

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER WILLIAM SIEYES,

Appellant.

No. 36799-8-II

UNPUBLISHED OPINION

Hunt, J. – Christopher William Sieyes appeals his juvenile guilty adjudication for second degree unlawful possession of a firearm. In his original appeal, he raised four issues, including whether RCW 9.41.040(2)(a)(iii) violated his constitutional right to bear arms. *See State v. Sieyes*, 168 Wn.2d 276, 280-81, 225 P.3d 995 (2010). Our Supreme Court accepted review of that issue, rejected Sieyes’s argument because of insufficient briefing on the constitutional issue,¹ and remanded back to us to consider Sieyes’s remaining arguments²: (1) Substantial evidence does not support one of the juvenile court’s factual findings; (2) the evidence is insufficient to

¹ Ultimately, the only issue our Supreme Court decided was whether the Second Amendment applied to the states “via the Fourteenth Amendment due process clause.” *Sieyes*, 168 Wn.2d at 279-80.

² *Sieyes*, 168 Wn.2d at 296.

support the guilty adjudication; and (3) the State had, and failed to meet, the burden of disproving the statutory exceptions allowing persons under 18 to possess firearms under certain circumstances as provided in RCW 9.41.042. *See Sieyes*, 168 Wn.2d at 281 n. 3. We affirm.

FACTS

I. Traffic Stop and Discovery of the Gun

At about 11:25 am, on April 26, 2007, Kitsap County Deputy Sheriff Jon Vangesen stopped a vehicle for speeding. Vangesen observed three people in the vehicle. Just before the speeding vehicle stopped, Vangesen saw the front passenger, 17-year-old Christopher William Sieyes, “reach to the front floorboard, passenger floorboard of the car with his right hand as he twisted his body towards the floorboard.” Verbatim Report of Proceedings (Aug. 1, 2007) at 29. Concerned for his safety, Vangesen approached the stopped vehicle from the passenger side, opened the passenger side door, and ordered Sieyes out of the vehicle; Sieyes complied. Vangesen did not see anything on the floorboards when Sieyes was inside the vehicle.

After patting down Sieyes, Vangesen returned to the open passenger’s side door and talked to the driver, Jacob Cole Lawing, and the backseat passenger, Janay Michelle Schnabel. A minute or two later, Vangesen looked under the passenger seat and noticed a loaded .380 caliber handgun “touching . . . the front framework of the seat,” resting against a “small ledge” that was apparently part of the passenger seat “framework.” VRP (Aug. 1, 2007) at 31-32. For the handgun to be accessible from the backseat, the backseat passenger would have to reach about a foot and a half under the seat and over a “ridge.” VRP (Aug. 1, 2007) at 33.

Vangesen seized the handgun, walked to the back of the vehicle, handcuffed Sieyes, and

ordered Lawing and Schnabel to keep their hands up and in view. Vangesen then waited for backup to arrive before removing Lawing and Schnabel from the vehicle.³ After Lawing and Schnabel exited the vehicle, Vangesen found an empty .380 caliber shell casing on the backseat floorboard. Vangesen did not see anything else on the floor near where Sieyes had been sitting. No one found any fingerprints on the handgun.

II. Procedure

The State charged Sieyes with second degree unlawful possession of a firearm under RCW 9.41.040(2)(a)(iii).⁴

A. Trial

The State's witnesses testified as described above. Several other witnesses testified on Sieyes's behalf.⁵

Sieyes's half brother testified that (1) he had never seen Sieyes with a gun, and (2) he had

³ Vangesen also arrested Lawing because he was driving on a revoked license and he had an outstanding arrest warrant for driving on a revoked license.

⁴ RCW 9.41.040(2)(a)(iii) provides:

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

...

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042[.]

The legislature amended RCW 9.41.040 in 2011, but these amendments are not relevant here. Laws of Washington 2011, ch. 193 §1.

⁵ Lawing asserted his Fifth Amendment right to remain silent and refused to testify.

seen Lawing with firearms in the past. Sieyes's father testified that the family did not keep any guns in the home other than pellet guns and that he had never seen Sieyes with any other gun. Three witnesses testified that before April 26, they had seen Lawing with guns, including a .380 caliber handgun that looked similar to the one Vangesen found in the vehicle. Schnabel testified that the vehicle was cluttered, that she did not see a gun in the vehicle that day, and that she did not hear or see Lawing or Sieyes talking about or handling firearms that day.

At no point during the proceedings did Sieyes assert that the State had the burden of disproving the statutory defenses established in RCW 9.41.042.⁶ Nor did any party present any

⁶ RCW 9.41.042 provides:

RCW 9.41.040(2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

- (1) In attendance at a hunter's safety course or a firearms safety course;
- (2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;
- (3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;
- (4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;
- (5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;
- (6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;
- (7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;
- (8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

evidence relevant to these defenses.

B. Adjudication of Guilt and Findings of Fact

The juvenile court adjudicated Sieyes guilty of second degree unlawful possession of a firearm and issued written findings of fact and conclusions of law. Finding of Fact (FF) III stated:

That during a safety search of the vehicle for weapons, Deputy Vangesen found a hand gun underneath the seat where [Sieyes] had been sitting. The gun was found leaning against a ledge just under the front portion of the front passenger seat, and, was located in an area that Deputy Vangesen saw [Sieyes] reaching. The gun was found more towards the front of the seat and was not easily accessible from the rear seat.

