

**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).

2014 IL App (4th) 130951-U  
NO. 4-13-0951

**FILED**  
September 23, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
CHARLIE LAWUARY,	)	No. 12CF27
Defendant-Appellant.	)	
	)	Honorable
	)	Rudolph M. Braud,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* In affirming defendant's conviction, the appellate court found (1) he was not denied his right to a fair trial, (2) the charging documents were not duplicitous and void, (3) the trial court did not err in instructing the jury, (4) the State's evidence proved him guilty beyond a reasonable doubt, and (5) the court did not err in sentencing him to 15 years in prison.

¶ 2 In May 2013, a jury found defendant, Charlie Lawuary, guilty of unlawful possession of a weapon by a felon, aggravated unlawful use of a weapon, and being an armed habitual criminal. In August 2013, the trial court sentenced him to 15 years in prison.

¶ 3 On appeal, defendant argues (1) he was deprived of his right to a fair trial, (2) the charging documents were duplicitous and void, (3) the trial court erred in instructing the jury, (4) the evidence failed to prove him guilty beyond a reasonable doubt, and (5) the court erred in sentencing him to 15 years in prison. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2012, the State charged defendant by information with single counts of unlawful possession of a weapon by a felon (count I) (720 ILCS 5/24-1.1(a) (West 2012)), aggravated unlawful use of a weapon (count II) (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)), and being an armed habitual criminal (count III) (720 ILCS 5/24-1.7(a) (West 2012)). In count I, the State alleged defendant knowingly possessed a firearm on or about January 10, 2012, and had previously been convicted of a Class 2 or greater felony. In count II, the State alleged that on or about January 10, 2012, defendant knowingly carried on or about his person or in any vehicle a firearm, at a time when he was not on his own land, or in his own abode or fixed place of business, and he had not been issued a valid firearm owner's identification (FOID) card and had previously been convicted of a felony. In count III, the State alleged defendant knowingly possessed a firearm on or about January 10, 2012, after having been convicted of residential burglary and unlawful delivery of a controlled substance. Defendant pleaded not guilty.

¶ 6 In May 2013, defendant's jury trial commenced. Springfield police officer Ryan Leach testified he was on patrol on January 10, 2012, at approximately 9 p.m. After seeing a vehicle known to be used by defendant, Leach and his partner followed the vehicle until the driver pulled into the parking lot of a convenience store. Leach observed defendant exit the vehicle and enter the store. Leach then contacted his dispatcher, who reported defendant had a suspended license and a warrant for his arrest. Thereafter, both officers exited the squad car and walked toward the store. Once defendant exited, Leach advised him of the outstanding warrant and had him walk to the squad car.

¶ 7 Officer Leach stated he asked defendant for consent to search the vehicle. Defendant consented and used a key fob to unlock it. Once inside, Leach observed "a black case laying on the floor behind the center console." Leach opened it and found a black Intratec 22

pistol, which was loaded, and a separate magazine. Leach stated the driver could have reached back behind the center console and made contact with the gun case as it was within "arm's length." Upon questioning, defendant stated the firearm belonged to the owner of the vehicle. Leach stated the owner showed up at the scene, and the vehicle was released to her.

¶ 8 Officer Leach stated defendant waived his *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) and agreed to talk with the officers. When asked if he had seen the firearm before, defendant stated he had never seen it. When asked if his fingerprints would be on the gun, defendant responded, "no." When asked if he had ever held the gun, defendant stated he had held it a few days before, "but his prints should not be on the firearm because the owner of the vehicle had taken it to a gun range since that day and fired it." On cross-examination, Officer Leach stated defendant made a phone call to the vehicle's registered owner, Taquila Pearson. She eventually arrived on the scene and told the officers the gun belonged to her.

¶ 9 Springfield police officer Ricky Burns testified he recognized defendant when he exited the vehicle at the convenience store. Upon approaching defendant and advising him of the outstanding warrant, defendant asked to call someone to pick up the vehicle. Burns placed defendant in handcuffs once Officer Leach informed him of finding the gun in the vehicle. After defendant waived his *Miranda* rights, he stated he had never seen the gun before and had not touched it. When asked if his fingerprints would be on it, he said "they might be on there because he held it several days ago." However, defendant stated Pearson "went shooting with the gun several days ago so his fingerprints should not be on there."

