



## **Case Summary**

Darrett Thompson appeals his conviction for possession of a handgun without a license, a Class A misdemeanor. We affirm.

### **Issue**

The issue before us is whether the evidence provided at trial is sufficient to sustain Thompson's conviction.

### **Facts**

On January 2, 2006, Thompson was a passenger in a car driven by Nicolas Smith. The vehicle was stopped after Sergeant Michael Jefferson of the Indianapolis Police Department observed Smith commit a traffic violation. Officer Anthony Carter arrived shortly thereafter to assist Sergeant Jefferson with the traffic stop. A background check of Smith's license revealed that it was suspended and he was arrested.

Thompson remained seated in the vehicle's passenger seat. Officer Carter observed, in plain view, a handgun "tucked between" the passenger seat and the center console. Tr. p. 11. The handgun was located "within inches" of Thompson's left hip. Id. at 13. Thompson was placed under arrest for carrying a handgun without a license and taken to the arrestee processing center. After finding marijuana on his person, Thompson was also arrested for possession of a controlled substance. After a bench trial, Thompson was found guilty as charged. Thompson now appeals only his conviction for possession of a handgun without a license.

## Analysis

In addressing a claim of sufficiency of the evidence, our standard of review is well-settled. Alkhalidi v. State, 753 N.E.2d 625, 627 (Ind. 2001). We will neither reweigh the evidence nor judge the credibility of witnesses. Id. Rather, we consider only the evidence most favorable to the judgment, and, if there is probative evidence from which a reasonable fact finder could find the defendant guilty, it will not be set aside. Id.

Thompson contends that the evidence was insufficient to prove that he was in possession of a handgun. Specifically, Thompson argues that he was unaware that the handgun was wedged between his seat and the center console and there was no showing that he touched the firearm. To convict Thompson, the State had to prove either actual or constructive possession. Bradshaw v. State, 818 N.E.2d 59, 62 (Ind. Ct. App. 2004). Actual possession is found when the defendant has direct and physical control over the object. Id. Conversely, constructive possession occurs upon a showing that the defendant had both the intent and capability to maintain dominion and control over the contraband. Id. at 62-63.

Proof of dominion and control may be shown by a number of factors including the proximity of contraband to the defendant, location of the contraband within the defendants' plain view, or the mingling of the contraband with other items owned by the defendant. Person v. State, 764 N.E.2d 743, 750 (Ind. Ct. App. 2002), trans. denied. Further, to prove an allegation of constructive possession, the State must demonstrate the defendant had knowledge of the handgun. Id. Knowledge may be inferred through examination of additional circumstances demonstrating the defendant's awareness of the

handgun's presence. Id. In Bradshaw, this court upheld a possession of a firearm conviction where the gun was found, in plain view, under the passenger seat. Id. at 63.

This case is similar to Bradshaw. Here, the facts most favorable to the judgment reveal that Officer Carter observed the handgun, in plain view, "tucked between" the front passenger seat and center console where the defendant was seated. Tr. p. 11. Besides Thompson, there was only one other person in the vehicle. Moreover, the handgun was located "within inches of [Thompson's] left hip." Id. at 13. Based on this evidence, we conclude that there is sufficient probative evidence to support the trial court's conclusion that Thompson was in possession of the handgun.

### **Conclusion**

The evidence presented at trial is sufficient to support the conviction. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.