

2015 IL App (2d) 130857-U  
No. 2-13-0857  
Order filed March 3, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CF-356
	)	
BRYANT JAMES JOHNSON,	)	Honorable
	)	Joseph G. McGraw,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Hudson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of possessing a handgun and thus being an armed habitual criminal: although the evidence conflicted on certain points, the trial court was entitled to credit the evidence that, when the vehicle in which he was riding was stopped, defendant knowingly placed a bag containing the gun into the area where it was found.

¶ 2 Defendant, Bryant James Johnson, appeals his conviction of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010)), contending that the State failed to prove him guilty beyond a reasonable doubt of possessing the handgun that supported that conviction. Because

the evidence, when viewed in the light most favorable to the State, was sufficient to prove defendant guilty beyond a reasonable doubt of possessing the handgun, we affirm.

¶ 3

#### I. BACKGROUND

¶ 4 A grand jury indicted defendant on one count of being an armed habitual criminal (count I) (720 ILCS 5/24-1.7(a) (West 2010)); two counts of unlawful possession of a weapon by a felon (counts II and III) (720 ILCS 5/24-1.1(a) (West 2010)); one count of aggravated unlawful use of a weapon by a felon (count IV) (720 ILCS 5/24-1.6(a)(1),(a)(3)(A) (West 2010)); one count of aggravated unlawful use of a weapon (count V) (720 ILCS 5/24-1.6(a)(1),(a)(3)(C) (West 2010)); one count of possession of a stolen firearm (count VI) (720 ILCS 5/16-16(a) (West 2010)); and one count of a violation of the Firearm Owners Identification Card Act (count VII) (430 ILCS 65/2(a)(1) (West 2010)).

¶ 5 The following evidence is from defendant's bench trial. On February 5, 2012, at approximately 4:35 a.m., Officer Daniel Basile of the Rockford police department was on patrol when he received a radio dispatch regarding an incident at the Steak 'n Shake restaurant on East State Street in Rockford. The dispatch identified the vehicle involved as a blue SUV, with a partial license plate number of "F92," that was traveling west on State Street.

¶ 6 Basile drove north on Alpine Road (situated west of Steak 'n Shake) toward State Street. As he approached the intersection of Alpine Road and State Street, he saw a blue SUV traveling west on State Street toward the Alpine Road intersection. He turned east onto State Street and made a U-turn so that he was behind the SUV as it sat in the left turn lane at the intersection of State Street and Alpine Road. From that position, Basile saw that the license plate on the SUV was a Wisconsin plate beginning with F92. When the SUV turned south onto Alpine Road

without using a turn signal, Basile radioed that he was stopping the SUV just south of State Street.

¶ 7 As other officers from the Rockford police department arrived, Basile exited his squad car and approached the driver's window of the SUV. According to Basile, there were several other officers around the vehicle, including Officer Jason Dobran near the rear passenger side and Officer Apostolos Sarantopoulos near the rear driver's side. There were two occupants in the front seat, three in the middle seat, and two in the rear seat. Basile asked the driver to exit the vehicle and come with him to his squad car, which was approximately 10 to 15 feet behind the SUV.

¶ 8 As Basile was walking back to his squad car with the driver, he heard Dobran yell "10-32," which meant that Dobran had seen a person with a gun. Basile placed the driver in his squad car and returned to the SUV.

¶ 9 Upon returning to the SUV, Basile saw that the rear cargo door was open and that Dobran was pointing his service weapon at the two passengers in the rear seat. Basile saw a white paper bag on the passenger's side of the cargo area. He also observed defendant, who was seated on the driver's side of the rear seat, reach his arm back into the cargo area at least twice, although officers were telling him to keep his hands where they could see them. The white paper bag was within defendant's reach. Dobran then removed the white bag from the cargo area.

¶ 10 Basile and Sarantopoulos, with guns drawn, ordered defendant to exit the vehicle by having him climb over the back of the rear seat and out the cargo door. After defendant was handcuffed, Dobran showed Basile a handgun that was in the white bag and then placed the bag and gun in the trunk of Basile's car. The handgun was a semi-automatic with a live round in the

chamber and 12 live rounds in the magazine. The white bag was from Steak 'n Shake and also contained some food.

¶ 11 Officer Sundly, the first backup officer to arrive, testified that she spoke to Basile, who explained why he had stopped the SUV. Sundly then approached the SUV near the rear passenger side. Although the interior of the SUV was partially illuminated by the spotlight of Basile's squad car, she used her flashlight to observe the occupants of the vehicle, including the two passengers in the rear seat. The person sitting on the passenger's side appeared to be using his cell phone. Defendant, who was sitting on the driver's side, kept "looking around, \*\*\* looking back at [the officers]; [with] a lot of furtive movement." Sundly never saw defendant hold a bag, place anything into the cargo area, or reach back into that area.

