

Demetrius Edwards appeals his conviction of unlawful possession of a firearm by a serious violent felon, a Class B felony.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On June 4, 2007, Officer Chris Cavanaugh noticed a passenger in a Caprice was not wearing a seatbelt, and he initiated a traffic stop. When he approached the Caprice, Officer Cavanaugh smelled marijuana. Officer Cavanaugh asked the driver, Orlando Rodgers, about the odor, and Rodgers admitted he and his passenger, Edwards, had been smoking marijuana.

Officer Cavanaugh asked Rodgers and Edwards to step out of the vehicle. As he was exiting the vehicle, Rodgers told Officer Cavanaugh there was a “roach” in the ashtray. (Tr. at 35.) Officer Sean McCurdy then searched the vehicle while Officer Cavanaugh placed Rodgers and Edwards in handcuffs. Officer McCurdy found a handgun under the passenger seat. The gun was “hidden completely under the seat. You had to actually bend down to see the gun. You could not see it from just plain view.” (*Id.* at 73.)

Officer McCurdy told Officer Cavanaugh about the gun, and Officer Cavanaugh read Rodgers and Edwards their *Miranda* rights. Officer Cavanaugh determined the car belonged to Rodgers, and Rodgers also claimed ownership of the marijuana. Officer Cavanaugh then asked Edwards “if the gun that was located underneath his seat was his gun.” (*Id.* at 41.) Edwards asked, “What gun?” (*Id.*) Officer Cavanaugh responded, “The gun that’s directly underneath your seat where you’re sitting.” (*Id.*) Edwards said,

¹ Ind. Code § 35-47-4-5.

“Well, if the gun is . . . under my seat, it must be my gun.” (*Id.*) Officer Cavanaugh was not sure if Edwards was being serious, so he asked Edwards, “Well, is it your handgun or what is it?” (*Id.* at 68.) Edwards said it was his aunt’s handgun.

Officer Tanya Eastwood came to provide backup. She watched Edwards and Rodgers while Officers Cavanaugh and McCurdy were taking care of administrative responsibilities. Edwards asked Officer Eastwood to “call his aunt so she could come to the scene to claim the gun.” (*Id.* at 84.) During the course of his conversation with Officer Eastwood, Edwards told her “he knew the gun was in the car before he got into the car.” (*Id.* at 83.)

At trial, Edwards stipulated he had been convicted of Class C felony robbery on May 5, 2006. The jury found Edwards guilty of unlawful possession of a firearm by a serious violent felon.

DISCUSSION AND DECISION

Edwards raises two issues: (1) whether the trial court abused its discretion by excluding a portion of Edwards’ testimony; and (2) whether the evidence was sufficient to support his conviction.

1. Exclusion of Evidence

Edwards testified he grew up with Rodgers and thinks of him as a cousin or brother. He explained that when he told the officers the gun belonged to his aunt, he was referring to Rodgers’ mother, Orlina. Edwards testified Rodgers’ parents had given Rodgers the car, and that Rodgers’ parents still drove it occasionally. He began to testify he knew Rodgers’ parents kept a gun in the car, and the prosecutor objected on the

ground Edwards did not have personal knowledge. Defense counsel then attempted to lay a foundation for the testimony:

Q. And you had mentioned that you knew that somebody carried a gun in the car. Who were you talking about?

A. I was talking about [Rodgers'] mother and father. . . . I don't know why they keep it in the car but I just know that they kept it in the trunk. . . . That's why when the officer asked me whose gun is in the car, that's why I was shocked and like, "What gun?" You know what I'm saying? Because I – it had blew [sic] my mind.

* * * * *

Q. Okay. And how did you know that? Is this something you observed yourself or are you relying on something that someone told you?

A. It . . . was just something told to me. . . .

(*Id.* at 104-05.)

The prosecutor renewed his objection. Defense counsel argued, "It . . . goes to explain why he responded to the officers in the way that he did. So it's not being offered . . . to prove that they actually carried a weapon in the car, but instead to explain why he gave the answers that he did to the officer." (*Id.* at 105-06.) The trial court sustained the objection and told defense counsel he could make an offer of proof by recitation.

Defense counsel gave the following recitation:

. . . Demetrius Edwards would testify that he knew that Orlina Rodgers, [who] is Orlando Rodgers' mother, often kept a gun in the car in the trunk of the vehicle and that when he was asked whose gun that was, he initially answered, "What gun," because he believed the only weapon would be in the trunk. . . . And that when he . . . would tell them that it was his aunt's gun, he was referring to Orlina Rodgers because she was known to carry a weapon in that car and that's who he attempted to have that officer call.

(*Id.* at 107-08.)