¶ 10 Gary Havey, a forensic scientist with the Illinois State Police, testified he compared fingerprints found on the gun with defendant's but they did not match. Havey stated

this did not necessarily mean defendant never touched the gun. Beth Patty, a firearms examiner with the Illinois State Police, testified she test-fired the gun and found it to be working properly.

¶ 11 The State submitted evidence that defendant had never been issued a FOID card. The parties stipulated defendant had been previously convicted of a forcible felony and a Class 2 or greater felony violation of the Illinois Controlled Substances Act (Controlled Substances Act) (720 ILCS 570/100 to 603 (West 2012)). After the State rested, defense counsel moved for a directed verdict, which the trial court denied.

¶ 12 Called as a witness by the defense, Taquila Pearson testified she was working at a bar from 9 p.m. to 3 a.m. on January 10, 2012. At that time, she owned a black GMC Denali. Pearson stated she left her residence at approximately 7:30 p.m. to go to the gun range. She had a FOID card and a gun. After arriving at the gun range after it closed, she returned home to take a shower but forgot to take her gun out of the vehicle. Once she exited the shower, she was informed defendant had taken his son home in her vehicle. Sometime later, defendant called to say he had been stopped by the police. Her daughter reminded her she left her gun in the vehicle. Pearson called defendant to have him tell the police the gun was behind the driver's seat. After she got a ride to the convenience store, Pearson retrieved the vehicle.

¶ 13 Defendant testified on his own behalf. He stated he had been convicted on two occasions of felony offenses. On January 10, 2012, he drove Pearson's vehicle to take his son to the boy's mother's house. After dropping him off and then seeing the officers coming behind him, he stopped at the convenience store. After the officers stopped him coming out of the store, he gave them permission to search the vehicle. Thereafter, defendant called Pearson and then asked the officers if he could drop off the vehicle. He stated Pearson called him back to say her gun was still in the vehicle. After being read his *Miranda* rights, defendant stated he was "still

babbling" and "jittery and nervous because I know I'm a felon and I'm not supposed to be around that." He stated an officer was asking him questions and it was confusing. He told the officers he had not seen a gun but then told them he had but never held it.

¶ 14 On cross-examination, defendant testified he was aware Pearson owned a firearm. He stated he had "never seen it exactly" but saw the case on her bed. He stated he told the officers the gun was not his and that he did not even know it was in the vehicle.

¶ 15 On rebuttal, the State introduced certified copies of defendant's convictions for residential burglary and unlawful delivery of a controlled substance. After the close of evidence, defense counsel moved for a directed verdict, which the trial court denied. During closing argument, the prosecutor made the following remarks:

"They asked him, 'Ever seen this gun before?' 'Oh, nope. Huh-uh.' 'Would your fingerprints be on it?' 'Oh, no. Huh-uh.' 'Have you ever held it?' 'Yes. I held it, but my prints won't be on it because the owner, she took it to the gun range and so my prints won't be on it.' Well, you know what? When he told them that, yes, he held it, he just confessed to committing a crime. He just confessed to possessing a firearm."

Defense counsel objected and, in a sidebar conference, asked for a mistrial. Counsel argued defendant was charged for conduct that occurred on January 10, 2012, rather than on a prior date. The State responded by stating the charges referred to "on or about" January 10, 2012, and defendant's statements to the police had been provided to the defense "from the very beginning." The trial court overruled the objection and denied the motion for mistrial, finding the State's instruction No. 9 (date of offense charged) (Illinois Pattern Jury Instructions, Criminal, No. 3.01

(4th ed. 2000) (hereinafter, IPI Criminal 4th No. 3.01)) meant it was not necessary for the State to prove the exact date and defense counsel was aware of defendant's statements through discovery. The prosecutor then continued her argument as follows:

"Thank you, Judge. Again, when you spoke with Officer Leach and was asked the question, 'Did you hold this gun?' He said, 'Yes. I held it a few days ago.' And again, that is possession, actual possession by a person convicted of forcible felony and a felony drug offense.

