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No. 3--09--0613

Order filed September 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	No. 08--CF-314
)	
RANDAL YOUNG,)	Honorable
)	Clark Erickson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Carter concurred in the judgment.
Justice McDade specially concurred.

ORDER

- ¶ 1 *Held:* The evidence presented during the defendant's trial was sufficient to support his conviction for unlawful possession of a weapon by a felon.
- ¶ 2 The defendant, Randal Young, was convicted after a jury trial of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). In this appeal, the defendant argues that the evidence presented by the State was insufficient to support his conviction. We affirm.

¶ 3

BACKGROUND

¶ 4 The defendant was charged with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). The indictment alleged that the defendant knowingly possessed a .380 caliber handgun after having been previously convicted of robbery, a forcible felony.

¶ 5 During the defendant's trial, the State called Kankakee Police Officer Zach Johnston. Johnston testified that he was on duty on May 21, 2008. He was dispatched to the 400 block of North Adams due to an anonymous report that four or five gunshots were heard in the area. When he arrived, he saw a green Buick parked in an alley behind a residence. The vehicle appeared to be occupied. Johnson testified that, as he turned down the alley, he shined his spotlight on the Buick to determine how many passengers were in it. At that point, he saw the right rear passenger door open, and an individual exited the car and began walking toward the nearby residence.

¶ 6 Before Johnston got out of his squad car, two other individuals exited the green Buick. One had been seated in the front passenger seat, and the other had been in the rear driver's seat. The driver remained in the car. All three individuals who exited the vehicle were walking towards the nearby residence. Johnston ordered them to stop, and all three returned to the vehicle. Johnston never lost sight of the first individual to exit the car, whom Johnson identified in court as the defendant. When Johnston asked the defendant to identify himself, the defendant initially claimed that his name was "Austin Smith." However, after one of the other individuals in the vehicle told Johnston that they had given "a friend named Randal" a ride, the defendant admitted that his name was Randal D. Young.

¶ 7 The driver gave Johnston permission to search the vehicle. When Johnston looked in the backseat area, he saw a chrome, .380 caliber handgun. He testified that the gun was stuck in the area where the seat cushion met the floorboard and that a small portion of the gun's handle and slide was visible. Johnson testified that if someone was sitting there the gun would be "right between their legs." He stated that the defendant was the one who had been sitting in the position where the gun was found. Johnston took the defendant into custody.

¶ 8 Kankakee Detective Peter Nichols also testified for the State. Nichols interviewed the defendant on May 22, 2008, after the defendant had been arrested. The defendant received Miranda warnings and signed the Miranda form. Nichols testified that the defendant initially denied having any knowledge of the gun or any other details relevant to the case. After Nichols asked the defendant if there was any reason why his fingerprints would be on the gun, however, the defendant said that he would tell the police "what happened." The defendant told Nichols that he was on Merchant Street when someone he knew as "T-Bone" pulled up and showed the defendant a gun. The defendant stated that he took the weapon, handled it, gave it back to "T-Bone," and then walked to his girlfriend's house. He later walked to Adams Street and was in the backyard of a house when the police approached him and handcuffed him. The defendant also told Nichols that he saw a car pull up and then saw an unknown black male flee from the backseat of the car.

¶ 9 Nichols testified that he wrote out the defendant's statement and was present when the defendant signed the statement. When the defendant gave his statement to Nichols, he described the gun that "T-Bone" handed him as a chrome, .380 caliber handgun. Nichols did not show the

defendant the gun that Johnston had seized or tell the defendant that the police had seized a chrome, .380 caliber handgun before the defendant described the gun that “T-Bone” handed him.

¶ 10 The defendant’s written statement and the handgun Johnston found in the car were both admitted into evidence. Pursuant to a stipulation between the parties, the State also entered into evidence a certified copy of the defendant’s 2004 felony conviction for robbery. The defendant did not call any witness or put on evidence. After closing arguments, the jury found the defendant guilty of unlawful possession of a weapon by a felon. The circuit court denied the defendant’s posttrial motion for a new trial and sentenced him to 9 years in prison. This appeal followed.