¶ 12 As Sundly tapped on a passenger-side window and began to speak to a female occupant in the middle seat, she heard Dobran shout "10-32" as he opened the cargo door. Sundly drew her service weapon and ordered the vehicle's occupants to put up their hands. According to Sundly, Dobran was at the rear passenger's side of the vehicle and Sarantopoulos was at the rear driver's side.

¶ 13 According to Dobran, upon arriving at the scene, he went to the rear driver's side of the SUV. Using his flashlight, he observed two people in the front seat, three in the middle seat, and two in the rear seat. He focused on the two passengers in the rear seat.

¶ 14 He saw defendant, who was looking around, take a white bag, "stretch [his right arm] out slowly behind him," drop the bag in the cargo area, and place his arm behind the man sitting to his right. Dobran moved toward the rear of the SUV as he kept watching defendant. As he did so, defendant kept looking to see where he was. Dobran never saw anyone else holding the white bag or reaching for it. When Dobran reached the cargo door, he saw that the white bag

was lying within reach of defendant, whose arm was still around the other rear passenger. Dobran opened the cargo door.

¶ 15 According to Dobran, he could not see the contents of the white bag as he looked at it through the window, although he thought that something was in the bag, as it tipped over when defendant placed it in the cargo area. When he opened the door, he saw the butt end of a handgun protruding from the white bag. Upon seeing the handgun in the bag, he yelled “10-32,” drew his firearm, ordered everyone to put up their hands, and secured the gun. Defendant did not put up his hands.

¶ 16 Dobran could not recall exactly where Sarantopoulos was before he yelled “10-32.” Once he yelled, Sarantopoulos was “over by [him].” Dobran recalled that when he yelled Basile was talking to the driver, but he could not remember exactly where.

¶ 17 Sarantopoulos, called by defendant, testified that when he arrived he approached the SUV on the passenger’s side. He admitted, however, that he testified at the hearing on defendant’s motion to suppress evidence that he could not recall which side of the SUV he was on. He then went to the rear of the vehicle, although he could not recall which side of the rear. He denied looking into the rear area of the SUV while he was on the passenger’s side. When asked about having testified at the suppression hearing that when he first approached the vehicle he went toward the rear bumper, he admitted that he had testified to that effect, but explained that, since the suppression hearing, he had given it more thought and “recalled it differently.” He added that, before Dobran yelled “10-32,” he was focused on the area between the first two rows of seats and not on the rear seat. According to Sarantopoulos, he was still on the passenger side of the vehicle when the cargo door was opened. He explained that, even though he testified at the suppression hearing that he was present “immediately at the back door when [it] was opened,”

actually he was there “immediately after” the cargo door was opened. He never saw either of the two rear passengers reach into the cargo area or hold a bag.

¶ 18 After Sarantopoulos went to the rear of the SUV, he saw a white Steak ‘n Shake bag and a purse in the cargo area. The white bag was within defendant’s reach. He also saw defendant moving his hand around and reaching toward the cargo area. Dobran then removed the white bag from the cargo area.

¶ 19 Sarantopoulos denied being able to see defendant before the cargo door was opened. He admitted, however, that he testified at the suppression hearing that he could see the occupants in the rear seat when he shined his flashlight into the vehicle and that he did not see either of the two rear passengers “do anything” as he was shining his flashlight into the vehicle.

¶ 20 According to defendant, he was seated in the driver’s side rear seat when the SUV was stopped. He denied having had any contact with, or having possessed, the white bag. He also denied having possessed a gun while in the SUV or having reached into the cargo area.

¶ 21 Both sides agreed in closing arguments that the only disputed issue was whether defendant possessed the handgun. In reviewing the evidence on that issue, the trial court acknowledged that Sarantopoulos was “impeached with his prior testimony from the motion to suppress.” The court characterized Sarantopoulos’s acknowledgement, that his recollection was different than it was at the suppression hearing, as candid and truthful. The court stated that it had observed Sarantopoulos’s “manner and demeanor while testifying” at trial and that he was “credible.” To the extent that Sarantopoulos’s trial testimony differed from his testimony at the suppression hearing, the court, having presided at the suppression hearing, “could not find that his testimony [at trial] was incredible or unbelievable as opposed to [his] previous testimony.” The court found that, to the extent that there were inconsistencies about which sides of the

vehicle Dobran and Sarantopoulos were on, those were not dispositive. Moreover, the court could not find any reason why any of the officers would be motivated to testify falsely that defendant possessed the white bag.

¶ 22 The court found that defendant “opportunistically concealed” the handgun in the Steak ‘n Shake bag. It also found, based on the sizes of the bag and the handgun, that the handgun necessarily would have protruded from the bag. The court found that defendant not only constructively possessed the handgun but actually possessed it. Therefore, the court found defendant guilty of counts I through IV. The court, under the one-act, one-crime rule, found that counts II, III, and IV merged into count I, and, pursuant to the State’s motion, it dismissed counts V, VI, and VII. Following the denial of defendant’s posttrial motion, the court sentenced him to 12 years’ imprisonment. Defendant then filed this timely appeal.