\* \* \*

You'll also be given instructions about various things. You'll be given instructions about definitions of different things. Definitions of what 'knowledge' means, what it does to be knowing. I'll say good luck with those. Those are written by attorneys who can take 50 words to what most people can say in [10]. I would remind you that you can use your common sense and I invite you to do so.

\* \* \*

This individual, twice-convicted felon, who asked how many times he's been in the backseat of a squad car, he couldn't even count. So, he's got to figure out a way to say why in the world did I say, 'Yes, I held that gun'? Well, because he did hold the gun, and let's face it. He had been driving around with that gun, that fully loaded gun with a round in the chamber. It wasn't

Taquila Pearson who put that gun in the car. She wasn't going to the driving [*sic*] range. He had been driving around with that gun."

Following closing arguments, the jury found defendant guilty on all three counts.

¶ 16 In June 2013, defendant filed a motion for a new trial, arguing, *inter alia*, the State failed to prove him guilty beyond a reasonable doubt, the trial court erred in giving certain instructions to the jury, the prosecutor made improper closing arguments, he was denied due process of law as the prosecution sought and obtained a conviction on a charge not made, and the information was duplicitous.

¶ 17 In August 2013, the trial court denied the motion for a new trial. Thereafter, the court sentenced defendant to 15 years in prison on count III. The court stated counts I and II merged with count III. In September 2013, defendant filed a motion to reconsider or reduce his sentence, which the court denied. This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Right to a Fair Trial

¶ 20 Defendant argues the State deprived him of his right to a fair trial when it requested and instructed the jury to convict him on an uncharged offense after concealing its intent to do so from the defense and when it made improper and unsupported statements during closing arguments. Specifically, defendant argues the State deprived him of his right to notice and a meaningful opportunity to defend when it attempted in closing argument to charge him for an offense several days earlier than the January 10, 2012, incident. Further, defendant argues the State did not try him on the earlier offense, as "the lion's share of the State's case revolved around the January 10, 2012[,] stop."

¶ 21 Section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3

(West 2012)) specifies the information that must be included in the charging document. The written charge must state the name of the offense, cite the relevant statutory provision, set forth the nature and elements of the charged offense, state the date and county of the offense "as definitely as can be done," and name the accused, if known. 725 ILCS 5/111-3(a) (West 2012). A defendant has a fundamental right "to be informed of the nature and cause of criminal accusations made against him." *People v. Rowell*, 229 Ill. 2d 82, 92-93, 890 N.E.2d 487, 493 (2008). "[D]ue process requires that a charging instrument adequately notify a defendant of the offense charged with sufficient specificity to enable a proper defense." *People v. Baldwin*, 199 Ill. 2d 1, 12, 764 N.E.2d 1126, 1132 (2002). When the charging instrument is challenged for the first time after trial, the defendant must show "he was prejudiced in the preparation of his defense." *Rowell*, 229 Ill. 2d at 93, 890 N.E.2d at 494.

¶ 22 In this case, the State charged defendant with the offenses of unlawful possession of a weapon by a felon, aggravated unlawful use of a weapon, and being an armed habitual criminal. By information, each of these offenses was charged in the language of the statute and in separate counts with the relevant statutory provision listed. Each offense was alleged to have been committed by defendant on or about January 10, 2012, in Sangamon County. Contrary to defendant's claim, his due-process rights were not violated due to insufficient notice of the State's intention to prosecute his earlier possession of the gun.

