

STATEMENT OF THE CASE

Appellant-Defendant, Phillip Eggleston (Eggleston), appeals his conviction for Count IV, carrying a handgun without a license, as a Class C felony, Ind. Code §§ 35-47-2-1(a), 35-47-2-23(c)(2)(B); and Count II, unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor, I.C. § 35-47-4-6.

We affirm.

ISSUES

Eggleston raises one issue on appeal, which we restate as the following two issues:

- (1) Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Eggleston committed the crime of carrying a handgun without a license, as a Class C felony; and
- (2) Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Eggleston committed the crime of unlawful possession of a firearm by a domestic batterer.

FACTS AND PROCEDURAL HISTORY

On the afternoon of September 1, 2005, Officer Charles Gold (Officer Gold) of the Indianapolis Police Department was conducting surveillance of the area in and around 3507 North Leland Street for crimes involving firearms. During his surveillance, Officer Gold observed a green Isuzu Rodeo pull into the driveway at 3507 North Leland Street. The driver and sole occupant, later identified as Eggleston, exited the vehicle and knocked on the door of the residence. When there was no answer, Eggleston walked across the street, briefly spoke with a neighbor, and returned to his vehicle. As Eggleston

drove away, Officer Gold radioed information about the suspicious vehicle to other officers in the area. Shortly thereafter, after observing Eggleston commit three traffic infractions, Officer Michael Schollmeier (Officer Schollmeier) stopped the vehicle in a liquor store parking lot on East 38th Street.

Upon approaching the vehicle, Officer Schollmeier requested Eggleston's driver's license; however, Eggleston informed the officer he did not have one and instead gave him a State identification card. Using the identification card, Officer Schollmeier learned through radio control that Eggleston was driving on a suspended license. At this time, Officer Schollmeier removed Eggleston from the vehicle and placed him under arrest. Incident to the arrest, Officer Gold searched the vehicle and discovered a handgun. Officers additionally determined that Eggleston's girlfriend, Twanna Taylor, was the owner of the vehicle.

On September 2, 2005, the State filed an Information charging Eggleston with Count I, carrying a handgun without a license, a Class A misdemeanor, I.C. § 35-47-2-1; Count II, unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor, I.C. § 35-47-4-6; and Count III, driving while suspended, a Class A misdemeanor, I.C. § 9-24-18-5. On February 15, 2006, Eggleston waived his right to a jury trial. On November 16, 2006, a bench trial was held and the trial court found Eggleston guilty on all Counts. Count I, however, became Count IV, when the trial court enhanced the charge of carrying a handgun without a license to a Class C felony because

Eggleston had a prior felony conviction.¹ On December 1, 2006, the trial court sentenced Eggleston to five years in the Department of Correction, with three years suspended, one year executed, and one year to be served on home detention.

Eggleston now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Eggleston argues the State presented insufficient evidence to prove beyond a reasonable doubt he committed the crimes of carrying a handgun without a license, as a Class C felony, and unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor.

I. Standard of Review

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Alspach v. State*, 755 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*. The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Cox*, 774 N.E.2d at 1028-29.

II. Carrying a Handgun Without a License

¹ Specifically, the record indicates that in June 2002, Eggleston was convicted of possession of cocaine and a firearm, a Class C felony.

To convict Eggleston of carrying a handgun without a license as a Class C felony, the State was required to prove: (1) Eggleston carried a handgun in a vehicle or on or about his body; (2) while not at his dwelling, fixed place of business, or on his property; and (3) that he had been convicted of a felony within fifteen years before the date of the offense. I.C. §§ 35-47-2-1(a) and 35-47-2-23(c)(2)(B). Specifically, to convict a defendant of carrying a handgun in a vehicle, the State must present evidence that a handgun was found in a vehicle and that the defendant had control of either the weapon or the vehicle with knowledge of the weapon's presence. *Grim v. State*, 797 N.E.2d 825, 831 (Ind. Ct. App. 2003). To prove that the defendant had control of the weapon, the State may present evidence of actual or constructive possession. *Id.* Actual possession occurs when a person has direct physical control over the item. *Id.* Constructive possession occurs when an individual has the intent and capability to maintain dominion and control over the item. *Id.*

