

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27819-1-III

Respondent,

Division Three

v.

TERRY J. BRYANT,

UNPUBLISHED OPINION

Appellant.

Brown, A.C.J. — Terry J. Bryant appeals the Kittitas County Juvenile Court’s Order of Adjudication and Disposition for second degree unlawful possession of a firearm under RCW 9.41.040(2)(a)(iii) (which limits circumstances in which children under age 18 can lawfully possess firearms) and minor in possession/consumption of alcohol. He contends (1) insufficient evidence supports the firearm offense, (2) the firearm offense statute unconstitutionally infringes on his right to bear arms protected under the United States and Washington constitutions, and (3) the disposition court exceeded its authority in imposing certain community supervision conditions. We affirm.

FACTS

Sixteen year-old Terry Bryant lived with his aunt, Ann Draper, for about a month and one-half during the summer of 2008. Ms. Draper confronted Mr. Bryant about a gun she heard he possessed and asked if the two of them could search his room together. Mr. Bryant responded by denying he had a gun and saying he would just leave. Ms. Draper then searched Mr. Bryant's room and found a loaded handgun under the mattress of his bed. Ms. Draper did not give Mr. Bryant permission to have a firearm in his possession.

Later that day, Ms. Draper confronted Mr. Bryant in a trailer parked on her property and asked him to leave. Mr. Bryant then told his aunt he would leave when she returned his "piece or side arm." Report of Proceedings (RP) (Jan. 15, 2009) at 60. Ms. Draper turned the handgun over to the police. The State charged Mr. Bryant with unlawful possession of a firearm under RCW 9.41.040(2)(a)(iii), and minor in possession/consumption of alcohol related to an earlier incident when police had encountered an intoxicated Mr. Bryant while investigating a vehicle prowl.

At the fact-finding hearing, Ms. Draper testified about finding the handgun under Mr. Bryant's mattress and his later demand for its return. Ms. Draper acknowledged that other persons lived at her home and that Mr. Bryant often had friends over, but recalled that most of the time Mr. Bryant and his friends went out. She testified Mr. Bryant normally kept his room locked with a cheap padlock when he left. Mr. Bryant

denied any knowledge of the gun and denied the confrontation at the trailer.

The court found Mr. Bryant had committed the firearm and alcohol offenses, but not other offenses. At disposition, the court ordered two days of confinement plus 12 months of community supervision on the firearm conviction and 6 months of community supervision on the alcohol conviction. The court's supervision conditions included:

- D. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.
- E. Curfew shall be set at the discretion of the probation counselor.
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- G. Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order, and shall notify the probation counselor if any moves are being contemplated.
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- I. Respondent shall participate in ART, FFT or other similar counseling programs if directed to do so by the probation counselor.

Clerk's Papers at 16. Mr. Bryant appealed.

ANALYSIS

A. Evidence Sufficiency

The issue is whether sufficient evidence supports Mr. Bryant's unlawful possession of a firearm conviction.

Sufficient evidence supports a conviction if a rational person viewing the evidence in the light most favorable to the State could find each element proven beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267

(2008). An evidence insufficiency challenger admits the truth of the State's evidence and all inferences reasonably drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable, and we defer to the trier of fact on conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Under RCW 9.41.040(2)(a)(iii), "A person . . . is guilty of the crime of unlawful possession of a firearm in the second degree, if the person . . . has in his or her possession, or has in his or her control any firearm [and] [i]f the person is under eighteen years of age, except as provided in RCW 9.41.042." RCW 9.41.042 provides limited exceptions for minors in possession of a firearm including, "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." RCW 9.41.042(7).

Mr. Bryant first contends the State failed to prove he knowingly possessed the firearm and that he had dominion and control over the area where the gun was found. Both knowledge and possession are essential elements of the crime of possession of a firearm. *State v. Anderson*, 141 Wn.2d 357, 361, 5 P.3d 1247 (2000); RCW 9.41.040(2)(a). Possession may be actual or constructive, and constructive possession can be established by showing the defendant had dominion and control over the firearm or over the premises where the firearm was found. *State v. Staley*, 123 Wn.2d

794, 798, 872 P.2d 502 (1994).