Clerk's Papers (CP) at 12 (FF III). Sieyes appeals.

ANALYSIS

I. Sufficiency Issues

Sieyes argues that substantial evidence does not support Finding of Fact III and that the evidence was insufficient to support the conviction. We disagree.

A. Standard of Review

When reviewing a challenge to evidentiary sufficiency, we view the evidence in the light most favorable to the State to determine whether a rational trier of fact could find the elements of the offense beyond a reasonable doubt. *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995), *cert. denied*, 516 U.S. 843 (1995). In reviewing a juvenile court adjudication, we determine whether substantial evidence supports the trial court's findings of fact and, in turn, whether the findings support the conclusions of law. *State v. Alvarez*, 105 Wn. App. 215, 220, 19

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty.

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P.3d 485 (2001). We treat unchallenged findings of fact as verities on appeal. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006).

We review conclusions of law de novo. *Levy*, 156 Wn.2d at 733. A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), *abrogated in part on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Circumstantial evidence is equally reliable as direct evidence. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

B. Finding of Fact III

Sieyes first argues that substantial evidence does not support Finding of Fact III. He contends that Vangesen's testimony showed that the handgun was not easily accessible from the front seat and that to access the handgun someone would "have to go over this ridge and then push it another foot and a half into the backseat." Br. of Appellant at 6 (quoting VRP (Aug. 1, 2007) at 33). We disagree.

We note that Vangesen did not see the handgun while Sieyes was in the passenger seat and that he (Vangesen) had to look under the front passenger seat twice before finding it. Nevertheless, he did not testify that it was difficult to access the handgun from the front seat. Instead, he testified that the handgun was leaning against a "ridge" located "right at the front of the [front passenger] seat." VRP (Aug. 1, 2007) at 32. The portion of the testimony Sieyes

quotes in his brief is Vangesen's description of what a person would have to have done to make the handgun accessible from the *backseat* of the vehicle, not how a person would have accessed the handgun from the front passenger's seat, where Sieyes had been sitting. Vangesen's testimony supports Finding of Fact III.

C. Sufficient Evidence

Sieyes next argues that the evidence was insufficient to establish that he was in actual or constructive possession of the handgun or that his possession was "knowing." Br. of Appellant at 8. Although there was no direct evidence, such as fingerprints, showing that Sieyes had handled the handgun, there was sufficient circumstantial evidence of his possession and knowledge. As Vangesen was pulling over the vehicle, he observed Sieyes leaning over and reaching under the front passenger seat, on which he was sitting, into the area where Vangesen later found the handgun. Vangesen also testified that he did not find anything else in this area. Taken in the light most favorable to the State, we hold that the evidence was sufficient to support a finding that Sieyes hid the handgun under the front passenger seat, establishing that he knew he had the handgun and that he had possessed the handgun immediately before Vangesen stopped the vehicle. Accordingly, this argument fails.

II. Burden of Proof: Statutory Defenses

Sieyes next argues, for the first time on appeal, that the State had the burden of disproving the existence of RCW 9.41.042's statutory defenses to illegal possession of a firearm under RCW 9.41.040(2)(a)(iii). He contends that the burden of disproving all of these statutory defenses falls on the State because the offense at issue here, second degree illegal possession of a firearm,

implicates his constitutional right to possess a firearm.⁷ Because Sieyes did not argue below that the State had the burden of disproving the enumerated statutory defenses, we will address this issue only if Sieyes can establish that it is a manifest error affecting a constitutional right. RAP 2.5(a). This he fails to do.

An important first step in deciding whether to allow a new argument for the first time on appeal is to determine whether the alleged error affects a constitutional right. *State v Gordon*, 172 Wn.2d 671, 676-77, 260 P.3d 884 (2011); *State v. Kirkpatrick*, 160 Wn.2d 873, 880, 161 P.3d 990 (2007), *abrogated on other grounds by Melendez-Diaz v. Massachusetts*, ___ U.S. ___, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009). On direct review in the instant case, our Supreme Court held that Sieyes had failed to establish that a 17-year-old's right to bear arms "should be equal to that of an 18-year-old's." *Sieyes*, 168 Wn.2d at 296. Sieyes still fails to offer any "convincing authority" establishing that the Second Amendment right to bear arms applies equally to 17-year-olds. *See Sieyes*, 168 Wn.2d at 296. Therefore, Sieyes fails to establish that the issue he now attempts to raise for the first time on appeal affects a constitutional right. Accordingly, we decline to reach this argument, which Sieyes failed to preserve for review and

⁷ Sieyes does not argue that the State had burden of proof because the statutory defenses negated one or more element of the crime. *See State v. Box*, 109 Wn.2d 320, 327, 745 P.2d 23 (1987) (State has burden of disproving a defense that negates one or more element of the offense).

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fails to bring within the manifest constitutional error exception to the general rule requiring preservation of error.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, P.J.

We concur:

Van Deren, J.

Johanson, J.