On appeal, Edwards renews his argument that the testimony was not hearsay and was necessary to put his statements to the police in perspective. A trial court has broad discretion to admit or exclude evidence, and we will not reverse unless the trial court abused its discretion. *Teague v. State*, 891 N.E.2d 1121, 1127 (Ind. Ct. App. 2008). An abuse of discretion occurs if the ruling is clearly against the logic and effect of the facts and circumstances before the court. *Id.* “Errors in the admission or exclusion of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party.” *Fleener v. State*, 656 N.E.2d 1140, 1141 (Ind. Ct. App. 1995). An error is harmless “if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” *Id.* at 1142.

We conclude any error was harmless. Although Edwards’ testimony was initially excluded, he later testified to the substance of the excluded evidence without objection: “At first I was like, ‘What gun,’ because . . . I had never got in the car with him and knowing . . . that it was real close to me like that because I had always thought it was in the trunk.” (Tr. at 110.) When asked if he had seen the gun before he got into the vehicle, Edwards replied, “I’ve never seen the gun I just know that [Rodgers’] parents used to always keep one.” (*Id.* at 114.) On cross-examination, Edwards again explained the statements he made to the police:

- Q. Okay. And it is true that when the officer asked you about the gun, you said, “What gun?”
- A. Yes, sir.
- Q. And then you changed your story and said it was your aunt’s gun?
- A. Yes, sir.
- Q. Okay. And you’re denying saying that you knew the gun was in the car when you got in the car?

* * * * *

A. Yes, sir, under my seat.

Q. So you did know there was a gun in that car?

A. At the time . . . I just knew that they used to always keep a gun in the car. That's why when he asked me whose gun is in the car, I said, "What gun?"

* * * * *

Q. [D]o you recall making the statement under direct that when the officer asked you about was that your gun, that that blew your mind?

A. No, because . . . in the moment, I was like, "What gun" and then it just popped in my mind that his parents used to keep a gun in the car. So then I was like, "It's my auntie's gun"

(*Id.* at 119-20, 123-24.)

Because the jury ultimately heard Edwards' explanation of his statements to the police, it is not probable that the excluded testimony had an impact on the jury's verdict; therefore, any error was harmless. *See Fleener*, 656 N.E.2d at 1141.

2. Sufficiency of Evidence

When reviewing sufficiency of evidence, we do not reweigh evidence or judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We consider the evidence favorable to the verdict and the reasonable inferences therefrom. *Id.* We will affirm if there is probative evidence from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.*

Constructive possession of a firearm "occurs when the person has the intent and capability to maintain dominion and control over the firearm." *Causey v. State*, 808 N.E.2d 139, 143 (Ind. Ct. App. 2004).

To prove the element of intent, the State must demonstrate the defendant's knowledge of the presence of the firearm. Knowledge may be inferred from either exclusive dominion and control over the premises containing

the firearm, or from evidence of additional circumstances indicating the defendant's knowledge of the presence of the firearm.

Id. (citations omitted). These additional circumstances may include:

(1) incriminating statements 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; and (5) the mingling of the firearm with other items owned by the defendant.

Id.

Edwards argues there is insufficient evidence of his intent to exercise dominion and control over the firearm. He cites *Henderson v. State*, 715 N.E.2d 833 (Ind. 1999), for the proposition that proximity to a weapon, without more, is insufficient to establish possession. The evidence against Edwards, however, included statements a jury could reasonably view as incriminating.² Edwards initially denied knowing anything about a gun, but then changed his story and claimed the gun belonged to his aunt. Edwards told Officer Eastwood he knew there was a gun in the car before he got in the car. Edwards claimed at trial that he believed the gun was in the trunk, but the officers did not testify Edwards made any such claim at the time of his arrest, and the jury was not required to believe the explanation he offered at trial. *See Edwards v. State*, 773 N.E.2d 360, 365 (Ind. Ct. App. 2002) (jury entitled to determine whether to credit defendant's claims), *trans. denied* 783 N.E.2d 701 (Ind. 2002). The jury could reasonably infer from Edwards' evasive and inconsistent answers that he knew not only that the gun was in the car, but that it was underneath his seat, where he could easily reduce it to his possession.

² *Henderson* is further distinguishable in that the driver in that case claimed ownership of the gun and had his gun license with him, whereas Rodgers denied owning the gun and did not confirm Edwards' claim that it belonged to Rodgers' mother.

Therefore, the evidence was sufficient to support Edwards' conviction of unlawful possession of a firearm by a serious violent felon. *See Abney v. State*, 822 N.E.2d 260, 265 (Ind. Ct. App. 2005) (affirming conviction of possessing material capable of causing bodily injury by inmate where sharpened binder clip was found in vent in Abney's cell and Abney admitted knowing it was in his cell), *trans. denied* 831 N.E.2d 743 (Ind. 2005).

Affirmed.

NAJAM, J., and ROBB, J., concur.