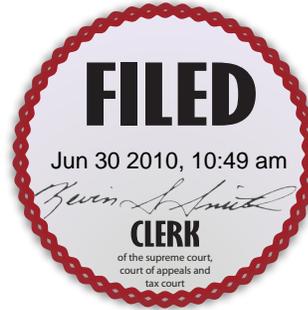


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

C.B.,)
)
Appellant- Defendant,)
)
vs.) No. 49A02-0909-JV-842
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tem
Cause No. 49D09-0903-JD-873

June 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

C.B. appeals his adjudication as a delinquent child for having committed dangerous possession of a firearm by a child, a class A misdemeanor. His sole argument is that the evidence is insufficient to support his adjudication because the State failed to prove that he possessed a sawed-off shotgun. Concluding the evidence is sufficient to prove C.B. had constructive possession of the shotgun, we affirm.

Facts and Procedural History

On March 21, 2009, Indianapolis Metropolitan Police Department Officer Philip Bulfer was dispatched to the eastside of Indianapolis to check out a suspicious vehicle that might have been involved in a shooting earlier that morning. Officer Bulfer approached the vehicle and looked inside. He saw C.B. hiding in the backseat of the car with his head facing the passenger side of the car and his hands and feet tucked in. There was a loaded sawed-off shotgun resting in plain view on top of the front passenger seat where the headrest would have been. The shotgun was less than twelve inches from C.B. The juvenile court adjudicated C.B. to be a delinquent child for committing dangerous possession of a firearm by a child. C.B. appeals.

Discussion and Decision

C.B. argues that the evidence is insufficient to support his delinquency adjudication. 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 in relevant part that a child¹ who knowingly, intentionally, or recklessly possesses a firearm commits dangerous possession of a firearm, a Class A misdemeanor. C.B. contends there is insufficient evidence he possessed 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 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 was able to reduce the firearm to his personal possession. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). 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 exclusive dominion and control over the premises containing the firearm or from additional circumstances pointing to the defendant's knowledge of the presence of the firearm. Id. Circumstances that will support such an inference include: 1) incriminating statements made by the defendant; 2) attempted flight or furtive gestures; 3) proximity of the defendant to the contraband; 5) contraband in plain view; 6) mingling of the

¹ For the purposes of this statute, a "child" is a person who is less than 18 years of age. Ind.Code sec. 35-47-10-3. C.B. was 16 years of age at the time he committed the offense.

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

Here, Officer Bulfer testified C.B. was hiding in the backseat of the vehicle with his head toward the passenger side of the car and his hands and feet tucked in. The sawed-off shotgun was in plain view less than twelve inches from C.B. The State therefore presented sufficient evidence to demonstrate that C.B. constructively possessed the shotgun. See Grim v. State, 797 N.E.2d 825, 831 (Ind. Ct. App. 2003) (finding that defendant's close proximity to handgun and ammunition in plain view was sufficient evidence to demonstrate constructive possession).

C.B. argues the fact he made no attempt to conceal the firearm indicates he was not aware of it or had no interest in exercising control over it. This is merely a request that we reweigh the evidence, which we cannot do.

Conclusion

There is sufficient evidence to support C.B.'s delinquency adjudication.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.