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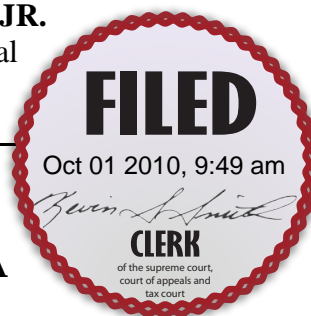
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**IN THE
COURT OF APPEALS OF INDIANA**



COREY STEWART,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-1003-CR-139

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Linda E. Brown, Judge

The Honorable Steven J. Rubick, Commissioner

Cause No. 49F10-0909-CM-080551

October 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Corey Stewart appeals his conviction for Class A misdemeanor carrying a handgun without a license. Stewart argues that the trial court erred in admitting the subject handgun because the State insufficiently established its chain of custody. He further argues that without the handgun, there is insufficient evidence to sustain his conviction. Even if we assume, for purposes of argument, that the gun was improperly admitted, any error was harmless, as Stewart's conviction is supported by sufficient independent evidence of guilt. We affirm the judgment of the trial court.

Facts and Procedural History

Lawrence Police Officers Michael Davis and Rick Harris were dispatched in response to the report of a burglary. The suspected burglar was described as a black male driving a green Dodge pickup truck. Officer Davis observed a man driving a truck and matching the suspect's description. He was later identified as Corey Stewart.

Officer Davis initiated a traffic stop and approached Stewart's vehicle. Stewart admitted to Officer Davis that he had an outstanding arrest warrant. Officer Davis confirmed the warrant and placed Stewart under arrest.

Stewart also informed Officer Davis that he had a handgun in the glove box of his truck. Officer Harris inspected the glove box and recovered a .357 Taurus revolver. Officer Davis observed Officer Harris remove the gun from the glove box. Stewart claimed he had a license for the gun. Officer Harris confirmed with State police that a license for the handgun existed. However, the license had expired a year before.

The State charged Stewart with Class A misdemeanor carrying a handgun without a license, Ind. Code §§ 35-47-2-1, -23. Stewart was tried to the bench.

At trial, Officer Davis testified to the progression of Stewart's arrest.

The State also offered the handgun recovered from Stewart's truck into evidence.

Officer Davis authenticated the gun as follows:

[STATE]	Sir, do you recognize this?
[OFFICER DAVIS]	Yes.
Q	What is this?
A	It is a three fifty seven (357) Taurus revolver.
Q	And, how do you know this particular revolver?
A	Just by the looks and my experience.
Q	Is this the same revolver that you found that day?
A	Yes.
Q	And, when that officer removed it from the vehicle who took control of the weapon?
A	Lieutenant or rather Sergeant Rick Harris, my assisting officer.
Q	Did you assist at all with the handling of the weapon?
A	No, he packaged it and brought it to the Police Station; at that time I was transporting Mr. Stewart to our Police Station as well.
Q	Do you specifically recognize this gun from being the gun in question or the gun that was found that day?
A	Yes.
Q	Is it in substantially the same condition as you found it in that day?
A	Yeah.
Q	Are there any differences between the condition found that day and what we see today?
A	Other than it's unloaded.

Tr. p. 9-10. The State moved to admit the handgun into evidence. Stewart objected, arguing that the gun's chain of custody was insufficiently established. The trial court admitted the handgun over objection.

The trial court found Stewart guilty as charged. Stewart now appeals.

Discussion and Decision

Stewart argues that the trial court erred in admitting the handgun recovered from his glove box because the State insufficiently established its chain of custody. Stewart further maintains that without the handgun, there is insufficient evidence to sustain his conviction.

No error in the admission of evidence is grounds for setting aside a conviction unless such erroneous admission appears inconsistent with substantial justice or affects the substantial rights of the parties. Ind. Trial Rule 61; *Lafayette v. State*, 917 N.E.2d 660, 666 (Ind. 2009). The improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt which satisfies the reviewing court that there is no substantial likelihood the challenged evidence contributed to the conviction. *Morales v. State*, 749 N.E.2d 1260, 1267 (Ind. Ct. App. 2001).

Indiana Code section 35-47-2-1 provides that “a person shall not carry a handgun in any vehicle or on or about the person’s body, except in the person’s dwelling, on the person’s property or fixed place of business, without a license . . . being in the person’s possession.”

The testimony of an eyewitness that the defendant was carrying a pistol in a place other than his dwelling or business and testimony that the defendant did not have a license to carry a handgun on that date is sufficient to sustain a conviction for carrying a handgun without a license. *Youngblood v. State*, 515 N.E.2d 522, 526-27 (Ind. 1987).

The State need not introduce the gun into evidence. *Id.* at 527; *Skaggs v. State*, 751 N.E.2d 318, 320-21 (Ind. Ct. App. 2001), *reh'g denied, trans. denied*.

Even if we assume without deciding that the subject handgun was somehow inadmissible, we conclude that any error in its admission was harmless and there is sufficient remaining evidence to support Stewart's conviction. Stewart admitted to Officer Davis that he had a handgun in the glove box of his truck. Officer Harris checked the glove box and discovered a revolver. Officer Davis observed Officer Harris remove it. Officer Davis confirmed that a license for the handgun existed but had expired a year before. Officer Davis testified to the foregoing at trial. Officer Davis's testimony is sufficient to support a finding that Stewart carried a handgun in his vehicle without a valid license in his possession. Accordingly, any purported error in the admission of the handgun was harmless, and there is sufficient independent evidence of guilt to support Stewart's conviction for carrying a handgun without a license. We affirm the judgment of the trial court.

Affirmed.

MAY, J., and ROBB, J., concur.