

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

A.P.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

February 27, 2023

Court of Appeals Case No.
22A-JV-1767

Appeal from the Allen Superior
Court

The Honorable Andrea R. Trevino,
Judge

The Honorable Daniel G. Pappas,
Magistrate

Trial Court Cause No.
02D07-2205-JD-441

Memorandum Decision by Judge Kenworthy
Judges Bradford and Pyle concur.

Kenworthy, Judge.

Case Summary and Issue

- [1] During a traffic stop, police officers found a handgun in a vehicle near where sixteen-year-old A.P. had been sitting. A juvenile court determined A.P. committed the delinquent act of dangerous possession of a firearm by a child, a Class A misdemeanor.¹ A.P. argues the evidence is insufficient to sustain the court's judgment. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] On May 4, 2022, Detective Geoff Norton of the Fort Wayne Police Department saw two individuals, later identified as A.P. and Devon Weaver, skateboarding on a street. Detective Norton noticed an extended magazine clip sticking out of A.P.'s shorts.
- [3] Several minutes later, Weaver and A.P. met Tramana Hambright, who was dating Weaver. She agreed to drive them to A.P.'s mother's home. Weaver chose the front passenger seat of Hambright's vehicle, and A.P. sat in the back seat on the passenger side, behind Weaver.
- [4] Detective Norton stopped Hambright shortly after she drove off, noting she had made a turn without first activating her turn signal at the required distance. He

¹ Ind. Code § 35-47-10-5 (2014).

approached the passenger side of the vehicle, where he smelled an odor of burning marijuana coming from inside.

[5] Several other officers arrived at the scene, and they removed everyone from the vehicle. Detective Norton patted down Weaver while two other officers removed A.P. from the rear passenger seat. One of the officers stated he saw a magazine clip.

[6] Detective Norton looked at the back seat area while the other officers handcuffed A.P. He saw the magazine clip in plain view, where “it would have been pretty much right against [A.P.’s] left leg on the seat.” *Tr. Vol. 2* at 18. Detective Norton also saw a handgun in a pocket on the door closest to the right rear passenger seat, where A.P. had been sitting. He did not have to move anything, bend over, or reach into the vehicle to see the handgun. Detective Norton retrieved the handgun and discovered it was loaded. Hambright did not own a firearm, and she had not given anyone permission to put a firearm in her vehicle.

[7] On May 11, 2022, the State of Indiana filed a petition alleging A.P. was a juvenile delinquent for committing the offense of dangerous possession of a firearm by a child, a Class A misdemeanor. The juvenile court held a factfinding hearing and determined the State proved its allegation beyond a reasonable doubt. The court later held a dispositional hearing and granted wardship of A.P. to the Indiana Department of Correction. This appeal followed.

Discussion and Decision

- [8] A.P. contends the State’s evidence is insufficient to support the juvenile court’s judgment. When reviewing a delinquency adjudication, we consider only the evidence and reasonable inferences supporting the judgment. *B.R. v. State*, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005). We neither reweigh the evidence nor judge the credibility of witnesses. *Matter of K. Y.*, 175 N.E.3d 820, 825 (Ind. Ct. App. 2021), *trans. denied*. We will not disturb the adjudication if there exists substantive evidence of probative value to establish every material element of an offense beyond a reasonable doubt. *E.H. v. State*, 764 N.E.2d 681, 683 (Ind. Ct. App. 2002), *trans. denied*.
- [9] To prevail on its delinquency petition, the State had to prove beyond a reasonable doubt (1) A.P. (2) a child (3) knowingly, intentionally, or recklessly (4) possessed a firearm (5) for any purpose other than those described in Indiana Code section 35-47-10-1. Ind. Code § 35-47-10-5. A.P. argues there is insufficient evidence to establish he possessed the handgun Detective Norton saw in Hambright’s vehicle.
- [10] A conviction for unlawful possession of a firearm may rest upon proof of “either actual or constructive possession.” *K.F. v. State*, 961 N.E.2d 501, 509 (Ind. Ct. App. 2012), *trans. denied*. Actual possession occurs when a defendant has direct physical control over an item. *Griffin v. State*, 945 N.E.2d 781, 783 (Ind. Ct. App. 2011). The State did not claim A.P. had direct physical control over the handgun.

[11] A person constructively possesses contraband 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. *Smith v. State*, 113 N.E.3d 1266, 1270 (Ind. Ct. App. 2018), *trans. denied*. A.P. concedes he had the capability to maintain dominion and control over the handgun. *Appellant's Br.* at 10. A.P.'s claim focuses on his intent.

[12] To prove intent to maintain dominion and control over an item, the State must establish the defendant's knowledge of the presence of the item. *Smith*, 113 N.E.3d at 1270. Knowledge may be inferred from either exclusive dominion and control over the premises containing the firearm, or from evidence of additional circumstances indicating the defendant's knowledge of the presence of the firearm. *Causey v. State*, 808 N.E.2d 139, 143 (Ind. Ct. App. 2004). These additional circumstances may include: "(1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) proximity of the firearm to the defendant; (4) location of the firearm within the defendant's plain view; and (5) the mingling of a firearm with other items owned by the defendant." *Id.*

[13] A.P. did not have exclusive dominion over the vehicle, so we must consider whether the facts and circumstances, viewed in the light most favorable to the judgment, indicated A.P. was aware of the presence of the firearm. He sat in close proximity to the handgun, which was in a pocket of the door next to his seat. He could have easily picked it up, but it would have been difficult for Hambright or Weaver to access it. *See Taylor v. State*, 482 N.E.2d 259, 261 (Ind.

1985) (affirming conviction of unlawful possession of firearm; handgun was found on floor of car in front of seat where Taylor had been sitting, and it would have been difficult for driver to reach it). Also, the handgun was in plain view. Detective Norton saw the gun when he looked in the vehicle, right after other officers removed A.P., and he did not need to move anything or even bend over to see it. *See Person v. State*, 661 N.E.2d 587, 590 (Ind. Ct. App. 1996) (affirming conviction of unlawful possession of firearm; among other factors, an officer saw the handgun sticking out of seat on which Person had been sitting, immediately after Person was removed from vehicle), *trans. denied*.

[14] A.P. argues the handgun was not in plain view, claiming the officers who removed him from the vehicle failed to notice the handgun. He further claims, pointing to his own testimony, he was in the vehicle for only a few minutes and was unaware of the handgun's presence. These arguments are, in essence, an invitation to reweigh the evidence, which our standard of review forbids. *See id.* (Person argued he did not know gun was in vehicle and someone else had placed gun on his seat; Court deemed argument to be request to reweigh evidence). The juvenile court, as the finder of fact, stated it found Detective Norton's testimony to be credible and A.P.'s testimony to not be credible. *Tr. Vol. 2* at 35.

Conclusion

[15] Based on the totality of the circumstances, the evidence is sufficient to support the juvenile court's judgment.

[16] Affirmed.

Bradford, J., and Pyle, J., concur.