¶ 23 During the State's opening statement, the prosecutor stated that on January 10, 2012, defendant possessed a firearm and was a twice-convicted felon. The prosecutor also stated that after defendant was arrested, he admitted that a few days earlier, he had held the gun. Defense counsel did not object. The information alleged the offenses occurred on or about January 10, 2012. Although defendant argues that most of the evidence presented at trial

centered on the January 10, 2012, incident, this does not require a finding that he was first charged with the offense of holding the gun days earlier during the State's closing argument. In fact, defendant knew about his possession of the gun prior to his January 10, 2012, arrest. The State chose to plead the offenses using the statutory language for each offense and stated the date as on or about January 10, 2012. As noted by the trial court, defense counsel had notice that defendant had given a statement to police that he had held the gun a few days prior to January 10, 2012. Thus, since defendant had notice and a meaningful opportunity to defend against each of the charged offenses, he was not deprived of due process.

¶ 24 Defendant argues the State did not present any evidence of the alleged earlier act of possession at the preliminary hearing. Defendant claims the only evidence presented related to the January 10, 2012, stop, and thus the State deprived him of his right to have a fact finder determine whether probable cause existed to prosecute the earlier possession.

¶ 25 We find the cases cited by defendant do not support his argument. See *People v. Velez*, 2012 IL App (1st) 110801, 983 N.E.2d 501; *People v. Kosyla*, 129 Ill. App. 3d 685, 472 N.E.2d 1207 (1984). The State did not present evidence on a particular offense at the preliminary hearing and then charge a different offense thereafter. Instead, the State charged the current offenses based on the gun being in the vehicle defendant was driving and corroborated that possession with his statement that he possessed the gun a few days earlier.

¶ 26 Defendant also argues the State unfairly prejudiced him by making improper assertions of fact and law during its closing argument. "Every defendant is entitled to [a] fair trial free from prejudicial comments by the prosecution." *People v. Young*, 347 Ill. App. 3d 909, 924, 807 N.E.2d 1125, 1137 (2004). "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it

yields." *People v. Glasper*, 234 Ill. 2d 173, 204, 917 N.E.2d 401, 419 (2009). A reviewing court "will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error." *People v. Runge*, 234 Ill. 2d 68, 142, 917 N.E.2d 940, 982 (2009).

¶ 27 Defendant argues the State attempted to persuade the jury to convict him for the alleged possession several days prior to January 10, 2012, and the prosecutor's suggestion to the jury that it could convict him based on that separate alleged offense was a misstatement of the law. However, the charging instruments alleged each offense occurred on or about January 10, 2012. The evidence at trial showed defendant admitted holding the gun a few days earlier. Moreover, Officers Leach and Burns testified defendant stated he had held the gun earlier. We find the prosecutor's argument was not improper.

¶ 28 Defendant argues the prosecutor's remarks that he confessed to committing a crime by possessing a firearm and could convict him based on that confession alone were misstatements of the law. He claims his statement to the officers was wholly insufficient to convict him—even assuming the statement as a whole constituted an admission—due to the *corpus delicti* rule.

"Under the law of Illinois, proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged. [Citations.] In many cases, \*\*\* a defendant's confession may be integral to proving the *corpus delicti*. It is well established, however, that proof of the *corpus delicti* may not rest exclusively on a

defendant's extrajudicial confession, admission, or other statement. [Citation.] Where a defendant's confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's own statement. [Citation.] If a confession is not corroborated in this way, a conviction based on the confession cannot be sustained.

\*\*\*

Although the corroboration requirement demands that there be some evidence, independent of the confession, tending to show the crime did occur, that evidence need not, by itself, prove the existence of the crime beyond a reasonable doubt. If the defendant's confession is corroborated, the corroborating evidence may be considered together with the confession to determine whether the crime, and the fact the defendant committed it, have been proven beyond a reasonable doubt." *People v. Sargent*, 239 Ill. 2d 166, 183, 940 N.E.2d 1045, 1055 (2010).

¶ 29 During closing argument, the prosecutor, in referencing defendant's statements to the police, stated, in part, as follows:

"When he told them that, yes, he held it, he just confessed to committing a crime. He just confessed to possessing a firearm.

\* \* \*

'Did you hold this gun?' He said, 'Yes. I held it a few days ago.'  
And again, that is possession, actual possession by a person

convicted of forcible felony and a felony drug offense.

