

No. 1-12-1309

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 11638
	)	
MAURICE GOLDMAN,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Hoffman and Delort concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction of aggravated unlawful use of a weapon was affirmed where the trial evidence established beyond a reasonable doubt that he was in constructive possession of a firearm found under the vehicle passenger seat in which he was sitting and he was the owner of the vehicle.

¶ 2 Following a bench trial, defendant Maurice Goldman was found guilty of aggravated unlawful use of a weapon and sentenced to 36 months in prison. On appeal, defendant contends

the State failed to prove beyond a reasonable doubt that he knowingly possessed a firearm found hidden beneath the passenger seat of a car where he was sitting. We affirm.

¶ 3 Defendant was charged by indictment with eight counts of aggravated unlawful use of a weapon and two counts of unlawful use or possession of a weapon by a felon. Along with two codefendants, defendant was also charged with four counts of aggravated battery upon Michael Townsend. At the joint bench trial of defendant and his codefendants, the following evidence was adduced.

¶ 4 Michael Townsend testified that at about 1 a.m. on July 5, 2011, he was asleep in his second-floor apartment on West 51<sup>st</sup> Street in Chicago. He awakened to find defendant and the two codefendants, Deaaron Smith and William Clark, in his bedroom. Defendant began beating him with a .45 caliber chrome-and-black handgun. Townsend knew it was a .45 caliber firearm because when Goldman dropped the clip, one .45 shell fell out and Townsend saw it when it fell on the floor. All three of the men took turns beating him, and they ransacked his apartment. When defendant was beating Townsend, he and the other two men asked Townsend where his brother Robert was. Townsend told them his brother was on Seeley. Townsend was able to escape from them by jumping out a window, and defendant fired shots out the window at him. Some "Good Samaritans" called the police. As Townsend was waiting for the police to arrive, he saw defendant's yellow Monte Carlo drive away. Townsend received a phone call 15 or 20 minutes later advising him that three men were looking for Robert, Townsend's brother. A friend of Townsend drove him to his aunt's house on South Seeley. When he arrived at the Seeley address, Townsend saw defendant and the two codefendants inside the yellow Monte Carlo. At trial, Townsend identified a State exhibit as a photograph of the Monte Carlo owned by

defendant. Townsend phoned the police. As the Monte Carlo drove away, Townsend and his friend followed the Monte Carlo to Blue Island, where he observed Blue Island police officers curb the Monte Carlo and place its three occupants in custody. Townsend went to the police station at 51<sup>st</sup> and Wentworth. Later, he was treated at a hospital with "stitches and staples" for head injuries.

¶ 5 On cross-examination, Townsend admitted to prior convictions for residential burglary and narcotics possession. He testified that defendant had lived in the third-floor apartment above him until about a month and a half before the incident. Townsend did not know whether his brother Robert charged defendant rent for the apartment. Townsend denied that the aggravated battery incident took place in the third-floor apartment. He denied stealing property from the third-floor apartment or having items belonging to defendant in his own second-floor apartment. He denied that on a prior court date he approached defendant's sister, Chantelle Goldman, in the courthouse and asked her to give him \$2,000 not to testify. Townsend was shown a defense exhibit, purportedly an affidavit signed by him in which he stated defendant never hit him. He denied that the signature on the affidavit was his.

¶ 6 The State and defendant's counsel stipulated that Officer Slattery of the Blue Island Police Department would testify that at 2:19 a.m. on July 5, 2011, he stopped a vehicle at 3616 Timbler Court in Country Club Hills. Defendant Maurice Goldman was sitting in the front passenger seat, codefendant Smith was in the driver's seat, and codefendant Clark was in the back seat. Slattery later found an uncased and loaded .45 caliber silver handgun under the front passenger seat. It was also stipulated that Detective Harriet Lewis would testify she received from Officer Slattery a .45 caliber Smith and Wesson automatic handgun which was loaded with

one bullet in the magazine and nine additional rounds. It was further stipulated that defendant Goldman had a prior felony conviction for possession of cannabis.

