

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

G.B.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

May 23, 2022

Court of Appeals Case No.
21A-JV-1883

Appeal from the Marion Superior
Court

The Honorable Duane Edward
Merchant, Magistrate

Trial Court Cause No.
49D09-2009-JD-754

Crone, Judge.

Case Summary

- [1] G.B. challenges his juvenile delinquency adjudication for carrying a handgun without a license, a class A misdemeanor if committed by an adult. He contends that the evidence is insufficient to support the adjudication. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] On September 9, 2020, Indianapolis Metropolitan Police Department (IMPD) Detective William Payne was off duty and driving around looking for his son's Hyundai Elantra, which had been stolen from his home the previous day. Detective Payne observed what he believed to be his son's car pass him, and he contacted IMPD dispatch and confirmed the license plate. He followed the Elantra into a parking lot and waited for additional officers to arrive. When the other officers arrived, the driver of the Elantra "attempted to back up and then it made a turn and ... hit two other cars that were parked." Tr. Vol. 2 at 13.
- [3] IMPD Officer Marcus Riley and other officers approached the vehicle. During his approach, Officer Riley did not observe "anything being tossed around in the car." *Id.* at 26. Officer Riley removed the three occupants from the vehicle, including G.B., who had been seated in the front passenger seat. Officers then searched the vehicle and found a handgun on the floorboard of the front passenger seat with the barrel pointed toward the driver. The gun was found when an officer went to "scooch" the front passenger seat back so that she could check under it. *Id.* at 53. The handgun was positioned "up against the []

middle console area” and appeared as if “somebody had just slid it in there” after the vehicle had struck the parked cars. *Id.* at 53.¹

[4] The State filed a delinquency petition alleging that G.B. committed conduct which, if committed by an adult, amounted to class A misdemeanor dangerous possession of a firearm and class A misdemeanor carrying a handgun without a license. The State later dismissed the dangerous possession allegation. Following a factfinding hearing, the juvenile court entered a true finding that G.B. committed carrying a handgun without a license. The trial court placed G.B. on probation and released him to his mother’s custody. This appeal ensued.

Discussion and Decision

[5] G.B. challenges the sufficiency of the evidence to sustain his true finding of carrying a handgun without a license. Specifically, he contends that the State presented insufficient evidence that he constructively possessed the handgun. Our standard of review is well settled:

We neither reweigh the evidence nor judge the credibility of witnesses. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. We will affirm if there exists substanti[al] evidence of probative value to establish

¹ IMPD Officer Tiffany Wren surmised, based on her experience, that the gun had recently been placed where it was found because otherwise it “would have been flung forward” when the vehicle struck the parked cars. Tr. Vol. 2 at 53.

every material element of the offense. Further, it is the function of the trier of fact to resolve conflicts in testimony and to determine the weight of the evidence and the credibility of the witnesses.

J.C. v. State, 131 N.E.3d 610, 612 (Ind. Ct. App. 2019) (citation omitted). We will affirm a juvenile delinquency adjudication unless no reasonable factfinder could have found the respondent guilty beyond a reasonable doubt. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018).

[6] At the time of G.B.’s offense, Indiana Code Section 35-47-2-1² provided that “a person shall not carry a handgun in any vehicle or on or about the person’s body without being licensed under this chapter to carry a handgun.” A person who knowingly or intentionally carried a handgun in violation of Indiana Code Section 35-47-2-1 committed a class A misdemeanor. Ind. Code § 35-47-2-1(e). It is well established that possession can be either actual or constructive. *Sargent v. State*, 27 N.E.3d 729, 732-33 (Ind. 2015). “Actual” possession of contraband,

² This section has been amended effective July 1, 2022, to remove the handgun licensing requirements for adults as well as the criminal penalty for violating these requirements. The legislature has added a new section, Indiana Code Section 35-47-2-1.5, outlining the new crime of “unlawful carrying of a handgun,” which makes it a crime (either a class A misdemeanor or a level 5 felony) for certain individuals, including persons who are less than eighteen years of age, to knowingly or intentionally carry a handgun. In doing so, the legislature may have created a problem with charging juveniles with a handgun offense, as the definition of a delinquent act, absent certain specified exceptions, requires that the child commit an act “that would be an offense if committed by an adult.” Ind. Code § 31-37-1-2. Here, the new legislation simply makes it a crime for a juvenile to carry a handgun; however, absent an adult offense, there can be no delinquent act. While it appears that the legislature proposed to amend Indiana Code Section 31-37-1-2 to specifically include unlawful carrying of a handgun within the definition of a delinquent act, the bill did not pass. S. 340 122d Gen. Assemb., 2d Reg. Sess. (Ind. 2022). So, it would appear prospectively that a juvenile’s possession of a handgun would not necessarily constitute a delinquent act. We leave for another day how this will all sort out moving forward.

whether a handgun or an illegal substance, 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). If the State cannot prove actual possession, as is the case here, it may nonetheless prevail on proof of “constructive” possession. *Id.* at 1177. “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.” *Id.* (citation omitted).

[7] Regarding the capability component of constructive possession, G.B. appears to concede that there was sufficient evidence that he had the capability to maintain dominion and control over the handgun. *See Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999) (the State must show “that the defendant is able to reduce the [item] to the defendant’s personal possession.”). As G.B. was seated in the vehicle right next to where the handgun was found, there is little question that he would have been able to reduce the handgun to his personal possession.

[8] Thus, G.B. focuses on the sufficiency of the evidence regarding his intent. The intent component is proven by demonstrating the accused’s knowledge of the presence of the item. *Grim v. State*, 797 N.E.2d 825, 831 (Ind. Ct. App. 2003). Such knowledge may be inferred from the exclusive dominion and control over the premises containing the item. *Id.* If, however, control of the premises is non-exclusive, the inference of intent to maintain dominion and control over the item must be supported by evidence of additional circumstances indicating the accused’s knowledge of the nature of the item and its presence. *Cannon v. State*, 99 N.E.3d 274, 279 (Ind. Ct. App. 2018), *trans. denied*. When the item is a

firearm, these additional circumstances have been found to include: (1) incriminating statements by the accused; (2) attempted flight or furtive gestures; (3) proximity of the firearm to the accused; (4) location of the firearm within the accused's plain view; and (5) mingling of the firearm with other items owned by the accused. *Deshazier v. State*, 877 N.E.2d 200, 206 (Ind. Ct. App. 2007), *trans. denied* (2008).

[9] Here, G.B. did not have exclusive dominion and control of the car in which the handgun was found. Accordingly, the State was required to present evidence of additional circumstances to support the inference that G.B. had knowledge of and intended to exercise control over the handgun. We need look no further than the positioning of the handgun and G.B.'s close proximity thereto to support his delinquency adjudication. The handgun was found leaning against the center console directly next to G.B.'s seat, and therefore the firearm clearly would have been within G.B.'s plain view while he was seated. Moreover, the handle of the gun was positioned perfectly for G.B., and only G.B., to grab it. In addition, there was no evidence or indication that the handgun belonged to or was ever under the control of either the driver or the backseat occupant of the vehicle. As this Court has acknowledged, "Indiana courts have been far more likely to find sufficient evidence [of constructive possession] where evidence suggests that a vehicle's passenger could see the handgun, was in the best position to access the gun, and no evidence clearly indicates the gun belonged to or was under the control of another occupant of the vehicle." *Deshazier*, 877 N.E.2d at 208. Under the circumstances, we conclude that sufficient evidence

demonstrates G.B.'s constructive possession of the handgun. His delinquency adjudication is affirmed.

[10] Affirmed.

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