\* \* \*

He admitted it to the police officer that he had held it a few days before. That is actual possession.

\* \* \*

He stated to the officers, 'I held this gun a few days ago.' That is sufficient under the law.

\* \* \*

His own statement to the police, that, yes, he held this gun a few days ago convicts him of these offenses."

¶ 30 Contrary to defendant's argument, the prosecutor did not tell the jury it could convict defendant based solely on defendant's admission, without consideration of any other evidence. The prosecutor sought to explain defendant's admission that he held the gun a few days earlier than on January 10, 2012. The prosecutor correctly argued that by holding the gun, defendant was in actual possession of the gun, and because he was a convicted felon, he had committed the charged offenses. We find no error in the prosecutor's statements.

¶ 31 Moreover, the prosecutor's remarks did not misstate the *corpus delicti* rule. In this case, the police recovered a gun from Pearson's vehicle, which defendant was driving. Defendant admitted he knew Pearson owned a gun and would drive to the gun range. Defendant also admitted he had seen the gun case before on Pearson's bed. As defendant's statement was sufficiently supported by independent corroborating evidence, it may be used, along with that independent evidence, to prove the elements of the charged offenses. Thus, the prosecutor's arguments were not improper.

¶ 32 Defendant argues the prosecutor committed error in commenting on the definition of knowledge. During the instruction conference, the prosecutor objected to defense instructions defining "knowingly," "possession," and "actual knowledge." The trial court overruled the State's objections. During closing argument, the prosecutor stated, in part, as follows:

"You'll also be given instructions about various things. You'll be given instructions about definitions of different things. Definitions of what 'knowledge' means, what it does to be knowing. I'll say good luck with those. Those are written by attorneys who can take 50 words to what most people can say in [10]. I would remind you that you can use your common sense and I invite you to do so."

Defendant argues this was a misstatement of law, as the jury was required to follow the instructions of the court.

¶ 33 We note defense counsel did not object to the prosecutor's comment, and thus defendant has forfeited this issue on appeal. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review). However, even if defendant had properly preserved this issue for review, we would find no error. The prosecutor's comment did not invite the jury to disregard the trial court's instructions. The prosecutor was simply explaining that jury instructions can be lengthy, but common sense may be used in following those instructions.

¶ 34 Defendant's final argument centers on the prosecutor's argument that Pearson did not place the gun in her vehicle and did not go to the gun range; rather, it was defendant who had been driving around with the gun. However, as we have noted, a prosecutor "is permitted to comment on the evidence and any fair, reasonable inferences it yields." *Glasper*, 234 Ill. 2d at

204, 917 N.E.2d at 419. The State argued Pearson and defendant were not credible in their testimony, and the prosecutor could make the argument that defendant knowingly possessed the firearm and knew it was in the vehicle. Accordingly, we find these remarks, and the others claimed to be error by defendant, were not improper.

¶ 35 B. Charging Informations

¶ 36 Defendant argues the charging informations brought against him were duplicitous and void. We disagree.

¶ 37 " 'Duplicity' occurs when two or more offenses are charged in the same count, not from charging a single offense in more than one way or where different acts contribute to the same offense." *People v. Johnson*, 231 Ill. App. 3d 412, 424, 595 N.E.2d 1381, 1390 (1992). A duplicitous indictment does not set forth the nature and elements of the charge with certainty, thereby rendering the complaint void. *People v. Edwards*, 337 Ill. App. 3d 912, 921, 788 N.E.2d 35, 43 (2002). On appeal, the sufficiency of the charging instruments is reviewed *de novo*. *Edwards*, 337 Ill. App. 3d at 921, 788 N.E.2d at 43.

¶ 38 The three counts in the informations are not duplicitous. Each charged defendant with distinct offenses. The charges were couched in the terms of the relevant statutes, and the nature of the elements of the charged offenses were set forth with certainty. Defendant's claim of error has no merit.

