

¶ 3

FACTS

¶ 4 On June 13, 2007, the defendant was charged by information with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)) and possession of a weapon without a FOID card (430 ILCS 65/2(a)(1) (West 2006)). A jury trial was conducted on November 3, 4, and 5, 2010, at which the following evidence and testimony was adduced. Justin McKinney testified that he is employed as an officer at the Eldorado police department. He was on duty and patrolling at approximately 2 a.m. on June 13, 2007. As McKinney was traveling west on Douglas Street, he observed an individual later identified as the defendant walking westbound on the south side of the street, about a block and a half in front of the patrol car.

¶ 5 McKinney testified that as he approached the defendant from behind, it appeared that the defendant was carrying an object on his left hip, as his arm was not swinging or moving on that side as he walked, which raised suspicion with McKinney. Accordingly, McKinney stopped to identify the defendant. McKinney testified that he pulled his patrol car up to the defendant's right side. He noted that he did not notice any objects lying on the street as he approached the defendant. When McKinney stopped his car, the defendant leaned down to speak to him. McKinney explained that the defendant was not facing him as he spoke to him. Rather, the defendant faced west the entire time, the same direction the patrol car was facing. Consequently, McKinney was unable to see the defendant's left side as they spoke.

¶ 6 McKinney explained that the defendant appeared to be attempting to hide something or remove something from his pocket, resulting in McKinney sensing a risk to his own safety. Accordingly, McKinney asked the defendant what he had in his hand. The defendant denied having anything. McKinney ordered the defendant to step away from the patrol car and McKinney exited the car. As McKinney opened the door and stepped out of the vehicle, he observed the defendant make a tossing motion with his left hand toward the rear of the patrol

car. As the defendant did so, McKinney heard a sound that he described as a hard, metallic object striking the pavement. Subsequently, the defendant turned and faced McKinney, who could clearly see the defendant's left side at that point. Using his flashlight, McKinney observed a Colt .45 revolver pistol lying on the pavement approximately five feet to the rear of his patrol car. McKinney notified dispatch, ordered the defendant onto the ground, and secured him in handcuffs.

¶ 7 McKinney testified that shortly thereafter, fellow officer Jack Johnson arrived on the scene, took possession of the firearm, and discovered six live rounds of ammunition inside. The defendant told McKinney that it was not his gun. In response, McKinney asked the defendant what he had been retrieving from his pocket, to which the defendant replied, "a cigarette." McKinney noted that no cigarettes were found on the defendant or anywhere else at the scene. The defendant later qualified that "he thought he had cigarettes on him." McKinney testified that after running a criminal history check, he discovered that the defendant was a convicted felon and had no FOID card. McKinney testified that a fingerprint test was never conducted on the gun or the ammunition.

¶ 8 Officer Jack Johnson testified that he is employed by the Eldorado police department and was leaving his shift to head home at 2 a.m. on June 13, 2007, when he headed to Douglas Street to provide backup for McKinney. As Johnson arrived at the scene, he noticed McKinney's patrol car parked along the edge of the street on the left side and the defendant wearing handcuffs. At McKinney's prompting, Johnson proceeded to the back of McKinney's patrol car, where he discovered a Colt DA .45 six-shot revolver, approximately one or two feet around the corner of the rear of the vehicle. Johnson picked up the gun, unloaded six rounds of ammunition, and turned it over to McKinney, who secured it in the squad car. The gun was later placed into a locker by Officer James Williams, who is the evidence custodian at the Eldorado police department.

¶ 9 Megan Stiles testified that she was the defendant's girlfriend on June 13, 2007, and she resided with him at that time, along with her five-year-old daughter and two of the defendant's children. Stiles stated that there were never any firearms in the home, nor had she ever seen a gun in the defendant's possession. Stiles testified that she got off work at 12:30 a.m. on June 13, 2007. When she got home, the defendant was there, but he left some time later to walk to his friend's house who lived just up the road. Stiles averred that the defendant did not have a gun on him when he left.

¶ 10 The jury found the defendant guilty of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and possession of a weapon without a requisite FOID card (430 ILCS 65/2(a)(1) (West 2010)). The circuit court entered a judgment on January 20, 2011, sentencing the defendant to concurrent five-year sentences in the Department of Corrections for his convictions. The defendant filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 As a threshold matter, the State concedes that the defendant's conviction for possession of a weapon without a FOID card (430 ILCS 65/2(a)(1) (West 2010)) must be vacated under the one-act, one-crime doctrine, thereby obviating the need to address the defendant's issue regarding the same on appeal. Accordingly, the sole remaining issue for our consideration is whether the State failed to prove the defendant guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)). "In reviewing the sufficiency of the evidence to sustain a verdict on appeal, the relevant inquiry is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v. Thomas*, 178 Ill. 2d 215, 231-32 (1997); *People v. Howery*, 178 Ill. 2d 1, 38 (1997)).

¶ 13 Section 24-1.1(a) of the Criminal Code of 1961 provides that "[i]t is unlawful for a person to knowingly possess on or about his person *** any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State." 720 ILCS 5/24-1.1(a) (West 2010). "Criminal possession may be actual or constructive." See *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009). As this court previously held in a case involving unlawful possession of a weapon by a felon, "[a]ctual possession is proved by testimony which shows [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) (quoting *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987)).

¶ 14 In this case, we find the evidence supports a finding of actual possession. Although the defendant emphasizes that the firearm was not fingerprinted, nor did any of the witnesses actually see the defendant in physical possession of the firearm, Officer McKinney's testimony shows that the defendant had actual possession by exercising dominion over the firearm by trying to conceal it or throw it away. See *Love*, 404 Ill. App. 3d at 788. McKinney testified that when he first observed the defendant, he appeared to be carrying an object on his left hip as he walked. When McKinney stopped to inquire, the defendant never turned toward McKinney, as doing so would reveal his left side. McKinney exited the patrol car when the defendant appeared to be removing something from his pocket, after which McKinney observed the defendant make a rear swinging motion with his left hand and heard a hard metallic object strike the pavement behind the patrol car. Only then did the defendant turn to reveal his left side to McKinney, followed by McKinney seeing the firearm on the pavement behind the patrol car.

¶ 15 Although the defendant offers various theories besides actual possession, regarding how the firearm ended up at the scene, we are mindful that "[i]n reaching its verdict, the jury is not required to (1) disregard inferences that flow normally from the evidence presented or

(2) search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt." *People v. Pelo*, 404 Ill. App. 3d 839, 881 (2010). Actual possession may be inferred in this case based on McKinney's testimony. Moreover, this court is "neither required nor permitted to substitute our judgment regarding the weight or credibility of the evidence for that of the jury." *People v. Guyon*, 117 Ill. App. 3d 522, 540 (1983). In applying these principles to the case at bar, and in looking at the evidence in a light most favorable to the State (see *Cooper*, 194 Ill. 2d at 430-31), we find that a reasonable trier of fact could infer that the defendant indeed had actual possession of the firearm. Accordingly, the defendant's conviction of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) was proper and we affirm the same.

¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, we affirm the defendant's conviction of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)), we vacate the defendant's conviction and sentence for possession of a weapon without a FOID card (430 ILCS 65/2(a)(1) (West 2010)), and we remand with directions for the circuit court to enter a new sentencing order reflecting only the conviction and sentence for unlawful possession of a weapon by a felon (720 ILCS 5/24.1-1(a) (West 2010)).

¶ 18 Affirmed in part and vacated in part; cause remanded with directions.