¶ 7 After the State rested, counsel for all three defendants moved the court to find for defendants on all charges. After arguments were concluded, the trial court ruled that, "even in the light most favorable to the State, I remember clearly the testimony of the alleged victim in this matter. 'Absurd' is probably the best word I could use." The court granted the defense motions on the aggravated battery counts as to all three defendants. However, the court denied defendant Goldman's motion on all the counts with respect to firearm possession.

¶ 8 Defendant rested without presenting evidence. The court found him guilty on Count 1, aggravated unlawful use of a weapon. The court found him not guilty of additional counts and determined that the remaining counts merged into Count 1. Because of defendant's prior felony conviction, his conviction was a Class 2 felony. 720 ILCS 5/24-1.6(d)(3) (West 2010). The court sentenced him to 36 months in prison.

¶ 9 On appeal, defendant contends that his conviction for aggravated unlawful use of a weapon must be reversed because the State failed to prove beyond a reasonable doubt that he had knowledge of the presence of the firearm which police found hidden beneath the passenger seat he was occupying when the police stopped the vehicle. The State responds that defendant's notice of appeal is insufficient to confer appellate jurisdiction and, alternatively, that the evidence established defendant's guilt beyond a reasonable doubt.

¶ 10 As a threshold matter, we address the State's contention that we have no jurisdiction to hear this appeal because defendant's notice of appeal failed to conform to Supreme Court Rule 303(b)(2) (eff. June 4, 2008), which mandates that a notice of appeal must specify the judgment

or part thereof or other orders appealed from. The State argues defendant's notice specified only the date of sentencing and not the date on which defendant was found guilty. We reject the State's argument, noting that the State does not allege it was prejudiced by defendant's failure to specify the date the guilty finding was entered, and that it has fully briefed the issue raised by defendant. In a criminal case, the final judgment of the court is the pronouncement of sentence. *People v. Albitar*, 374 Ill. App. 3d 718, 721 (2007). There is no final judgment until the imposition of sentence, and, in the absence of final judgment, no appeal may be entertained. *People v. Neely*, 2013 IL App (1<sup>st</sup>) 120043, ¶ 14, citing *People v. Flores*, 128 Ill. 2d 66, 95 (1989). The purpose of a notice of appeal is to inform the prevailing party in the trial court that the other party seeks review of the judgment. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). The notice is to be liberally construed, considered as a whole, and judged sufficient to establish appellate court jurisdiction if it fairly and adequately identifies the judgment complained of and relief requested. *Id.* at 104-05. The notice of appeal in the instant case was sufficient to do so.

¶ 11 With respect to defendant's challenge to the sufficiency of the evidence supporting his conviction, the critical inquiry on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Diaz*, 377 Ill. App. 3d 339, 344 (2007). The trier of fact is responsible for determining the credibility of witnesses and the weight to be given their testimony, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will not be reversed unless the evidence is so improbable or unsatisfactory

that there remains a reasonable doubt of the defendant's guilt. *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007).

¶ 12 Defendant was convicted of aggravated unlawful use of a weapon. To obtain a conviction in this case, the State was required to prove that defendant knowingly carried in any vehicle any firearm, and the firearm was uncased, loaded, and immediately accessible at the time of the offense. 720 ILCS 5/24-1.6(a)(1), (3)(A) (West 2010). Possession of a weapon may be proved by showing that the defendant had actual or constructive possession of the weapon. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). To establish constructive possession, the State must prove beyond a reasonable doubt that defendant (1) had knowledge of the presence of the weapon, and (2) exercised immediate and exclusive control over the area where the weapon was found. *Id.*; *People v. Hampton*, 358 Ill. App. 3d, 1029, 1031 (2005). Knowledge could be inferred from several factors, including: (1) the visibility of the weapon from defendant's location in the vehicle, (2) the amount of time in which defendant had an opportunity to observe the weapon, (3) gestures or movements made by defendant that would suggest an effort to retrieve or conceal the weapon, and (4) the size of the weapon. *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009). Constructive possession may be proved by circumstantial evidence. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002).