Here, Eggleston asserts he was not in actual or constructive possession of the handgun; thus, the evidence was insufficient to convict him of carrying a handgun without a license. We disagree. First, we emphasize that the State need only show that Eggleston had control of *either* the weapon or the vehicle with knowledge of the weapon's presence. *See id.* Accordingly, the State is not required to prove actual or constructive possession of the handgun in every case. In the instant case, our review of the record leaves no question Eggleston was the sole occupant and driver of the vehicle; therefore, Eggleston clearly had control over the vehicle. In addition, the record reveals that Officer Gold testified at trial that in his search of the vehicle, he found a handgun

underneath the passenger's seat. Furthermore, Officer Schollmeier testified that upon arresting Eggleston, Eggleston indicated to him that his fingerprints would be found on the handgun. A logical inference from this statement is that Eggleston knew of the weapon's presence in the vehicle. Finally, the record discloses that Eggleston was convicted of a Class C felony in 2002. Consequently, we conclude the State presented sufficient evidence to prove beyond a reasonable doubt that Eggleston committed the crime of carrying a handgun without a license, as a Class C felony.

II. *Unlawful Possession of a Firearm*

Eggleston also contests his conviction for unlawful possession of a firearm by a domestic batterer. "A person who has been convicted of domestic battery under I.C. § 35-42-2-1.3 and who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor." I.C. § 35-47-4-6. In addition, under I.C. § 35-47-2-1(b), a person who has been convicted of domestic battery may not possess or carry a handgun in any vehicle. Again, Eggleston contends the evidence was insufficient to convict him of this crime because he was not in actual or constructive possession of the weapon. He additionally asserts within this sub-argument that Officer Gold's and Officer Schollmeier's testimonies were incredibly dubious.

It is undisputed that Eggleston was not in actual physical possession of the handgun. However, possession may be either actual or constructive. *Ables v. State*, 848 N.E.2d 293, 296 (Ind. Ct. App. 2006). Possession is considered constructive when one has the intent and capability to maintain dominion and control over the item. *Id.* at 297. Intent is shown if the State demonstrates the defendant's knowledge of the presence of

the gun. *Id.* Knowledge can be inferred from the exclusive dominion and control over the premises containing the contraband. *Id.* Additionally, knowledge may be inferred from a defendant's incriminating statements and the proximity of the contraband to the defendant. *Id.*

In the present case, we have already determined that at the time of his arrest, Eggleston had exclusive control over the vehicle in which the gun was found and that he stated to Officer Gold that police officers would find his fingerprints on the handgun. Also, Officer Gold testified that he found the handgun underneath the front passenger's seat, a location in close proximity to the driver's seat where Eggleston was seated. In combination, these facts support the conclusion that Eggleston had the intent and capability to maintain dominion and control of the handgun. Furthermore, our review of the record indicates that Eggleston was previously convicted of domestic battery in January 2000. Accordingly, we conclude the State presented sufficient evidence to prove beyond a reasonable doubt that Eggleston is guilty of unlawful possession of a firearm by a domestic batterer.

Moreover, we note that we find no merit in Eggleston's contention that the officers' testimonies were incredibly dubious. Under the incredible dubiousity rule, "a court will impinge on the [factfinder's] responsibility to judge the credibility of [a] witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity." *White v. State*, 846 N.E.2d 1026, 1032 (Ind. Ct. App. 2006), *trans. denied*. Here, Eggleston does not argue that either Officer Gold's or Officer Schollmeier's testimonies are inherently

contradictory; rather, Eggleston claims the officers' testimonies are inconsistent with the evidence he presented at trial. Therefore, Eggleston is not asking us to examine a sole witness's testimony for incredible dubiousity; instead, he is asking us to reweigh the officers' testimonies against evidence presented on his behalf, which we will not do. *See Cox*, 774 N.E.2d at 1028-29. Thus, we affirm the trial court's conviction of Eggleston for unlawful possession of a firearm by a domestic batterer.

CONCLUSION

Based on the foregoing, we conclude the State presented sufficient evidence to prove beyond a reasonable doubt that Eggleston was guilty of carrying a handgun without a license, as a Class C felony, and unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.