¶ 11 ANALYSIS

¶ 12 An individual commits unlawful possession of a firearm by a felon if he “knowingly possess[es]” a firearm on or about his person and he has previously been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2008). The defendant does not contest that he was convicted of the felony of robbery before he was charged with the instant offense. Thus, the only issue on appeal is whether the evidence presented at trial was sufficient to establish that he knowingly possessed a firearm.

¶ 13 When reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, when the evidence is viewed in the light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002); *People v. Nesbit*, 398 Ill. App. 3d 200, 208 (2010). Decisions regarding the credibility of witnesses and the weight given to their testimony are exclusively within the province of the jury. *People v. Collins*, 106

Ill. 2d 237, 261-62 (1985); *Nesbit*, 398 Ill. App. 3d at 209. A defendant's conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007); *Nesbit*, 398 Ill. App. 3d at 209.

¶ 14 Criminal possession may be actual or constructive. Actual possession is proved by evidence showing that the defendant "exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away." *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Where the possession is constructive, the State must prove that defendant: (1) had knowledge of the presence of the weapon; and (2) had immediate and exclusive control over the area where the weapon was found. *Nesbit*, 398 Ill. App. 3d at 209; *People v. Ingram*, 389 Ill. App. 3d 897, 899-900 (2009). "The element of knowledge may, and most often must, be proved by circumstantial evidence." *Ingram*, 389 Ill. App. 3d at 900 (quoting *People v. Rangel*, 163 Ill. App. 3d 730, 739 (1987)). A defendant's mere presence in a car, without more, is not evidence that he knows a weapon is in the car. *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). However, knowledge may be inferred from other factors, such as: (1) the visibility of the weapon from defendant's position in the car; (2) the period of time in which the defendant had an opportunity to observe the weapon; (3) any gestures by the defendant indicating an effort to retrieve or hide the weapon; and (4) the size of the weapon. *Bailey*, 333 Ill. App. 3d at 89-92; see also *Ingram*, 389 Ill. App. 3d at 900.

¶ 15 Courts should "also consider any other relevant circumstantial evidence of knowledge," including whether the defendant had a possessory or ownership interest in the weapon or in the automobile in which the weapon was found (*Bailey*, 333 Ill. App. 3d at 89-92), or any other

“acts, declarations, or conduct from which it can be inferred that [the defendant] knew the contraband existed in the place where it was found.” *People v. Ross*, No. 1-09-1463, slip op. at 6-7 (March 11, 2011); see also *People v. Beverly*, 278 Ill. App. 3d 794, 798 (1996). For example, a defendant’s flight from a car following a traffic stop or other interaction with the police may support a reasonable inference that he knowingly possessed a gun left in the car. See, e.g., *Ross*, No. 1-09-1463, slip op. at 8; *Ingram*, 389 Ill. App. 3d at 901.

¶ 16 In this case, Officer Johnston testified that he found the gun in plain view wedged between the rear seat cushion and the floorboard immediately after the defendant fled the car. Johnson testified that the defendant had been sitting in the part of the car where the gun was found and that the gun would have been “right between the[] legs” of anyone seated in that position. Moreover, the defendant fled the car immediately after Johnston shined his spotlight on the car. This evidence supports a reasonable inference that the defendant knew that the gun was in the car and constructively possessed it. See, e.g., *Rangel*, 163 Ill. App. 3d at 740 (evidence supported inference that defendant knowingly and constructively possessed a gun found in his car where, *inter alia*, police testified that the weapon “was in plain view on the floor of the car where defendant had been sitting just before he exited and was apprehended by police”); *Ingram*, 389 Ill. App. 3d at 900-01 (evidence sufficient to support inference of knowing and constructive possession where, *inter alia*, defendant exited the front passenger seat immediately after police stopped the vehicle and the gun was found in plain view on the floor of the vehicle where it would have been easily accessible to someone sitting in the front passenger seat); see also *Ross*, No. 1-09-1463, slip op. at 8.¹

¹ This inference is not undermined by the fact that there were other people in the car who