¶ 13 The State contends that defendant's knowledge of the weapon's presence under his seat was established by Townsend's testimony that a short time earlier defendant had used a .45 caliber weapon to beat Townsend. We note Townsend also testified that the yellow Monte Carlo in which the weapon was found was owned by defendant. When shown a State photographic

exhibit of the vehicle in which the firearm was found, Townsend identified the vehicle as defendant's Monte Carlo.

¶ 14 Defendant relies on *People v. Bailey*, 333 Ill. App. 3d 888 (2002) in support of his argument that the State failed to prove he had constructive possession of the firearm. As in the instant case, Bailey was convicted of aggravated unlawful use of a weapon. Bailey had been riding in the front passenger seat of a car driven by another man when the vehicle was stopped by police officers who noticed an open beer bottle on the floor of the vehicle. An inventory search of the vehicle resulted in the discovery of an uncased and loaded 9-millimeter handgun beneath the passenger seat. Bailey denied having knowledge of the presence of the handgun. *Id.* at 889-90. After a jury convicted Bailey of aggravated unlawful use of a weapon, he appealed to this court. We reversed his conviction after finding that the State had failed to produce any affirmative evidence to establish Bailey had knowledge of the weapon's presence under his seat. *Id.* at 892. We held that a defendant's mere presence in a car, without more, is not evidence that he knows a weapon is in the car. *Id.* at 891.

¶ 15 In the instant case, however, Townsend testified that he observed the yellow Monte Carlo stopped by Blue Island police and that that vehicle belonged to defendant. Townsend identified a photograph of the Monte Carlo as a vehicle owned by defendant. Moreover, defendant had not just entered the Monte Carlo before it was curbed, but had been in the vehicle for a sufficient time to imply knowledge. See *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009). In addition, Townsend's testimony established that he had seen defendant in possession of a .45 handgun within one or two hours before Blue Island police stopped defendant's vehicle and retrieved a .45 caliber handgun beneath the seat where defendant was sitting.

¶ 16 Defendant argues that Townsend's testimony about the ownership of the Monte Carlo and defendant's possession of a .45 handgun cannot be considered in support of the conviction for aggravated unlawful use of a weapon because, in ruling on motions for findings in favor of defendants after the State rested, the trial court acquitted all three defendants of aggravated battery on the basis that Townsend's testimony was "absurd." Defendant asserts that where Townsend's credibility was discredited by the trial court, none of his testimony may be relied on in support of the firearm charge. The record shows, however, that the court simultaneously denied defendant's motion on the firearm counts. It was the responsibility of the trial court to accept or reject as much of Townsend's testimony as it chose and to draw reasonable inferences therefrom. *People v. McCarter*, 2011 IL App (1<sup>st</sup>) 092864, ¶ 22, citing *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004). It was the trial court's prerogative to find Townsend credible with respect to the presence of the .45 caliber firearm in defendant's vehicle and ownership of the vehicle. Moreover, we must presume that a trial judge knows and follows the law unless the record demonstrates otherwise. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). Consequently, it must be presumed that the trial court here knew that while defendant's mere presence in the Monte Carlo, without Townsend's testimony, was insufficient to establish that he knew a weapon was in his car, Townsend's evidence about the car's ownership and defendant's display of a .45 caliber handgun in Townsend's apartment a short time earlier were sufficient to establish defendant's guilt of the firearm charge beyond a reasonable doubt. We find no basis for disturbing the decision of the trial court.

¶ 17 Based on this record, we cannot conclude that the evidence presented was so improbable or unsatisfactory to warrant reversal. Defendant's knowledge of the presence of the firearm

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under his car seat may be inferred from the facts that he owned the vehicle and had been in possession of the firearm a short time earlier that morning. It is reasonable to assume defendant had actual possession of the weapon when he entered the vehicle, he placed it beneath the passenger seat, and, therefore, he had knowledge of the presence of the weapon when the police stopped the vehicle. Accordingly, we affirm the judgment of the trial court.

¶ 18 Affirmed.