¶ 39 C. Jury Instructions

¶ 40 Defendant argues the trial court erred in giving the State's instruction No. 9 (IPI Criminal 4th No. 3.01), stating there was no question as to the date when the alleged conduct giving rise to the charged offenses occurred. We disagree.

¶ 41 "The purpose of jury instructions is to provide the jury with the correct legal

principles applicable to the evidence, so that the jury may reach a correct conclusion according to the law and the evidence." *People v. Bannister*, 232 Ill. 2d 52, 81, 902 N.E.2d 571, 589 (2008).

Generally, the decision to give certain jury instructions rests with the trial court, and that decision will not be reversed on appeal absent an abuse of that discretion. *People v. Lovejoy*, 235 Ill. 2d 97, 150, 919 N.E.2d 843, 872 (2009). However, "the issue of whether the jury instructions accurately conveyed to the jury the applicable law is reviewed *de novo*." *People v. Parker*, 223 Ill. 2d 494, 501, 861 N.E.2d 936, 939 (2006).

¶ 42 During the jury-instruction conference, the State presented People's instruction No. 9, which stated as follows:

"The information states that the offense charged was committed on or about January 10, 2012. If you find the offense charged was committed, the State is not required to prove that it was committed on the particular date charged."

See IPI Criminal 4th No. 3.01. Defense counsel admitted the instruction was valid but questioned its relevancy. The trial court noted the informations alleged the offenses were committed on or about January 10, 2012, and thus indicated it would give the instruction over defense counsel's objection.

¶ 43 Generally, the State is "not required to prove that a crime was committed on a particular date, unless the allegation of a particular time is an essential ingredient of the offense or a statute of limitations question is involved." *People v. Suter*, 292 Ill. App. 3d 358, 363, 685 N.E.2d 1023, 1027 (1997). Moreover, "[a]n instruction that the State need not prove the date of the offense is usually appropriate." *Suter*, 292 Ill. App. 3d at 363, 685 N.E.2d at 1027. "Where the proof at trial suggests the offense occurred on a date other than the one charged, IPI Criminal

3d No. 3.01 serves to inform the jury that the difference in dates is not material." *Suter*, 292 Ill. App. 3d at 363, 685 N.E.2d at 1027.

"Giving IPI Criminal 4th No. 3.01 prevents a defendant from arguing that he should be acquitted simply because of a nonfatal variance between the charging information and the proof at trial. [Citation.] However, giving IPI Criminal 4th No. 3.01 may result in reversible error where (1) 'inconsistencies between the date charged in the indictment and the evidence presented at trial are so great that the defendant is misled in presenting his defense'; or (2) the defendant 'presents an alibi for the time alleged in the indictment and is thereby prejudiced because he failed to gather evidence and witnesses for the time actually proved by the State.' [Citation.]" *People v. Thrasher*, 383 Ill. App. 3d 363, 368, 890 N.E.2d 715, 719-20 (2008).

Defendant argues there was no question the charged crime—the alleged possession of the gun at the time of the stop—occurred on January 10, 2012. Thus, defendant contends, the trial court should not have given IPI Criminal 4th No. 3.01.

¶ 44 We find that, even if this was not the type of situation where IPI Criminal 4th No. 3.01 should be given, defendant has not shown he was prejudiced or misled in presenting his defense. The informations in this case charged the offenses in the statutory terms and alleged each offense occurred on or about January 10, 2012. The trial court noted defense counsel was made aware during discovery that defendant had made the statement when questioned that, prior to January 10, 2012, he had previously held the gun. The evidence indicated defendant was in a

vehicle with a gun on January 10, 2012, and he told the officers when questioned that he held the gun a few days before. The State's theory was that defendant had possessed the gun when stopped on January 10, 2012, and a few days prior thereto. Defendant was able to present a defense by testifying the gun was not his, he did not know it was in the vehicle, and, although confused by the questions, he told the officers he had not held the gun previously. Also, Pearson testified on his behalf, stating it was her gun and she forgot to take it out of her vehicle. As defendant cannot show he was prejudiced or misled in presenting his defense, we find no reversible error.