Mr. Bryant was living in a room at his aunt's house for about a month and a half. The door to his room was customarily locked. Ms. Draper related to her knowledge that no other resident entered Mr. Bryant's room when he was not present. Mr. Bryant had the ability to exclude others from his room, was the sole room occupant, and the firearm was under his mattress. Notably, Mr. Bryant told Ms. Draper he would not leave until she returned his "piece or side arm." RP at 60. While Mr. Bryant testified otherwise, credibility determinations are for the trier of fact. *Thomas*, 150 Wn.2d at 874-75. Viewing the evidence in a light most favorable to the State, the State met its burden in establishing both knowledge and possession.

Next, Mr. Bryant contends the State failed to prove he did not have permission from a parent or legal guardian to possess the handgun. But the State is not required to prove the absence of defenses allowed in RCW 9.41.042. *See State v. McCormick*, 56 Wash. 469, 473, 105 P. 1037 (1909) (regarding a liquor sale to a minor, our Supreme Court held, "the burden of proving . . . parental consent was on the appellant if he desired to justify on that ground" not the State). The State is required to prove each element of a crime beyond a reasonable doubt to convict. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). But the RCW 9.41.042 defenses are not crime elements here. Thus, Mr. Bryant's arguments are unpersuasive.

B. Right to Bear Arms

The issue is whether RCW 9.41.040(2)(a)(iii), which criminalizes a juvenile's possession of a firearm except in limited circumstances, violates the right to bear arms under the Second Amendment to the United States constitution and article I, section 24 of the Washington constitution. This issue was decided against Mr. Bryant in *State v. Sieyes*, ___ Wn.2d ___, ___ P.3d ___ (2010 WL 548385) (Feb. 18, 2010). The Supreme Court held, "The Second Amendment right to bear arms applies to the states through the due process clause of the Fourteenth Amendment. We remain unconvinced, however, that RCW 9.41.040(2)(a)(iii) violates either state or federal constitutional right to bear arms." *State v. Sieyes*, 2010 WL 548385 at *9.

C. Community Supervision

The issue is whether the juvenile court exceeded its authority by imposing certain community supervision conditions. First, Mr. Bryant contends the class-program attendance and counseling conditions improperly delegate authority to his probation counselor. Second, Mr. Bryant contends the curfew and the approved residential placement conditions are conditions unrelated to his offenses.

At disposition, a juvenile court may impose local sanctions as a suspended disposition alternative. RCWA 13.40.0357. Local sanctions include "(a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine." RCW 13.40.020(16). "Community supervision is an

individualized program comprised of one or more of the following: (a) Community-based sanctions; (b) Community-based rehabilitation; (c) Monitoring and reporting requirements; (d) Posting of a probation bond.” RCW 13.40.020(4). “Community-based sanctions may include one or more of the following: (a) A fine, not to exceed five hundred dollars; (b) Community restitution not to exceed one hundred fifty hours of community restitution.” RCW 13.40.020(2). Community-based rehabilitation includes, “Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district.” RCW 13.40.020(1).

To support his improper delegation arguments, Mr. Bryant relies on cases involving the Sentencing Reform Act (SRA), not the Juvenile Justice Act (JJA). “The difference between Washington’s juvenile justice and adult criminal systems are well-defined in our law.” *Monroe v. Soliz*, 132 Wn.2d 414, 419, 939 P.2d 205 (1997). A critical difference between the adult and juvenile systems is that the juvenile system must respond to the needs of juvenile offenders, and focuses on rehabilitation, not punishment. *Id.* at 419-20. While under some conditions courts may use decisions interpreting the SRA to interpret the JJA, “meaningful comparison of sentences under the Juvenile Justice Act and the SRA is impossible.” *State v. Miller*, 54 Wn. App. 763,

766, 776 P.2d 149 (1989).

Here, the probation counselor is expected to be familiar with Mr. Bryant and functions as the court's liaison in dealing with the needs and demands placed upon a juvenile both before and after an adjudicatory hearing. The counselor and the court work together to facilitate accomplishment of the local sanctions imposed. Considering the statutory scheme and the court-counselor working relationship, Mr. Bryant fails to demonstrate an improper delegation of authority.

Regarding Mr. Bryant's unrelated-condition arguments, community supervision includes monitoring and reporting requirements. RCW 13.40.020(4)(c). Reporting and monitoring requirements are defined as:

“Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement.”

RCW 13.40.020(18). Clearly, the curfew and residence conditions fall within the monitoring requirements contemplated by the JJA. Therefore, the trial court did not err in imposing the challenged conditions.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW

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2.06.040.

Brown, A.C.J.

WE CONCUR:

Sweeney, J.

Korsmo, J.