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IN THE
COURT OF APPEALS OF INDIANA

S.W.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0908-JV-488
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0904-JD-1002

April 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

S.W. appeals her delinquency adjudication for having committed what would be Class A misdemeanor dangerous possession of a firearm if committed by an adult. We affirm.

Issue

S.W. raises one issue, which we restate as whether the evidence is sufficient to demonstrate her constructive possession of the firearm.

Facts

On April 2, 2009, Deputy James Trimble of the Marion County Sheriff's Department was working off-duty in his personal vehicle at the Amberwoods Apartment Complex when he heard several gunshots. He then saw a blue vehicle, which was travelling at a high rate of speed, fail to stop at an intersection. Deputy Trimble followed the vehicle, called dispatch, and gave dispatch a description of the vehicle. Officer Brian Lambert of the Indianapolis Metropolitan Police Department, who was in the area, then initiated a traffic stop of the vehicle. S.W. was the driver of the vehicle. A passenger, M.M., got out of the vehicle and was secured by the officers. The officers saw a black shotgun with a scope on it in the back seat of the vehicle, and the shotgun was "in plain view." Tr. p. 12. A photograph of the shotgun admitted into evidence shows a black shotgun with a scope on it. The stock of the shotgun is resting on the backseat behind the passenger, and the barrel of the shotgun is on the floorboard area between the driver's

and passenger's seats.[1] The officers also found a handgun underneath the passenger's front seat.

The State alleged that S.W. was a delinquent child for committing acts that would be carrying a handgun without a license as a Class A misdemeanor and dangerous possession of a firearm as a Class A misdemeanor if committed by an adult. After a hearing, the trial court entered a true finding as to dangerous possession of a firearm and a not true finding as to carrying a handgun without a license. The trial court noted that this was a "constructive possession" case and that the shotgun was in plain view. Tr. p. 26. S.W. now appeals.

Analysis

S.W. argues that the evidence is insufficient to show that she had constructive possession of the firearm. When reviewing the sufficiency of the evidence in a juvenile adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses. K.S. v. State, 849 N.E.2d 538, 543 (Ind. 2006). We consider only the evidence most favorable to the juvenile court's judgment and the reasonable inferences to be drawn from that evidence. Id. We will affirm if there is substantial probative evidence to support the delinquency adjudication. Id.

The offense of dangerous possession of a firearm is governed by Indiana Code Section 35-47-10-5, which provides: "A child who knowingly, intentionally, or recklessly: (1) possesses a firearm for any purpose other than a purpose described in

[1] Officer Lambert testified that the photograph accurately showed what he saw that evening and the location of the shotgun.

section 1 of this chapter . . . commits dangerous possession of a firearm, a Class A misdemeanor." S.W. argues that she did not "possess" the shotgun.

A conviction for possession of contraband may rest upon either actual or constructive possession. Goodner v. State, 685 N.E.2d 1058, 1061 (Ind. 1997). Evidence of constructive possession is sufficient if the State shows that the defendant had both the capability and the intent to maintain dominion and control over the contraband. Hardister v. State, 849 N.E.2d 563, 573 (Ind. 2006).

"The capability element is met when the state shows that the defendant is able to reduce the [firearm] to the defendant's personal possession." Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). S.W. rightly does not dispute that the State presented sufficient evidence to demonstrate the capability element. S.W. was driving the vehicle, and the shotgun was laying inches away from her with the stock of the gun on the backseat. She was clearly capable of reducing the shotgun to her possession.

To prove the intent element, the State must establish the defendant had knowledge of the presence of the contraband. Id. "This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband." Id. Circumstances that will support such an inference include: 1) incriminating statements made by the defendant; 2) attempted flight or furtive gestures; 3) a drug manufacturing setting; 4) proximity of the defendant to the contraband; 5) contraband in plain view; and 6) the mingling of the contraband

with items owned by the defendant. Henderson v. State, 715 N.E.2d 833, 836 (Ind. 1999).

Because S.W.'s control over the vehicle was non-exclusive, evidence of additional circumstances pointing to her knowledge of the shotgun must exist to find that she had knowledge of the shotgun. She argues that none of the six circumstances noted in Henderson apply here. The State counters that S.W. was in close proximity to the shotgun and the shotgun was in plain view. The State also notes that, while S.W. did not flee the police, she was seen driving away from the area where officers heard multiple gunshots, and she was driving at a high rate of speed and failed to stop at an intersection. S.W. argues that the shotgun, which was in the backseat, would not have been in the driver's plain view. She also argues that driving at a high rate of speed does not establish her knowledge of the shotgun and that her mere close proximity to the gun is insufficient to establish her knowledge.

Both officers testified that the shotgun was in plain view in the vehicle. Our review of the photograph, which Officer Lambert testified was an accurate depiction of the shotgun's location, shows that the shotgun, which is a long firearm, would have been in S.W.'s view. The photograph shows the stock of the shotgun resting on the backseat behind the passenger and the barrel of the shotgun on the floorboard area between the driver and passenger's seats. S.W.'s argument is merely a request that we reweigh the evidence, which we cannot do. The State presented sufficient evidence to demonstrate that S.W. constructively possessed the shotgun.

Conclusion

There is sufficient evidence in the record to support the juvenile court's finding that S.W. constructively possessed the firearm. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.