¶ 17 In addition, the defendant told Detective Nichols that he had handled a chrome, .380-caliber handgun on May 21, 2008—the exact same type of gun that was found in the back seat of a car that the defendant exited later that evening. The defendant volunteered this information without being told what type of gun the police had found in the car. Thus, the defendant’s statement to Nichols constituted “additional acts, declarations, or conduct from which it c[ould] be inferred that [the defendant] knew the [gun] existed in the place where it was found.” *People v. Ross*, No. 1-09-1463, slip op. at 6-7.² At a minimum, the evidence presented by the State was

could have accessed the gun. See, e.g., *Ingram*, 389 Ill. App. 3d at 901 (“The law is clear that the exclusive dominion and control required to establish constructive possession is not diminished by evidence of others’ access to the contraband.” [Citations]); *People v. O’Neal*, 35 Ill. App. 3d 89, 91 (1975) (“[t]he presence of other persons in the vicinity does not necessarily undermine th[e] inference” of constructive possession).

² Although the defendant told the police that he denied knowing that the gun was in the car and that he saw an unidentified black male exit the rear passenger seat just before the police found the gun there, the jury was not required to credit these statements. The statements were contradicted by Officer Johnston’s testimony. Moreover, the defendant chose not to testify or to present any other evidence in support of the statements. Further, the credibility of the defendant’s statements was questionable because the defendant initially offered Johnston a false name and changed his story during his interview with Detective Nichols. In any event, we will not reverse the jury’s verdict merely because it chose to credit Johnston’s account of the events rather than the unsupported statements allegedly made by the defendant. See generally, *Nesbit*, 398 Ill. App. 3d at 208 (“Decisions regarding the credibility of witnesses and the weight given to

sufficient to support a reasonable inference of constructive possession. A rational jury could have convicted the defendant of unlawful possession of a firearm by a felon based upon this evidence.

¶ 18 The defendant argues that the evidence was insufficient to support his conviction because “the only evidence presented by the State tending to establish that a crime occurred is the statements of the Defendant himself.” The defendant correctly notes that the *corpus delicti* cannot be proven by the defendant’s confession alone; rather, there must be some independent evidence or corroborating evidence aside from the confession which tends to establish that a crime occurred. See, e.g., *People v. Lambert*, 104 Ill. 2d 375, 378-79 (1984). The defendant argues that the State failed to prove that a crime occurred because it offered no evidence to corroborate his statement to the police that he handled a chrome, .380-caliber handgun.

¶ 19 We disagree. Contrary to the defendant’s suggestion, the defendant’s statements to the police were not the only evidence the State introduced at trial. Officer Johnston testified that he saw the defendant exit a car and then found a gun under the rear seat cushion in the exact part of the car in which the defendant had been sitting. This testimony, standing alone, supported a reasonable inference that the defendant knowingly possessed the gun found in the car. The statements that the defendant made to Detective Nichols lent further support to that inference because it established that the defendant had handled the same type of handgun that was found in the car on the same day that the gun was found. However, the statement that the defendant made to the police was not the most significant—let alone the *only*—evidence presented to establish that the defendant constructively possessed the firearm that was recovered from the car. Here, the

their testimony are exclusively within the province of the jury.”).

evidence that a gun was found where the defendant had been sitting, together with the defendant's confession, proved that the defendant had committed the crime of unlawful possession. See, e.g., *Lambert*, 104 Ill. 2d at 379 (evidence which corroborates the facts contained in the defendant's confession and which tends to prove that the offense occurred "may be considered together with the confession to establish the *corpus delicti*").

¶ 20 In sum, viewing the evidence in the light most favorable to the prosecution, as we must, we conclude that a rational trier of fact could have found beyond a reasonable doubt that the defendant committed each element of the charged offence, *i.e.*, that he knowingly possessed a firearm and was previously convicted of a felony. We therefore affirm.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the defendant's conviction for unlawful possession of a weapon by a felon.

¶ 23 Affirmed.

¶ 24 JUSTICE McDADE, specially concurring:

¶ 25 I concur with the majority decision affirming the conviction of defendant, Randal Young, for unlawful possession of a firearm by a felon. I do so because the restrictive standard of review set out in *People v. Collins*, 106 Ill. 2d 237, 261-62 (1985), compels that finding.

