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IN THE
COURT OF APPEALS OF INDIANA

RAFAEL BASILIO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0909-CR-829
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
Cause No. 49F19-0905-CM-52629

March 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Rafael Basilio appeals his conviction for carrying a handgun without a license as a class A misdemeanor.[1] Basilio raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The facts most favorable to the conviction follow. On May 30, 2009, Officer Roland Bryant of the Indianapolis Metropolitan Police Department stopped Basilio while Basilio was driving his car for failing to stop at a stop sign in Indianapolis, Indiana. Officer Bryant approached the car and asked Basilio for his driver's license and registration, and Basilio opened the car's glovebox to retrieve his registration. Officer Bryant "observed a chrome pistol" in Basilio's glovebox after Basilio opened it despite the fact that Basilio "placed his hands over the glovebox as if to keep [Officer Bryant] from seeing inside the glovebox." Transcript at 8. Basilio did not provide a valid gun permit to Officer Bryant or deny ownership of the gun to him. Officer Bryant also learned that Basilio's driver's license was suspended. Officer Bryant arrested Basilio. A passenger who had been sitting in the front passenger seat was not arrested.

The State charged Basilio with carrying a handgun without a license as a class A misdemeanor.[2] A bench trial was held on August 10, 2009, and Basilio was found guilty as charged. Basilio was sentenced to 365 days in the Marion County Jail with six days executed for time served and the remaining 359 days suspended.

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[1] Ind. Code § 35-47-2-1 (Supp. 2007).

[2] Also, Basilio was charged with and convicted of one count of driving while suspended as a class A misdemeanor. Basilio does not challenge his driving while suspended conviction on appeal.

The sole issue is whether the evidence is sufficient to sustain his conviction for carrying a handgun without a license as a class A misdemeanor. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of carrying a handgun without a license as a class A misdemeanor is governed by Ind. Code § 35-47-2-1, which provides in pertinent part 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 . . . ." Thus, to convict Basilio of carrying a handgun without a license as a class A misdemeanor, the State needed to prove that Basilio did, in a place not his dwelling, property, or fixed place of business, carry a handgun on or about his person or in a vehicle without a license.

Basilio argues only that he did not have possession of the handgun. The Indiana Supreme Court has held that possession of a handgun may be actual or constructive.

Henderson v. State, 715 N.E.2d 833, 835 (Ind. 1999). Actual possession occurs when a person has direct physical control over the item. Id. Constructive possession occurs when a person has "the intent and capability to maintain dominion and control over the item." Id.

> When constructive possession is asserted, the State must demonstrate the defendant's knowledge of the contraband. This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband.

Id. at 835-836. The intent element of constructive possession is shown if the State demonstrates the defendant's knowledge of the presence of the contraband. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). Proof of dominion and control has been found through a variety of means, including: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) proximity of the contraband to the defendant, (4) location of the contraband within the defendant's plain view, and (5) the mingling of the contraband with other items owned by the defendant. Henderson, 715 N.E.2d at 836.

Basilio argues that the State did not prove actual or constructive possession because there was a passenger "seated in front of the glove box," and that Basilio "left the vehicle, with his passenger inside, for about ten minutes while [Basilio] visited his girlfriend." Appellant's Brief at 7. Finally, Basilio argues that "there are no additional circumstances demonstrated in the record from which it could reasonably be concluded that [Basilio] knew of the gun or could control it." Id. Basilio's argument is merely a

request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Drane, 867 N.E.2d at 146.

Here, Officer Bryant testified that he "observed a chrome pistol" in the glovebox of Basilio's car. Transcript at 8. Basilio had been driving the car, and he stated at trial that the car was "my car" and that the gun was "in my glovebox." Id. at 22. When Basilio opened the glovebox, Basilio "placed his hands over the glovebox as if to keep [Officer Bryant] from seeing inside the glovebox." Id. Accordingly, given the facts of the case, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find Basilio guilty of carrying a handgun without a license as a class A misdemeanor based on a theory that he constructively possessed the handgun. See, e.g., Deshazier v. State, 877 N.E.2d 200, 208 (Ind. Ct. App. 2007) (holding that, based on the totality of the circumstances, the evidence was sufficient to support defendant's conviction based on a theory that he constructively possessed the handgun while seated in the vehicle, whether or not he actually transported the gun in the vehicle and even though there was a passenger in the front passenger seat of the vehicle), trans. denied.

For the foregoing reasons, we affirm Basilio's conviction for carrying a handgun without a license as a class A misdemeanor.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.