

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Jose Antonio Cordova,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 26, 2024

Court of Appeals Case No.
23A-CR-2507

Appeal from the Marion Superior Court
The Honorable Jeffrey L. Marchal, Judge
The Honorable Peggy R. Hart, Magistrate

Trial Court Cause No.
49D31-2304-F4-11733

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Jose Antonio Cordova appeals his conviction for unlawful possession of a firearm by a serious violent felon as a level 4 felony and claims the evidence is insufficient to support the conviction. We affirm.

Facts and Procedural History

- [2] In March 2023, S.M. was in an “on and off” relationship with Cordova. Transcript Volume II at 125. S.M. lived with her daughter, C.P., her son-in-law, A.P., and their two children in Indianapolis. On March 16, 2023, C.P., A.P., and one of their children went to the store, and their other child and S.M. stayed home. When they returned home, C.P. noticed Cordova’s vehicle near her driveway. A.P. was driving their truck, and C.P. was in the passenger seat. C.P. exited the truck and saw S.M. and Cordova outside arguing and yelling. Cordova was angry and animated. C.P. and A.P. saw Cordova holding an object which they believed was a handgun. C.P. told Cordova that he needed to leave, Cordova entered his vehicle and drove away, and A.P. called the police. Indianapolis Metropolitan Police Officer Abigail Frye responded to the scene.
- [3] The State charged Cordova with unlawful possession of a firearm by a serious violent felon as a level 4 felony and intimidation as a level 5 felony. The State

later dismissed the intimidation count. On August 30, 2023, the court held a jury trial at which Officer Frye, C.P., and A.P. testified. The court also admitted a recording taken from a surveillance camera which was positioned above the door of C.P.'s house and faced the road. Officer Frye testified that the police did not recover a firearm during their investigation. When defense counsel asked A.P. on cross-examination “[i]t’s possible this isn’t a gun at all, isn’t it” and “[i]t could be an airsoft gun,” A.P. replied that was possible. *Id.* at 185. The jury found Cordova guilty of possessing a firearm. Cordova admitted that he had a prior felony conviction making him a serious violent felon, and the court entered a conviction for unlawful possession of a firearm by a serious violent felon as a level 4 felony.

Discussion

[4] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if evidence of probative value exists from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.* It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011).

[5] Cordova argues that the State did not prove he unlawfully possessed a firearm as defined by Indiana law. He argues: “Because a firearm was never recovered, the evidence most favorable to the State was that Cordova had what look[ed]

like a gun, but it may not have been a gun. It could have been a toy gun, or an air soft gun.” Appellant’s Brief at 9. He argues “the State did not prove Cordova either actually or constructively had a firearm because one was never recovered.” *Id.* He argues “[t]he jury found [he] unlawfully possessed a firearm, without any evidence that whatever he held in his hand met the statutory definition of a firearm.” *Id.* at 11. Cordova does not dispute that he was a serious violent felon.

[6] Ind. Code § 35-47-4-5(c) provides that “[a] serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Level 4 felony.” Ind. Code § 35-47-1-5 provides that “Firearm” means “any weapon: (1) that is: (A) capable of expelling; or (B) designed to expel; or (2) that may readily be converted to expel; a projectile by means of an explosion.” Ind. Code § 35-47-1-6 provides that “Handgun” means “any firearm: (1) designed or adapted so as to be aimed and fired from one (1) hand, regardless of barrel length; or (2) any firearm with: (A) a barrel less than sixteen (16) inches in length; or (B) an overall length of less than twenty-six (26) inches.”

[7] The record reveals that C.P. and A.P. testified in detail regarding their observations on March 16, 2023, upon arriving at their house. Although police did not recover the firearm, both C.P. and A.P. testified that Cordova held a handgun while standing near his vehicle and described the appearance of the firearm. They each testified regarding their respective positions relative to Cordova and their abilities to see the object in his hand. C.P. testified that she

was “within feet” of Cordova and could “clearly see the gun.” Transcript Volume II at 157. She stated that she owned guns and that the firearm Cordova was holding appeared to be “a 9 mm.” *Id.* at 162. A.P. testified that he “had a clear view” due to the angle of his headlights. *Id.* at 169. Defense counsel thoroughly cross-examined C.P. and A.P. regarding their recollections and observations. Further, the recording taken from the surveillance camera was played for the jury.

[8] Based upon the record, we conclude the State presented evidence of a probative nature from which a trier of fact could find beyond a reasonable doubt that Cordova knowingly or intentionally possessed a firearm.

[9] For the foregoing reasons, we affirm Cordova’s conviction.

[10] Affirmed.

Riley, J., and Foley, J., concur.

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