¶ 45 D. Sufficiency of the Evidence

¶ 46 Defendant argues the evidence failed to prove him guilty beyond a reasonable doubt. We disagree.

¶ 47 " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). This standard of review applies regardless of whether the evidence is direct or circumstantial. *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Rowell*, 229 Ill. 2d at 98,

890 N.E.2d at 496-97.

¶ 48 In the case *sub judice*, the jury found defendant guilty of unlawful possession of a weapon by a felon, aggravated unlawful use of a weapon, and being an armed habitual criminal. The trial court sentenced defendant solely on the armed-habitual-criminal conviction. Thus, that conviction is the only one before us now on appeal. See *People v. Johnson*, 392 Ill. App. 3d 127, 132, 924 N.E.2d 1019, 1023 (2009) (stating that if no sentence is imposed on a conviction, an appeal cannot be entertained thereon).

¶ 49 Section 24-1.7(a) of the Criminal Code of 2012 (720 ILCS 5/24-1.7(a) (West 2012)) provides, in part, that a person commits the offense of being an armed habitual criminal when he possesses any firearm after previously having been convicted of two or more forcible felony offenses, certain weapons offenses, or any violation of the Controlled Substances Act or the Cannabis Control Act (720 ILCS 550/1 to 19 (West 2012)) that are punishable as a Class 3 felony or higher.

¶ 50 In this case, defendant stipulated to his prior convictions of a forcible felony and a Class 2 or greater felony of the Controlled Substances Act. As to the element of possession of a firearm, the State may prove a defendant had either actual or constructive possession of the firearm. *People v. Nesbit*, 398 Ill. App. 3d 200, 209, 924 N.E.2d 517, 525 (2010). To establish constructive possession, the State must prove the "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." *People v. Ingram*, 389 Ill. App. 3d 897, 899-900, 907 N.E.2d 110, 114 (2009).

"However, the State cannot rely on an inference of knowledge from defendant's presence in a motor vehicle where a weapon is found. The State must present other evidence

establishing defendant's knowledge of the weapon. [Citations.]

Knowledge may 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.' [Citations.]"

*Nesbit*, 398 Ill. App. 3d at 209-10, 924 N.E.2d at 525-26.

¶ 51 Defendant argues the State's evidence failed to establish beyond a reasonable doubt he constructively possessed the weapon on January 10, 2012. However, the evidence indicated officers observed defendant driving Pearson's vehicle on January 10, 2012. After obtaining defendant's consent, Officer Leach entered the vehicle on the passenger side and noticed a black case, which resembled a gun case, laying on the floor behind the center console. When he opened the case, there was a black gun inside. Leach stated the case was within arm's reach and visible from where defendant was seated in the driver's seat. Defendant also made repeated requests to drive the vehicle to the owner, leading to the reasonable inference that he knew the gun was in the vehicle and did not want it discovered by the officers.

¶ 52 Defendant points out the gun and vehicle were not his, his fingerprints were not on the gun, he consented to the search, and he did not attempt to flee from the police. Pearson also testified to her activities on that evening and that she forgot to take her gun out of the vehicle. However, the jury had the responsibility to determine the credibility of the witnesses and draw reasonable inferences from the facts. It was for the jury to resolve the questions of fact regarding defendant's knowledge and possession of the weapon. Viewing the evidence in the

light most favorable to the prosecution, we conclude a rational trier of fact could find defendant had actual knowledge of the presence of the gun and constructively possessed the gun based on circumstances described by the officers.

¶ 53 Defendant also argues the State failed to sustain its burden of proof as to the offense occurring prior to January 10, 2012. Defendant again raises the issue of the proof of the *corpus delicti* and contends his statement alone was insufficient to carry the conviction without any corroborating evidence.

¶ 54 The evidence indicated Officer Leach questioned defendant after giving him *Miranda* warnings. Leach asked defendant if he had ever seen the firearm before, and defendant stated he had never seen it. When asked if his fingerprints would be on the gun, defendant stated no. But when Leach asked if he held the gun, defendant stated he held it "a few days ago" but his prints would not be on it because Pearson had taken it to the gun range since that day and fired it.

