

## 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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Eric Jalil Wilson,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 22, 2022

Court of Appeals Case No.  
22A-CR-1303

Appeal from the Marion Superior  
Court

The Honorable Jennifer Harrison,  
Judge

Trial Court Cause No.  
49D20-2008-F4-27020

**Pyle, Judge.**

## Statement of the Case

[1] Eric Jalil Wilson (“Wilson”) appeals, following a bench trial, his conviction for Level 4 felony unlawful possession of a firearm by a serious violent felon.<sup>1</sup> Wilson argues that the evidence is insufficient to support his conviction. Concluding that the evidence is sufficient to support Wilson’s conviction, we affirm the trial court’s judgment.

[2] We affirm.

## Issue

Whether there is sufficient evidence to support Wilson’s conviction.

## Facts

[3] On August 25, 2020, around 8:30 p.m., Indianapolis Metropolitan Police Department Officer Samuel Cohrs (“Officer Cohrs”) initiated a traffic stop on a red Chrysler that had failed to signal for a turn. Officer Cohrs immediately ran the plate on the car and discovered that the plate did not match the make or model. After running the plate, Officer Cohrs approached the car from the passenger side and noticed the car’s windows were tinted. Officer Cohrs saw three individuals in the car.

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<sup>1</sup> IND. CODE § 35-47-4-5.

- [4] Officer Cohrs first spoke with Stephanie Earnest (“Earnest”), who had been driving the car. Earnest claimed that the car belonged to her grandmother. Officer Cohrs also learned that Christopher Henderson (“Henderson”) was the individual in the front passenger seat. However, when Officer Cohrs asked Henderson for his name, Henderson gave him the name of his brother. Officer Cohrs also learned that Wilson was the individual in the back driver’s side seat.
- [5] Officer Cohrs asked Earnest, Henderson, and Wilson if any of them had “any firearms, weapons, knives, [or] anything like that.” (Tr. Vol. 2 at 55). Both Earnest and Henderson immediately responded by stating, “no.” (Tr. Vol. 2 at 55-56). Wilson did not respond to Officer Cohr’s question. When Officer Cohrs asked Wilson the same question a second time, Wilson would not make eye contact with Officer Cohrs and shook his head from side to side.
- [6] Officer Cohrs returned to his car and searched the three names to determine if any of them had valid driver’s licenses. After determining that none of them had a valid license, Officer Cohrs returned to the red Chrysler. Officer Cohrs informed Earnest, Henderson, and Wilson that the car had to be towed and asked each of them to step out of the car one at a time. When Henderson stepped out of the car, Officer Cohrs immediately recognized Henderson and detained him because there was an active warrant out for his arrest.
- [7] Officer Cohrs walked to Wilson’s door and when Wilson stepped out of the car, Officer Cohrs saw a silver handgun on the floorboard where Wilson’s feet had

just been. Officer Cohrs, after removing all three individuals from the car, began to question them about who had been carrying the handgun.

[8] Initially, Wilson said that the handgun belonged to Henderson. Henderson told Officer Cohrs that the handgun was actually his. However, when Officer Cohrs allowed Earnest to leave, both Wilson and Henderson claimed that the handgun belonged to Earnest. When Officer Cohrs continued to ask about who had been carrying the handgun, Wilson and Henderson both changed their answers again to Henderson.

[9] The State charged Wilson with Level 4 felony unlawful possession of a firearm by a serious violent felon. The trial court held a bench trial in March 2022. At the bench trial, the trial court heard the facts as set forth above. Additionally, Officer Cohrs testified that when he had initiated the traffic stop, both Earnest and Henderson had immediately responded with “conviction” that they did not have any weapons in the vehicle. (Tr. Vol. 2 at 56). Officer Cohrs also testified that Wilson had refused to make eye contact, refused to answer verbally, and simply “stared straight ahead at the [back of] the driver’s side seat and shook his head back and forth.” (Tr. Vol. 2 at 56). Additionally, Officer Cohrs testified that he did not see any furtive movement in the car and that Wilson did not attempt to flee the scene.