¶ 26__I write separately to note that the concept of possession has been so watered down by case law (including that recited by the majority) as to be virtually meaningless today. The statute seems to have contemplated actual possession of the firearm by a convicted felon to support the felony conviction. When actual possession became too difficult to prove, the courts adopted the

concept of "constructive" possession, the elements of which are: (1) that the defendant had knowledge of the presence of the weapon and (2) that the defendant exercised immediate and exclusive control of the area where the weapon was found. *People v. Nesbit*, 398 Ill. App. 3d 200, 209 (2010); *People v. Ingram*, 389 Ill. App. 3d 897, 899-900 (2009). But those elements were also too difficult to meet and the requirement of "exclusive control" has been rendered meaningless. See, e.g. *Ingram*, 389 Ill. App. 3d at 901, finding that "[t]he law is clear that the exclusive dominion and control required to establish constructive possession is *not diminished by evidence of others' access to the contraband.*"

¶ 27 Considering, in the instant case, the first prong – knowledge of the presence of the weapon – Johnston testified that from his vantage point looking into the backseat area, the gun was shoved between the rear seat cushion and the floorboard with a small portion of the handle and slide showing. It was, thus, for Johnston, in "plain view." What was "plain" to be seen from where he stood may not have been visible to a person actually sitting in the rear passenger seat of the car. *People v. Bailey*, 333 Ill. App. 3d, 888, 891-92 (2002), seems to require a showing of visibility from *defendant's* position in the car – a showing that was not made here. I would find the officer's testimony, without more, insufficient to establish defendant's knowledge of its presence beyond a reasonable doubt. By the same token the gun could have been seen by one or more of the other occupants of the car resulting in their knowledge of its presence.

¶ 28 Turning to defendant's "immediate and exclusive control of the area where the weapon was found," the officer testified that the defendant was the first person to leave the vehicle. The majority states that defendant "fled" the vehicle despite the fact that Johnston testified that he walked away at a normal pace. Although the driver remained in the car, the two people

occupying the front passenger and rear driver's seats exited after the defendant had left.

Presumably they also "fled."

¶ 29 Thus, the testimony of the police officer established that (1) the defendant *never* had immediate and exclusive control of the car, (2) defendant may have had immediate and exclusive control of his seat in the car while he was in it, (3) there was a time when the other three occupants of the car had access to that seat (and to the gun) while defendant was no longer sitting in either the seat or the car, and (4) during the period between defendant's exit from the car and the police officer's discovery of the gun, defendant had *no* control of any possibly relevant area.

¶ 30 Applying plain language and common sense to the facts of this case, two necessary conclusions emerge. First, the defendant did not have immediate and exclusive control of any relevant area of the car at all pertinent times, and, second, under the law as applied by the majority, any one or all of the other three persons in the car could also have been found in "constructive" possession of the gun. In such a circumstance, it is not possible, in my opinion, for the defendant to have properly been found guilty of its possession beyond a reasonable doubt.

¶ 31 For me, that would be enough to find defendant had not been properly convicted and his conviction would have to be reversed. However, the majority cites an additional overlay of case law that, in light of *Collins*, makes a dissent problematic. *People v. Ross*, 407 Ill. App. 3d. 931 (2011), notes the relevance of "acts, declarations, or conduct from which it can be inferred that [the defendant] knew the contraband existed in the place where it was found." In the instant case, Detective Peter Nichols suggested to defendant, apparently falsely,³ that his fingerprints

³One has to assume that if defendant's fingerprints had actually been on the gun, that fact would have obviated the need for this exercise in constructive possession.

were on the gun. This prompted defendant to recount an improbable scenario that had him handling an identical chrome, 380 caliber handgun earlier in the day and then returning it at that same time to a man he knew as "T-Bone." This story, coupled with defendant's initial proffering of a false name, the presence of the gun under his seat, his "fleeing" of the car, and the damning fact that "the defendant chose not to testify or to present any other evidence in support of [his] statements [contradicting Johnston's testimony] (slip op at 7, fn 2), would, under *Collins* and the evolving precedents relating to constructive possession cited here and in the majority decision, appear sufficient to require affirmance of defendant's conviction.

¶ 32 Accordingly, I concur in the decision.