

Appellant-defendant Lawrence Lusk appeals his conviction for Carrying a Handgun Without a License With a Prior Conviction,¹ a class C felony, challenging the sufficiency of the evidence. Specifically, Lusk argues that the conviction must be set aside because the evidence purportedly established that the arresting officer could not have seen him in possession of a handgun. Finding the evidence sufficient, we affirm the judgment of the trial court.

FACTS

Sometime during the afternoon of June 8, 2009, South Bend Police Officer Anthony Scott observed the driver of a Chevy Blazer pull to the left of the center line on Corby Street. As a result, Officer Scott activated his police cruiser's overhead lights and initiated a traffic stop. At that time, Officer Scott's stationary in-car camera was activated. Although the Blazer's windows were tinted, Officer Scott noticed that there were three people inside.

When Officer Scott got out of his vehicle, he saw the Blazer's passenger side door open. Officer Scott noticed that Lusk, the front seat passenger, was holding a gun. Thereafter, Lusk tossed the gun underneath the Blazer. In response, Officer Scott drew his own weapon and radioed for assistance. After the other units arrived, one of the officers recovered the pistol approximately six inches under the Blazer on the passenger side that Officer Scott had seen Lusk holding. As a result of the incident, Lusk was

¹ Ind. Code § 35-47-2-1; I.C. § 35-47-2-23(c).

charged with Count I, carrying a handgun without a permit, a class A misdemeanor, and count II, carrying a handgun without a license with a prior conviction, a class C felony.

On May 26, 2010, Lusk submitted a conditional plea to Count II that would only be entered if the jury convicted him on Count I. Following a jury trial, Lusk was found guilty as charged. Thereafter, the trial court sentenced Lusk to six years of incarceration with 381 days of credit time on Count II. Lusk now appeals.

DISCUSSION AND DECISION

Lusk claims that his conviction must be set aside because Officer Scott's observation that he was carrying a gun was a "physical impossibility." Appellant's Br. p. 5. More particularly, Lusk claims that Officer Scott could not have seen him with a gun because the police vehicle's in-car camera confirmed that he did not possess the weapon.

When reviewing a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. Rosenbaum v. State, 930 N.E.2d 72, 74 (Ind. Ct. App. 2010), trans. denied. Rather, we look to the evidence that best supports the judgment and all reasonable inferences to be drawn therefrom. Id. If there is substantial evidence of probative value supporting the trial court's judgment, it will not be overturned. Id.

To convict Lusk of carrying a handgun without a permit as a class A misdemeanor, the State was required to prove that he carried a handgun in a vehicle or on or about his person in a place other than his dwelling, property, or fixed place of business. Wallace v. State, 722 N.E.2d 910, 913 (Ind. Ct. App. 2000); I.C. § 35-47-2-1.

To satisfy these elements, the State must prove that “the defendant had either actual or constructive possession of the handgun.” Deshazier v. State, 877 N.E.2d 200, 204 (Ind. Ct. App. 2007). Actual possession occurs when an individual “has direct physical control over an item.” Wallace, 722 N.E.2d at 913.

In this case, Officer Scott testified that he saw Lusk holding the gun outside the passenger door. When Officer Scott approached the Blazer, Lusk was still holding the gun when the passenger side door opened. Officer Scott immediately retreated and radioed for assistance. Tr. p. 28-29. The police officers subsequently recovered the gun on the ground near the passenger side of the Blazer where Lusk had placed it. Id. at 25, 46.

Lusk maintains that Officer Scott’s testimony was inaccurate because the police vehicle’s camera did not confirm his observations about Lusk’s possession of the gun. However, the evidence at trial established that the camera did not capture Lusk placing the gun under the Blazer because of the angle between the camera and passenger side door. Id. at 44. Moreover, in response to the deputy prosecutor’s question, Officer Scott acknowledged that the Blazer’s back tires blocked the camera’s view of the gun. Id. at 48. Although the tires may have obstructed the view between the camera and the gun, Officer Scott testified there was “[no] doubt” that it was Lusk who held the pistol and placed it under the vehicle. Id. at 48.

In short, Officer Scott saw Lusk with the gun that was found directly beneath the Blazer where Officer Scott saw Lusk place it. Lusk’s arguments amount to a request that

we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Rosenbaum, 930 N.E.2d at 74. As a result, we conclude that the evidence was sufficient to support Lusk's conviction.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.