[10] At the conclusion of the bench trial, the trial court found Wilson guilty as charged. In May 2022, the trial court sentenced Wilson to six (6) years to be served in the Indiana Department of Correction, with nine hundred and

seventy-seven (977) days of that time on home detention, and two (2) years suspended.

[11] Wilson now appeals.

## Decision

[12] Wilson argues that there is insufficient evidence to support his conviction. Specifically, he contends that there is insufficient evidence of his constructive possession of the firearm found in the car. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[13] In order to convict Wilson of Level 4 felony unlawful possession of a firearm by a serious violent felon, the State was required to prove that he knowingly or intentionally possessed a firearm after having been convicted of a qualifying felony. *See* I.C. § 35-47-4-5(c). To prove that a defendant possessed an item, the State may prove either actual or constructive possession. *Payne v. State*, 96 N.E.3d 606, 610 (Ind. Ct. App. 2018), *trans. denied*. Actual possession occurs “when a person has direct physical control over [an] item.” *Sargent v. State*, 27 N.E.3d 729, 733 (Ind. 2015). When, as in this case, the State proceeds on a

theory of constructive possession, it must show that the defendant 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).

[14] To prove intent to maintain dominion and control, the State must demonstrate the defendant’s knowledge of the presence of the firearm. *Griffin v. State*, 945 N.E.2d 781, 784 (Ind. Ct. App. 2011). In cases where the accused has exclusive possession of the property in which the contraband is found, an inference is permitted that he knew of the presence of the contraband and was capable of controlling the contraband. *Id.* Where, as here, the control is non-exclusive, knowledge may be inferred from evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the firearm. *Causey v. State*, 808 N.E.2d 139, 143 (Ind. Ct. App. 2004). These additional circumstances may include, but are not limited to: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) proximity of the firearm to the defendant; (4) location of the firearm within the defendant’s plain view; or (5) the mingling of a firearm with other items owned by the defendant. *Id.* From these additional circumstances, a reasonable fact-finder must determine beyond a reasonable doubt whether the defendant knew of the nature and presence of the contraband. *Johnson v. State*, 59 N.E.3d 1071, 1074 (Ind. Ct. App. 2016). The capability prong of constructive possession requires that the State demonstrate that the defendant had the ability to maintain dominion and control over the handgun; in other words, to reduce the handgun to his personal possession. *Griffin*, 945 N.E.2d at 783.

[15] Beginning with the capability element, Officer Cohrs testified that the handgun was in plain view on the floorboard right where Wilson's feet had been when he was sitting in the back driver's side seat. Furthermore, the State introduced photographic evidence of the handgun on the floorboard of the car behind the driver's seat. Because the gun was in such close proximity to Wilson, it was reasonable to infer that he had the capability to reduce the firearm to his personal possession. Thus, the State presented sufficient evidence to show that Wilson had the ability to maintain dominion and control over the handgun.

[16] There was also sufficient evidence to satisfy the intent element of constructive possession. Here, the evidence revealed that Wilson was sitting in the back driver's side seat in a car where a handgun was found in plain view on the floorboard behind the driver's side seat. When Officer Cohrs asked the individuals in the car to exit the car, he immediately saw the handgun on the floorboard where Wilson's feet had been. Further, when Officer Cohrs asked the occupants in the car if they had any weapons, Wilson did not respond while the other occupants in the car immediately responded that they did not. When Officer Cohr's asked Wilson a second time, he refused to make eye contact and shook his head from side to side as a response. Thus, it was reasonable for the trial court, as trier of fact, to infer that Wilson had knowledge of the nature and presence of the handgun due to his close proximity to the handgun, the handgun's location in plain sight, and his response to Officer Cohr's questioning.

[17] Wilson's arguments amount to a request to reweigh the evidence, which we cannot do. *See Drane*, 867 N.E.2d at 146. Based on the evidence presented at trial, the trial court, as trier of fact, could have reasonably determined that Wilson had the intent and capability to maintain dominion and control over the handgun and that he constructively possessed it. Accordingly, we affirm Wilson's Level 4 felony unlawful possession of a firearm by a serious violent felon conviction.

[18] Affirmed.

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