

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.H.,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

May 3, 2023

Court of Appeals Case No.
22A-JV-2768

Appeal from the Vanderburgh
Superior Court

The Honorable Brett J. Niemeier,
Judge

The Honorable Renee A.
Ferguson, Magistrate

Trial Court Cause No.
82D04-2208-JD-1272

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] Sometime in June or July of 2022, fifteen-year-old J.H. stole his mother's ("Mother") handgun from the safe in her bedroom. On August 12, 2022, after being confronted by Mother, J.H. admitted that he had stolen the handgun. One week later, the State filed a delinquency petition alleging that J.H. had committed what would be Level 5 felony theft of a firearm if committed by an adult and Class A misdemeanor dangerous possession of a firearm. In October, the juvenile court found J.H. to be a juvenile delinquent and ordered that he be made a ward of the Indiana Department of Correction ("the DOC"). On appeal, J.H. contends that the evidence is insufficient to sustain his adjudication as a juvenile delinquent. We affirm.

Facts and Procedural History

- [2] In the summer of 2022, J.H. lived with Mother, her boyfriend, and his three younger brothers in Evansville. J.H. had a twenty-one-year-old brother, Javier, who did not live in the family home. Sometime that June, Mother locked her handgun in her bedroom safe. Mother routinely kept her bedroom locked and had told J.H. and his brothers that they were not to enter her room or touch her handgun.
- [3] On July 31, 2022, Mother discovered that her handgun was missing from her bedroom safe. J.H., his brothers, and Mother's boyfriend all had denied taking

the handgun, so Mother reported it as stolen to the police. On August 12, 2022, while cleaning J.H.'s shared room, Mother found "the top clip part of [her] gun" or "the cap" to the scope. Tr. Vol. II p. 15. Mother then discovered a Facebook picture of J.H. with his friend in which J.H. had what appeared to be her "9 millimeter in his pocket." Tr. Vol. II p. 15. Mother told Javier that she believed that J.H. had stolen her handgun, and Javier, who had already been on his way to see J.H., said he would ask J.H. about it.

[4] Later that day, Mother confronted J.H. Initially, J.H. claimed that Mother's boyfriend had been "try[ing] to set [him] up." Tr. Vol. II p. 17. After being questioned further, J.H. admitted that he had taken the handgun to protect himself because he had been "beefing with some people in the streets." Tr. Vol. II p. 17. Mother called Javier who informed her that he had retrieved the gun from J.H. earlier that day. J.H. told Mother that he had stolen the handgun from her bedroom safe while she and her boyfriend were fighting; however, he did not say when the theft occurred. After retrieving the handgun from Javier, Mother called the police to report that it had been recovered. When the police arrived at the home, Mother informed them that J.H. had stolen the handgun and had fled "when [the police] came into the house to look for him." Tr. Vol. II p. 19. Police arrested J.H. at school a few days later.

[5] On August 19, 2022, the State alleged J.H. to be a juvenile delinquent for committing what would be Level 5 felony theft if committed by an adult and Class A misdemeanor dangerous possession of a firearm. On September 13, 2022, the juvenile court held a fact-finding hearing, after which it found that

J.H. was a delinquent. At the dispositional hearing, the juvenile court ordered that J.H. be made a ward of the DOC for placement at the Indiana Boys School.

Discussion and Decision

[6] J.H. argues that the State failed to present sufficient evidence to prove his delinquency beyond a reasonable doubt. We apply the same sufficiency standard in juvenile cases as we do in criminal cases. *J.C. v. State*, 131 N.E.3d 610, 612 (Ind. Ct. App. 2019). Our sufficiency standard is well-settled:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). In other words, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder

could find the defendant guilty.” *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

[7] To prove that J.H. committed what would be Level 5 felony theft of a firearm if committed by an adult, the State had to prove that he “knowingly or intentionally exert[ed] control” over Mother’s handgun “with the intent to deprive [her] of any part of its value or use[.]” Ind. Code § 35-43-4-2(3). “The elements of both ‘exertion of control’ and intent can be proven by direct evidence or inferred from circumstantial evidence.” *Mefford v. State*, 51 N.E.3d 327, 334 (Ind. Ct. App. 2016).

