

STATEMENT OF THE CASE

Appellant-Defendant, Adam Blake (Blake), appeals his conviction for unlawful possession of a firearm by a serious violent felon, a Class B felony, Ind. Code § 35-47-4-5.

We affirm.

ISSUE

Blake raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that he possessed a firearm.

FACTS AND PROCEDURAL HISTORY

On March 1, 2009, Blake engaged in an argument with his next-door neighbor over a five-dollar bottle of automotive liquid. While arguing, the neighbor was standing at his front porch and Blake was moving back and forth, on the street and sidewalks, in front of the neighbor's house. Blake escalated the dispute by challenging his neighbor to fight. When the neighbor hid inside his house, Blake advanced to the neighbor's porch and kicked his front door, thereby breaking a glass pane. Another neighbor, who lived across the street from Blake and who witnessed the incident, saw that Blake had a gun in his hand. A few minutes later, Blake fled the scene.

The police arrived a short time later, responding to a call concerning a disturbance with a gun. The officers first talked with Blake's next-door neighbor. Then, the officers approached Blake's house and knocked on the door. The officers were talking to Blake's wife, when Blake stepped outside and told the police that "you all are going to have to come up with a search warrant." (Transcript p. 61). The police ordered Blake to remain outside,

but he retreated into the house. Blake eventually came back outside and was arrested on several charges. When asked whether he possessed a gun, Blake replied that his wife owned one. The officers asked Blake's wife where she kept the gun, but she was unable to tell them where the gun was located. Blake then disclosed that the gun was inside the bedroom closet on a shelf. The police found the loaded gun exactly where Blake had described it to be.

On March 4, 2009, the State filed an Information charging Blake with Count I, unlawful possession of a firearm by a serious violent felon, a Class B felony, I.C. § 35-47-4-5; Count II, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3; and Count III, criminal mischief, a Class A misdemeanor, I.C. § 35-43-1-2. On November 9, 2009, the State dismissed the resisting law enforcement and criminal mischief charges. On November 19, 2009, a jury trial was held and the jury convicted Blake of unlawful possession of a firearm by a serious violent felon, a Class B felony. On December 8, 2009, Blake was sentenced to twelve years executed at the Indiana Department of Correction.

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

DISCUSSION AND DECISION

Blake asserts that the State failed to present sufficient evidence to sustain his conviction for unlawful possession of a firearm by a serious violent felon. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those

inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

In order to convict Blake for unlawful possession of a firearm by a serious violent felon, a Class B felony, the State was required to prove beyond a reasonable doubt that Blake was a serious violent felon and that he knowingly or intentionally possessed a firearm. *See* I.C. § 35-47-4-5. Both parties stipulated that Blake was a serious violent felon. Therefore, the only element that the State was required to prove was knowing and intentional possession of the firearm. Possession of a handgun may be established through either actual or constructive possession. *Wallace v. State*, 722 N.E.2d 910, 913 (Ind. Ct. App. 2000). Actual possession occurs when a person has direct physical control over an item. *Id.* Constructive possession occurs when a person has both the intent and the capability to maintain dominion and control over the item. *Id.*

Blake first argues that there was insufficient evidence to support actual possession. Blake contends that Kristina Strunk (Strunk), the State's only eyewitness, was incredibly dubious in her testimony because her description of the gun differed from the recovered gun. Under the narrow limits of the incredible dubiousity rule, a court may impinge upon a jury's function to judge the credibility of a witness. *Gray v. State*, 871 N.E.2d 408, 416 (Ind. Ct. App. 2007), *trans. denied*. For testimony to be disregarded based on a finding of incredible dubiousity, it must be inherently contradictory, wholly equivocal, or the result of coercion. *Id.*

Moreover, there must also be a complete lack of circumstantial evidence of the defendant's guilt. *Id.* at 417. The rule is rarely applicable. *Id.*

Here, we find that the evidence supporting actual possession is sufficient and that the incredible dubiousity rule does not apply because Strunk's testimony was consistent and there was enough circumstantial evidence to support Blake's guilt. The incredible dubiousity rule applies only if a witness, within her own testimony, contradicts herself: initially saying one thing and then changing her mind and saying something completely different. Here, however, Strunk always was consistent throughout her testimony. Strunk repeatedly said that she saw a gun. When asked if the thing that she saw could have been a pipe, Strunk unequivocally rejected this possibility and reaffirmed that it was a gun. Therefore, because Strunk testified that she saw Blake with the gun, the State established actual possession.

Nevertheless, even if actual possession would not be established, the State presented sufficient evidence beyond a reasonable doubt to establish constructive possession. Constructive possession can be established if the defendant has both the intent and the capability to maintain dominion and control over the item. *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). The proof of a possessory interest in the premises on which the item is found is adequate to show the capability to maintain dominion and control over the item in question. *Id.* In essence, the law infers that the party in possession of the premises is capable of exercising dominion and control over all items on the premises. *Id.* at 340-341. And this is so whether possession of the premises is exclusive or not. *Id.* Here, we find that, even though Blake shared the house with his wife and children, Blake had the possessory interest

in the house because he lived there. Blake was capable of maintaining dominion and control over the gun because the gun was in Blake's bedroom and Blake knew its precise location. As such, the State established the capability prong of constructive possession.

However, when a defendant's possession of the premises where the item is found is not exclusive, then the inference of intent to maintain dominion and control over the item must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the item and its presence. *Id.* The "additional circumstances" can be shown by various means: (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the item to the defendant, (5) location of the item within the defendant's plain view, and (6) the mingling of the item with other items owned by the defendant. *Id.*

We find that Blake had knowledge of the gun and its presence. Blake informed the officers of the gun's precise location in the house. Even though the gun was registered to Blake's wife, she was not able to tell the police where she kept the gun; only Blake knew the exact location of the gun. Further, the gun mingled with Blake's personal belongings because it was found in his bedroom. The gun was recovered lying on the shelf inside Blake's bedroom closet amongst Blake's clothes and other things. Therefore, because Blake precisely knew the location of the gun which was mingled with his possessions, the State established the intent prong of constructive possession.

Accordingly, the evidence here clearly supports a reasonable inference that Blake knowingly or intentionally possessed the gun. As such, we conclude that the State proved

specific facts that provided a solid basis to support a reasonable inference that Blake possessed the gun when he engaged in a fight with his neighbor.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to convict Blake for unlawful possession of a firearm by a serious violent felon.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.