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ATTORNEY FOR APPELLANT:

SEAN P. HILGENDORF
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DONALD ANDERSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 71A03-0701-CR-39

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marnocha, Judge
Cause No. 71D02-0402-FB-16

June 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Donald Anderson appeals his conviction for Possession of a Firearm by a Serious Violent Felon, a Class B felony, following a jury trial. He presents one issue for our review, namely, whether the State's evidence is sufficient to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

Anderson lived with his wife, Regina, at 413 North College in South Bend. On February 19, 2004, officers from the South Bend Police Department executed a search warrant. Officer Rick Ruszkowski searched the bedroom and found a nine-millimeter Bryco Jennings handgun wrapped in a red bandana.¹ Anderson was in the residence when the warrant was executed and told the officers that he lived there. Anderson also told the officers that the gun belonged to his wife.

The State charged Anderson with possession of a firearm by a serious violent felon. During the trial, Anderson stipulated that he had been convicted for Possession of Cocaine, as a Class B felony, under Cause No. 71D01-9401-CF-0021. Anderson also presented Regina's testimony that she had brought the handgun into the house and that Anderson did not know it was there.

The jury convicted Anderson. The court sentenced him to a sixteen-year term of incarceration. This appeal ensued.

¹ The officers also found cocaine in the house, and the State charged Anderson with Possession of Cocaine, as a Class B felony. A jury acquitted Anderson of that charge in a separate trial.

DISCUSSION AND DECISION

The well-established standard of review to a challenge of the sufficiency of the evidence to support a conviction requires us to “neither reweigh the evidence nor judge the credibility of the witnesses.” Prickett v. State, 856 N.E.2d 1203, 1206 (Ind. 2006). We will affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id. To sustain Anderson’s conviction, the State was required to prove that Anderson: knowingly or intentionally; possessed; a firearm; after Anderson had been convicted of and sentenced for a serious violent felony. Ind. Code § 35-47-4-5 (West 2004).

Anderson contends that the State’s evidence is insufficient to support his conviction because the State failed to prove he possessed the handgun. The State may prove illegal possession of a firearm by either actual or constructive possession. Tate v. State, 835 N.E.2d 499, 511 (Ind. Ct. App. 2005), trans. denied. Because the handgun was not found on Anderson, the State was required to prove that Anderson had constructive possession of the handgun. Id. Evidence of constructive possession is sufficient where the State proves that the defendant had both the capability and intent to maintain dominion and control over the contraband. Hardister v. State, 849 N.E.2d 563, 573 (Ind. 2006).

Here, other individuals had access to the handgun, and Anderson’s constructive possession of the handgun was not exclusive. But the State was not required to prove that Anderson’s possession was exclusive. Massey v. State, 816 N.E.2d 979, 989 (Ind.

Ct. App. 2004). When possession of contraband is not exclusive, however, the State must present additional circumstances to prove that the individual knew of the contraband. Hardister, 849 N.E.2d at 574. The factfinder may infer the individual's intent to maintain dominion and control of the contraband from these additional circumstances, which may include incriminating statements and location of the contraband in close proximity to items owned by the defendant. Id.

The State presented evidence that Anderson admitted that he lived in the place where the handgun was found and that he knew it was there. Also, the State presented evidence that the handgun was found atop a dresser with men's clothing in the drawers. Men's cologne and mail addressed to Anderson were on that dresser. Further, Regina testified that she and Anderson shared that bedroom. These additional circumstances allowed the jury to infer that Anderson had both the capability and intent to maintain dominion and control over the handgun. See Collins v. State, 822 N.E.2d 214, 222-23 (Ind. Ct. App. 2005), trans. denied. Thus, the State's evidence supporting Anderson's conviction for possession of a firearm by a serious violent felon is sufficient.

Affirmed.

RILEY, J., and BARNES, J., concur.