[8] Specifically, J.H. argues that “there is no evidence that [he] committed the crime of theft on or about July 31, 2022[.]” Appellant’s Br. p. 9. Indeed, he claims that the State failed to present evidence of any specific act of J.H. obtaining or exerting unauthorized control over Mother’s handgun because Mother had never seen J.H. in possession of it. We, however, disagree.

[9] To start, J.H. admitted to Mother that he had stolen her handgun “[f]or protection” because he had been “beefing with some people out in the streets.” Tr. Vol. II pp. 17–18. *See Reynolds v. State*, 409 N.E.2d 639, 641 (Ind. 1980) (concluding that defendant’s admission of guilt, among other things, constituted sufficient evidence to support defendant’s conviction). Moreover, J.H. fled the scene when the police entered Mother’s house to look for him after she had reported that he had stolen the handgun, suggesting J.H.’s consciousness of guilt. *Dill v. State*, 741 N.E.2d 1230, 1231 (Ind. 2001) (“[F]light and other

actions calculated to hide a crime [...] are evidence of consciousness of guilt[.]”). Further, contrary to J.H.’s argument, “where time is not an element” of the offense, as is the case here, “the State need not prove the precise date alleged in the indictment or information but may prove that the crime occurred at any time within the statutory period of limitations.” *Sangsland v. State*, 715 N.E.2d 875, 878 (Ind. Ct. App. 1999) (citing *Quillen v. State*, 271 Ind. 251, 252, 391 N.E.2d 817, 818–19 (1979)), *trans. denied*. Generally, the statute of limitations for a Level 5 felony is five years; therefore, the State is not confined to the precise date alleged in the charging information, but only to that five-year period. *See* Ind. Code § 35-41-4-2; *see also Sangsland*, 715 N.E.2d at 877. The State produced sufficient evidence to sustain the juvenile court’s finding that J.H. committed what would be Level 5 felony theft if committed by an adult.

[10] Next, J.H. claims that the evidence is insufficient to support the finding that he committed Class A misdemeanor dangerous possession of a firearm. Indiana Code section 35-47-10-5(a) provides that “[a] child who knowingly, intentionally, or recklessly possesses a firearm for any purpose other than a purpose described in section 1 of this chapter commits dangerous possession of a firearm[.]” J.H. argues that the State failed to prove that he “had actual possession of the gun on July 31, 2022, or that anyone even saw the gun on July 31, 2022.” Appellant’s Br. p. 12. Again, we disagree.

[11] Indiana law establishes that possession may be actual or constructive. *Britt v. State*, 810 N.E.2d 1077, 1082 (Ind. Ct. App. 2004). “Actual possession occurs when the defendant has direct physical control over the item, while constructive

possession involves the intent and capability to maintain control over the item even though actual physical control is absent.” *Id.* Here, the evidence is sufficient to support the juvenile court’s decision because it establishes that J.H. possessed the handgun. Despite the lack of evidence that either Mother or anyone else saw him possess the handgun on July 31, 2022, a conviction for a possession offense “does not depend on the accused being ‘caught red-handed[.]’” *Smith v. State*, 113 N.E.3d 1266, 1270 (Ind. Ct. App. 2018), *trans. denied*. Therefore, J.H.’s admission that he stole Mother’s handgun sometime after she had stored it in her safe in June of 2022, and possessed it until Javier took it from him on August 12, 2022, constitutes sufficient evidence to support the juvenile court’s decision. *See Craig v. State*, 883 N.E.2d 218, 223 (Ind. Ct. App. 2008) (concluding that the evidence was sufficient to prove actual possession of handgun where defendant admitted that he had the handgun in his house because he had hoped to sell it).

[12] After assessing the evidence and witness credibility, the juvenile court determined that the direct and circumstantial evidence was sufficient to prove that J.H. had committed what would be Level 5 felony theft if committed by an adult and Class A misdemeanor dangerous possession of a firearm. J.H. essentially asks us to reweigh the evidence, which we will not do. *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001).

[13] The judgment of the juvenile court is affirmed.

May, J., and Mathias, J., concur.