¶ 55 Along with defendant's statement, the officers recovered a gun from Pearson's vehicle, which defendant was driving. Defendant admitted he knew Pearson owned a gun and would drive to the gun range. He also admitted he had seen the gun case before on Pearson's bed. As defendant's statement was sufficiently supported by independent corroborating evidence, it was properly used, along with the independent evidence, to prove the elements of the charged offense. Thus, we find the State proved him guilty beyond a reasonable doubt of the offense of being an armed habitual criminal.

¶ 56 E. Prison Sentence

¶ 57 Defendant argues the trial court erred in imposing a 15-year prison sentence. We disagree.

¶ 58 The Illinois Constitution mandates "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *Hestand*, 362 Ill. App. 3d at 281, 838 N.E.2d at 326 (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

¶ 59 A trial court has broad discretion in imposing a sentence. *People v. Chester*, 409 Ill. App. 3d 442, 450, 949 N.E.2d 1111, 1118 (2011). "A reviewing court gives great deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the cold record." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *Thrasher*, 383 Ill. App. 3d at 371, 890 N.E.2d at 722.

¶ 60 In his first argument, defendant argues the trial court's sentence constituted an impermissible double-counting of his previous convictions. At the sentencing hearing, the court stated, in part, as follows:

"So, again, [defendant] has been to prison, he's had a, in my view, and I appreciate what you said Mr. Locher, it hasn't been a violent past, but again, in my book, residential burglary sort of ramps it up on the violence stage for me. Is this a case with this sentence range where [defendant] needs to sit in prison for 20 to 25 years?"

No way, and I don't think, when I exercise my discretion in sentencing [defendant], that I think he needs to sit in prison for 85 percent of 20 years, but I do believe a fair and just, appropriate sentence based on, just his criminal history and his criminal record alone is 15 years, and that's going to be the sentence of this Court. 15 years."

Defendant argues the court's statement indicated it had decided on a harsher penalty based on the two felonies that constituted a basis for his armed-habitual-criminal conviction.

¶ 61 Initially, we note the State argues defendant forfeited this issue by not objecting to the trial court's statement at the sentencing hearing and by not raising it in a postsentencing motion. While defense counsel did not object, counsel did argue at the hearing on the motion to reconsider sentence that the trial court erred by using defendant's previous convictions as factors in aggravation. Thus, we will address the issue.

"It is well established that a factor inherent in the offense should not be considered as a factor in aggravation at sentencing. There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22, 979 N.E.2d 1014.

The defendant has the burden "to affirmatively establish that the sentence was based on improper considerations." *People v. Dowding*, 388 Ill. App. 3d 936, 943, 904 N.E.2d 1022, 1028 (2009).

¶ 62 Here, defendant has not affirmatively established the trial court improperly

double-counted defendant's felonies in imposing the sentence. In sentencing defendant, the court stated it considered the presentence investigation report, the evidence presented, the statutory factors in aggravation and mitigation, and the financial impact of incarceration. The court noted defendant's "past in this town has not been the best" and pointed to his drug use and conviction for driving under the influence.

¶ 63 While the trial court remarked about defendant's criminal history, this did not amount to double-counting. Rather, the court was responding to defense counsel's claim that the minimum sentence of six years should be imposed because of defendant's lack of a violent history. The court rejected the State's recommendation of 20 to 25 years in prison, but found a 15-year sentence was appropriate. The court's isolated remark did not amount to reversible error.

¶ 64 In his second and alternative argument, defendant contends the trial court's 15-year sentence was excessive. The offense of being an armed habitual criminal is a Class X felony. 720 ILCS 5/24-1.7(b) (West 2012). A Class X offender is subject to a sentencing range between 6 and 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2012).

¶ 65 Here, the trial court's 15-year sentence fell within the applicable sentencing range. The court indicated it considered the aggravating and mitigating factors and relevant evidence in fashioning the sentence. We find no abuse of discretion.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 68 Affirmed.