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**IN THE
COURT OF APPEALS OF INDIANA**

LEE A. WELLS,)
)
 Appellant-Defendant,)
)
 vs.) No. 02A04-0604-CR-206
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Marcia Linsky, Magistrate
Cause No. 02D04-0506-CM-4068

November 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Lee Wells appeals his conviction for carrying a handgun without a license, a Class A misdemeanor. We affirm.

Issue

Wells raises one issue for our review, which is whether the State's evidence was sufficient to support his conviction.

Facts

On June 3, 2005, following a report that there was a man with a gun in the Eden Green apartment complex, Fort Wayne police officers William Thomas and Bobby Lemon arrived at and were admitted by Saquanna Russell, Wells's girlfriend, into her mother's apartment. The officers observed Wells sitting in the living room and a jacket resting on his feet. The officers then searched the apartment, Wells's person, and the jacket. Officer Lemon located a handgun and box of ammunition in one of the jacket's pockets.

On June 9, 2005, the State charged Wells with carrying a handgun without a license.¹ On September 28, 2005, a jury found Wells guilty of that charge, and the trial court sentenced him to 365 days of incarceration. Wells appeals his conviction.

Analysis

When reviewing a challenge to the sufficiency of the State's evidence, we may consider only the evidence most favorable to the jury's conclusion and all reasonable and

¹ The State also charged Wells with Class A misdemeanor criminal trespass but voluntarily dismissed that charge before the beginning of Well's trial.

logical inferences that can be drawn therefrom. Pinkston v. State, 836 N.E.2d 453, 464 (Ind. Ct. App. 2005), trans. denied. We must affirm a jury's findings if they are supported by substantial evidence of probative value. Id. We are not in a position to reweigh the evidence or assess the credibility of the witnesses. Id.

Indiana Code Section 35-47-2-1 proscribes carrying a handgun in any vehicle or on or about one's body, except in one's dwelling or on one's property or fixed place of business, without a license. On appeal, Wells argues that the State failed to prove beyond a reasonable doubt that he 1) possessed the gun and 2) was not in his dwelling. We conclude there are no deficiencies in the sufficiency of the State's evidence.

The State contends that Wells had constructive possession of the gun found in the jacket pocket. A finding of constructive possession requires a showing that a person had the intent and capability to maintain dominion and control over the item. Collins v. State, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005), trans. denied. Among other things, constructive possession can be inferred from the defendant's proximity to the contraband. Id. Such a circumstance may show constructive possession even where the defendant is only a visitor to the premises where the contraband is found. Id.

In this case, Officer Lemon testified that the jacket in which he found the handgun was "at [Wells's] feet." Tr. p. 99. Officer Lemon subsequently testified in greater detail regarding Wells's proximity to the jacket:

Q Sir, again for clarification, where was that jacket located?

A It was located on Mr. Wells' feet.

Q Was it within his reach?

A Yes, it was.

Q Was it within his control?

A Yes, it was.

Q At any time, could've he reached down and grabbed the jacket?

A At any time, he could have.

Id. at 111.

Officer Lemon's testimony that the jacket was at or on Wells's feet and well within his reach is sufficient evidence from which the jury could reasonably infer that Wells constructively possessed the gun. Wells's argument on appeal that the jacket did not belong to him is a request for us to reweigh the evidence, a chore that we cannot undertake.

Wells next argues that the State failed to prove that beyond a reasonable doubt that he was not in his dwelling when he possessed the gun. See Ind. Code § 35-47-2-1. In particular, Wells contends that although Russell's mother was the apartment's tenant of record, he, Russell, and Russell's children were staying at the apartment while Russell's mother was away for an extended period of time. Again, we view this argument as an invitation to reweigh evidence already considered by the jury.

As Wells correctly asserts, the State was required to prove beyond a reasonable doubt that Wells carried the handgun in a place that was not his dwelling, property, or fixed place of business. See, Woods v. State, 768 N.E.2d 1024, 1027 (Ind. Ct. App.

2002). Officer Lemon's testified that the Eden Green Apartments unit was not Wells's residence and that he was not the tenant of the apartment. Similarly, Officer Thomas testified that Wells did not live at that address. These statements were admitted into evidence without any objection from Wells, and the jury clearly relied on them in reaching its verdict. We may not disturb that verdict.

Conclusion

The State's evidence was sufficient to prove that Wells constructively possessed a handgun in a place other than his dwelling, property, or place of business. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.