

## MEMORANDUM DECISION

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

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Christopher M. Brooks,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 12, 2015

Court of Appeals Case No.  
02A05-1408-CR-404

Appeal from the  
Allen Superior Court

The Honorable John F. Surbeck, Jr.,  
Judge

Cause No. 02D06-1403-FC-92

**Kirsch, Judge.**

[1] Christopher M. Brooks was convicted after a jury trial of carrying a handgun without a license<sup>1</sup> as a Class C felony and was sentenced to a six-year sentence with five years executed and one year suspended to probation. He appeals, raising the following restated question for our review: whether sufficient evidence was presented to support his conviction.

[2] We affirm.

### **Facts and Procedural History**

[3] In the early morning hours of March 23, 2014, Indiana State Trooper and FBI Task Force Officer Rob Smith (“Officer Smith”) was working an undercover operation providing surveillance in the parking lot of the Belvedere Lounge in Fort Wayne, Indiana. He was in plain clothes and lying in the backseat of an unmarked four-door pickup truck. At approximately 3:00 a.m., when the bar closed, many people exited the bar and came into the parking lot. Officer Smith observed a black male, wearing a white t-shirt with black sleeves and a red baseball cap, who was later identified as Brooks, approach the truck and get into the passenger side of a Buick parked right next to Officer Smith’s truck.

[4] Shortly thereafter, Brooks got out of the Buick and yelled to an unknown black male that Brooks had left his jacket inside the bar. The unknown male

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<sup>1</sup> See Ind. Code §§ 35-47-2-1, 35-47-2-23. We note that, effective July 1, 2014, our criminal statutes were substantially changed with many sections being repealed and recodified. Because Brooks committed his crime prior to July 1, 2014, we will apply the statutes in effect at the time he committed his crime.

approached Brooks and stated, “[Y]ou can’t take that in there.” *Tr.* at 107.

Brooks then removed a black semi-automatic handgun from his waistband and handed it to the unknown male, who placed the handgun in his waistband.

When Brooks returned from retrieving his jacket from inside the bar, the unknown male returned the handgun to Brooks, who placed it on the right side of his waistband and again got into the passenger side of the Buick. While this was happening, Officer Smith radioed to other officers in the area and informed them of what he had observed.

[5] A Grand Am pulled up, and Brooks got out of the Buick with a liquor bottle in his hand. He had a short conversation with the occupants of the Grand Am and returned to the passenger seat of the Buick. A short time later, another black male, later identified as Walter Priester, got into the driver’s seat of the Buick and sped off at a high rate of speed through the parking lot. At that time, other officers in marked cars initiated a traffic stop of the Buick.

[6] When the Buick was stopped, Brooks was observed leaning forward and reaching toward the floor of the car. Brooks made multiple movements and was told several times to stop reaching. Priester exited the car when ordered to by the police, and officers then had to remove Brooks from the car because he was not listening to their commands. As the officers approached the car, they could smell a strong odor of marijuana. Fort Wayne Police Officer Shannon Hughes (“Officer Hughes”) located a handgun under the passenger seat. The handgun was a black Smith and Wesson 9-millimeter semi-automatic. A soft-

sided cooler was also found on the driver's side of the car, and it contained a jar of marijuana.

[7] Brooks was placed in the back of Officer Hughes's patrol car and was transported to the police station for an interview. Without being asked any questions or told about the handgun found in the car, Brooks made statements to Officer Hughes that, "he never pointed" the gun and "never fired the gun off." *Tr.* at 184. Later, Fort Wayne Police Officer Derrick Demorest ("Officer Demorest") was transporting Brooks from the police station to the jail. Officer Demorest did not question Brooks, but Brooks began to plead his case and stated, "[t]he gun was in a jacket. I gave the jacket back to him. It wasn't even mine." *Id.* at 165.

[8] The State charged Brooks with carrying a handgun without a license as a Class C felony due to the fact that he had a prior conviction for the same crime. A jury trial was held, at the conclusion of which Brooks was found guilty of carrying a handgun without a license. He then pleaded guilty to having a prior conviction for carrying a handgun without a license. The trial court sentenced Brooks to six years with one year suspended to probation and five years executed. Brooks now appeals.

## **Discussion and Decision**

[9] The deferential standard of review for sufficiency claims is well settled. This court will neither reweigh the evidence nor assess the credibility of witnesses. *Tooley v. State*, 911 N.E.2d 721, 724 (Ind. Ct. App. 2009), *trans. denied*; *Elisea v.*

*State*, 777 N.E.2d 46, 48 (Ind. Ct. App. 2002). Rather, we will consider only the evidence and reasonable inferences most favorable to the trial court's ruling. *Elisea*, 777 N.E.2d at 48. We will affirm unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Tooley*, 911 N.E.2d at 724-25. Thus, if there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Trimble v. State*, 848 N.E.2d 278, 279 (Ind. 2006).

