

Children's Law Center of Indiana



Delinquency

05/04/2009

In **E.D. v. State**, 905 N.E.2d 505 (Ind. Ct. App. 2009), the Court reversed the juvenile court's adjudication of the juvenile as a delinquent child for carrying a handgun without a license, a Class A misdemeanor if committed by an adult. The juvenile was a backseat passenger, between two other backseat passengers in a car police pulled over for a missing headlight. When the driver told police he did not have a driver's license, the police had everyone exit the vehicle for an inventory inspection of it prior to having it towed. The police searched the vehicle and found (1) a handgun in the pocket behind the driver's seat, about one foot away from where the juvenile was sitting; (2) a "blunt" allegedly containing marijuana in the pocket behind the front passenger's seat, about two feet away from where the juvenile was sitting; and (3) a small baggie of what appeared to be marijuana in the front cup holder. On May 27, 2008, the juvenile was alleged a delinquent child on the handgun charge and for possession of marijuana. The juvenile court dismissed the possession of marijuana charge because the chemist was not present to testify as to the substance found in the vehicle, and entered a true finding with respect to the handgun charge. The juvenile appealed.

The State failed to meet its burden of proving violation of IC 35-47-2-1 which states in pertinent part: "a person shall not carry a handgun in any vehicle or on or about his person ... without a license[.]" *Id.* at 507-08. The Court opined that, to convict the juvenile of Class A misdemeanor possession of a handgun without a license, (1) the State was required to prove that "the handgun was found in a vehicle and that the defendant had control of either the weapon or of the vehicle with knowledge of the weapon's presence" and that there was an intention to convey or transport the weapon; (2) to satisfy the element of control, the State must show that the juvenile had constructive possession, which occurs when an individual has the intent and capability to maintain dominion and control over the contraband; (3) where a person's control is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate that the person knew of the presence of the contraband; and (4) these additional circumstances include: incriminating statements made by the defendant; attempted flight or furtive gestures; location of substances like drugs in settings that suggest manufacturing; proximity of the contraband to the defendant; the location of the contraband within the defendant's plain view; and the mingling of the contraband with other items owned by the defendant. *Id.* at 507 (citations omitted). The Court compared the facts here to those in **D.C.C. v. State**, 695 N.E.2d 1015, 1016-27 (Ind. Ct. App. 1998) in which the State had failed to prove that the defendant's constructive possession of the gun could be inferred, and in **Ferrell v. State**, 656 N.E.2d 839, 842 (Ind. Ct. App. 1995) in which the Court of Appeals found that there was sufficient circumstantial evidence to support an inference of constructive possession. Here, the Court found that, unlike the defendant in **Ferrell**, other than the juvenile's proximity to the gun, there was no evidence to suggest that the juvenile had capability to maintain control and dominion of the gun. The Court observed that, here, (1) the police officer testified that the

juvenile was sitting in the back of the car between two other males, about one foot away from the gun and the gun was about “arm’s length” away, or two feet, from the passenger riding behind the driver’s seat; (2) thus, the juvenile was only marginally closer to the gun and the gun was arguably in reach of the driver, who was three to three-and-a-half feet way from the gun if he turned to reach for it; (3) the State did not provide evidence establishing whether the gun was in plain view; and (4) there was no evidence to suggest that the juvenile made incriminating statements regarding knowledge of the gun or that he made furtive gestures. E.D. at 507-08