thompson’s car at this time. While Officer Thompson was “typing and trying to focus on the warrant . . . [Odom] continually was talking to [Officer Thompson] about everything that was going on.” Tr. Vol. I at 94. Odom eventually told Officer Thompson that “he ‘left something out’” during their initial conversation: “there was a weapon inside of his vehicle.” *Id.* at 94–95. Odom described the “weapon” as a .22-caliber assault rifle that was black in color and missing the stock. Odom informed Officer Thompson that the firearm was “inside a black garbage bag,” *id.* at 99, “in the third row of the vehicle,” *id.* at 102.

[7] Odom also told Officer Thompson that the firearm belonged to Odom's cousin, that Odom used the firearm for squirrel hunting, and that Odom had taken the firearm from Harding's apartment and placed it in the Vehicle shortly before Officer Thompson arrived in response to Harding's second 911 call. Odom then gave Officer Thompson permission to search the Vehicle, but Officer Thompson chose to complete the search warrant request. Once Officer Thompson obtained approval of that warrant, he and Matthew Weller, a crime scene technician with the SBPD, searched the Vehicle. In addition to cocaine, Officers Thompson and Weller found an empty magazine in the glove compartment of the Vehicle, and a .22-caliber Mossberg rifle without a stock (the "Rifle") inside of a black trash bag in the third row of the Vehicle.

[8] After finding the Rifle in the Vehicle, Officer Thompson asked Odom to provide a DNA sample, to which Odom agreed. Officer Weller collected a buccal swab from Odom, and a DNA swab from the Rifle. The DNA analysis indicated that four individuals had handled the Rifle, and one of those individuals was one trillion times more likely to be Odom than anyone else. Odom was subsequently arrested and charged with unlawful possession of a firearm by a serious violent felon, a Level 4 felony, and possession of cocaine, a Level 6 felony.

[9] Patrick Washington, Odom's cousin, testified at trial that he had purchased the Rifle in 2016 from a pawn shop and that he had left it in the Vehicle after borrowing the Vehicle to move furniture a day or two before the search. According to Washington, he had not used the Rifle for at least a year at the

time it was seized. Washington also testified that Odom did not know the Rifle was in the Vehicle, Odom never borrowed the Rifle from Washington, and Odom never handled the Rifle.

[10] In a two-phase jury trial, the jury found Odom guilty of possession of cocaine, a Level 6 felony, and unlawful possession of a firearm by a serious violent felon, a Level 4 felony. This appeal ensued.

Discussion and Decision

[11] Odom argues that the evidence presented at trial was insufficient to support his conviction for unlawful possession of a firearm by a serious violent felon.¹ “Sufficiency-of-the-evidence arguments trigger a deferential standard of appellate review, in which we ‘neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the jury.’” *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)), *reh’g denied* (Aug. 17, 2023). A jury’s verdict “comes before us with a presumption of legitimacy, and we do not substitute our judgment for” the jury’s judgment. *Joseph v. State*, 126 N.E.3d 810, 812 (Ind. Ct. App. 2019) (citing *Binkley v. State*, 654 N.E.2d 736, 737 (Ind. 1995)). We will reverse a jury’s verdict only when no reasonable jury “could find the elements of the

¹ Odom does not challenge his conviction for possession of cocaine.

crime proven beyond a reasonable doubt.” *Lock v. State*, 971 N.E.2d 71, 74 (Ind. 2012) (quoting *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)).

[12] “[I]t is well-settled that [a] conviction for possessory offenses does not depend on the accused being caught red-handed in the act by the police.” *McCoy v. State*, 153 N.E.3d 363, 366 (Ind. Ct. App. 2020) (quoting *Smith v. State*, 113 N.E.3d 1266, 1269 (Ind. Ct. App. 2018)). That is, the evidence does not need to “overcome every reasonable hypothesis of innocence; it is sufficient so long as an inference may reasonably be drawn from it to support the verdict.” *Lock*, 971 N.E.2d at 74 (internal quotation marks omitted) (quoting *Drane*, 867 N.E.2d at 147).

[13] In order to convict Odom of unlawful possession of a firearm by a serious violent felon under Indiana Code section 35-47-4-5(c), the State had to prove beyond a reasonable doubt that

1. Odom was a serious violent felon; and
2. Odom knowingly or intentionally possessed a firearm.

Odom argues only that there was insufficient evidence to prove he possessed the Rifle.

There are two types of possession: (1) actual and (2) constructive. *Sargent v. State*, 27 N.E.3d 729, 732–33 (Ind. 2015). “A person actually possesses contraband if he has direct physical control over it.” *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011) (citing *Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999)). A person constructively possesses contraband when he has (1) the capability to

maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it, *id.* (citing *Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind.), *modified on reh'g*, 685 N.E.2d 698 (Ind.1997)), regardless of whether he had exclusive possession of the premises, *Gee v. State*, 810 N.E.2d 338, 341 (Ind. 2004) (citing *Davenport v. State*, 464 N.E.2d 1302, 1307 (Ind. 1984)).

[14] After responding to Harding's second 911 call in which she alleged that Odom had a firearm, Officer Thompson *Mirandized* and interviewed Odom. Odom eventually told Officer Thompson that the Rifle was wrapped in a black trash bag in the third row of the Vehicle, and that he had placed it there after removing it from Harding's apartment shortly before Officer Thompson arrived. Odom informed Officer Thompson that he used the Rifle for squirrel hunting, and Odom's DNA was on the Rifle.

[15] Odom relies in large part on Washington's testimony to show that Odom did not actually or constructively possess the Rifle; however, the jury was free to not give much, if any, weight to that testimony. We will not reweigh the evidence on appeal. *See Lock*, 971 N.E.2d at 74 (quoting *Drane*, 867 N.E.2d at 146). Based on Harding's statements to the 911 operator, Odom's statements to Officer Thompson, and the DNA test results, the jury could have reasonably

concluded that, at one point, Odom had direct physical control over the Rifle. This evidence is sufficient to establish that Odom actually possessed the Rifle.²

Conclusion

[16] Based on the foregoing, we hold that the State presented sufficient evidence beyond a reasonable doubt to support Odom's conviction for unlawful possession of a firearm by a serious violent felon.

[17] Affirmed.

Crone, J., and Brown, J., concur.

² Because the evidence is sufficient to show that Odom actually possessed the Rifle, we need not determine whether he constructively possessed it.