[10] Brooks argues that the State failed to present sufficient evidence to support his conviction for carrying a handgun without a license. He specifically contends that, as to Officer Smith's observation of an individual with actual possession of the handgun, there was testimony from Brooks's friend that he was wearing similar clothing as to what Officer Smith observed and that this friend was carrying a handgun in a holster while in the parking lot. Brooks also alleges that, when the handgun was discovered in the car, he had no knowledge of the weapon and that Priester made statements to the police that the handgun belonged to him. Brooks, therefore, asserts that insufficient evidence was presented to support his conviction.

[11] We first note that Brooks's arguments are actually requests for this court to reweigh the evidence and judge the credibility of the witnesses, which this court cannot do on appeal. *Tooley*, 911 N.E.2d at 724. We, however, will still proceed to determine whether sufficient evidence was presented to support Brooks's conviction. In order to convict Brooks of carrying a handgun without a license, the State was required to prove beyond a reasonable doubt that

Brooks carried a handgun on his person or in a vehicle without being licensed to carry a handgun. Ind. Code §§ 35-47-2-1, 35-47-2-23. To enhance the offense to a Class C felony, the State was required to prove that Brooks had a prior conviction for carrying a handgun without a license. Ind. Code § 35-47-2-23. The State must also establish that Brooks either had actual or constructive possession of the handgun. *Jones v. State*, 924 N.E.2d 672, 675 (Ind. Ct. App. 2010). In order to establish actual possession, the State must show that the defendant had direct physical control over the handgun. *Id.* In order to establish constructive possession, the State must show that the defendant had both the intent and capability to maintain dominion and control over the handgun. *Id.*

[12] The evidence presented established both that Brooks had actual and constructive possession of the handgun. Brooks testified that he did not have a permit to carry a handgun. *Tr.* at 306. As to actual possession, the evidence showed that Officer Smith was conducting surveillance in a truck parked next to the Buick that later was pulled over by the police. Officer Smith observed an individual, later identified as Brooks, remove a black semi-automatic handgun from his waistband and give it to another unknown individual while Brooks went back into the bar to retrieve his jacket. When Brooks came back with his jacket, the unknown male returned the handgun to Brooks, and Brooks placed the gun on the right side of his waistband. This evidence was sufficient to establish that Brooks exercised direct physical control over the handgun and, therefore, had actual possession of the handgun.

[13] While the above evidence of actual possession was sufficient to convict Brooks of carrying a handgun without a license, we note that there was also evidence that Brooks had constructive possession of the handgun while in the Buick. As for constructive possession, there is no dispute that the car belonged to Priester. Therefore, the State was required to prove that Brooks had both the intent and capability to maintain dominion and control over the handgun. *Bradshaw v. State*, 818 N.E.2d 59, 62-63 (Ind. Ct. App. 2004). Proof of dominion and control may be shown by (1) incriminating statements made by a defendant; (2) attempted flight or furtive gestures; (3) proximity of contraband to the defendant; (4) location of the contraband within the defendant's plain view; or (5) the mingling of the contraband with other items owned by the defendant. *Id.* at 63.

[14] The evidence presented showed that, without being questioned or being informed of the discovery of the handgun in the car, Brooks told Officer Hughes that he never pointed the handgun or fired it. *Tr.* at 184. Also, without being questioned, Brooks told Officer Demorest that the gun was in the jacket and Brooks gave the jacket back to "him." *Id.* at 165. Additionally, several of the officers involved in the traffic stop of the Buick observed Brooks making furtive movements toward the floor of the passenger area, including leaning forward, reaching toward the floor area, and acting as if he was hiding something. The officers had to order Brooks multiple times to show his hands and stop reaching. When Officer Hughes looked under the passenger seat, where Brooks had been sitting, she discovered a black semi-automatic handgun. Further,

despite testimony by Priester that the gun belonged to him and that he had placed it under the driver's seat before he went to work, the gun was found under the passenger's seat. This evidence was sufficient to prove that Brooks had both the intent and capability to maintain dominion and control over the handgun and, therefore, had constructive possession of the handgun. We conclude that sufficient evidence was presented to support Brooks's conviction for carrying a handgun without a license.

[15] Affirmed.

Vaidik, C.J., and Bradford, J., concur.