¶ 23

## II. ANALYSIS

¶ 24 On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt of actually possessing the handgun. In that regard, he argues that the testimony of Dobran, Basile, and Sarantopoulos was so incredible in certain respects that it created a reasonable doubt as to his guilt. He further maintains that he was not proved guilty beyond a reasonable doubt of constructively possessing the handgun, because the evidence was insufficient to prove both that he knew the handgun was present and that he had immediate and exclusive control of the area in which it was found.

¶ 25 When reviewing the sufficiency of the evidence, the standard is whether, after viewing 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. Jackson*, 232 Ill. 2d 246, 280 (2009). In a bench trial, it is for the trial court, as the trier of fact, to determine the

credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Therefore, we will not substitute our judgment for that of the trier of fact on issues regarding the weight of the evidence or the credibility of the witnesses. *Jackson*, 232 Ill. 2d at 280-81. Nor will we reverse a conviction simply because the evidence is contradictory or because the defendant claims that a witness was not credible. *Siguenza-Brito*, 235 Ill. 2d at 228. Indeed, a reviewing court will not disturb a guilty finding unless the evidence is so unbelievable, improbable, or unsatisfactory that it raises a reasonable doubt as to the defendant's guilt. *Jackson*, 232 Ill. 2d at 281.

¶ 26 The Criminal Code of 1961 provides that a person is an armed habitual criminal when he or she “receives, sells, *possesses*, or transfers any firearm” after previously having been convicted of two or more applicable forcible felonies. (Emphasis added.) 720 ILCS 5/24-1.7 (West 2010).

¶ 27 Criminal possession can be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Actual possession is proved by evidence that shows that the defendant exercised some form of dominion over the item, such as trying to conceal it or throw it away. *Love*, 404 Ill. App. 3d at 788. However, the defendant need not have touched the item. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). Constructive possession, on the other hand, may be proved by showing that the defendant knew of the presence of the contraband and had immediate and exclusive control over the area in which the contraband was located. *Love*, 404 Ill. App. 3d at 788. For purposes of constructive possession, a defendant's presence in a vehicle where contraband is found is not sufficient alone to establish knowledge of the contraband. *Love*, 404 Ill. App. 3d at 788. Knowledge may be inferred, however, from several factors, including: (1) the visibility of

the contraband from the defendant's position in the vehicle; (2) the amount of time that the defendant had to observe the contraband; (3) any gestures or movements by the defendant that suggest that he or she was attempting to conceal or retrieve the contraband; and (4) the size of the contraband. *Love*, 404 Ill. App. 3d at 788. Because possession, including the element of knowledge, is difficult to prove with direct evidence, it is frequently proved circumstantially. *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009).

¶ 28 In this case, there was ample evidence, viewed in the light most favorable to the State, to support the finding that defendant actually possessed the handgun. The evidence, as credited by the trial court, established that defendant had the white bag containing the handgun in his hand and placed it into the cargo area behind his fellow passenger. Given the size of the handgun, it was reasonable to find that he knew that it was in the bag, even if someone else put it there. Further, several officers observed defendant reaching toward the cargo area. The evidence clearly sufficed to prove defendant guilty beyond a reasonable doubt of actually possessing the handgun.

¶ 29 Defendant, however, focuses on asserted inconsistencies regarding the testimony of several of the officers. Initially, he emphasizes that Sarantopoulos changed his testimony from the suppression hearing to the trial regarding where he was positioned in relation to, and what he was able to observe within, the SUV. Specifically, he points to his trial testimony in which he admitted that he had testified at the suppression hearing that upon arriving at the scene he went immediately to the rear of the SUV. According to defendant, when Sarantopoulos testified at trial that, because of his position "closer to the front" of the SUV, he was unable to see defendant in the SUV, he effectively minimized the impact of his testimony that he did not see defendant hold the white bag or place it into the cargo area.

¶ 30 That contention lacks merit, however, because even if Sarantopoulos was in a position where he was able to see defendant, his failure to see defendant handle the white bag did not raise a reasonable doubt. Sarantopoulos testified, as did other officers, that the SUV contained numerous occupants and that the officers were all trying to observe what was going on inside the SUV. Based on the testimony of Dobran, defendant's act of placing the white bag into the cargo area was brief. Considering the number of people in, and the number of officers surrounding, the SUV, and the limited view available to the officers, Sarantopoulos, irrespective of his position outside the SUV, could have easily missed seeing defendant momentarily handle the white bag. Therefore, the change in his testimony did not have the effect that defendant asserts.

¶ 31 To the extent that Sarantopoulos's changed testimony impacted his credibility, the trial court found that his explanation for doing so was credible and that his revised version was truthful. We are not free to substitute our assessment of the witness's credibility for that of the trial court. See *Jackson*, 232 Ill. 2d 280-81.

¶ 32 Defendant further seeks to create reasonable doubt by arguing that Basile's testimony, that he saw the white bag in the cargo area, was incredible. According to defendant, Basile's testimony, that he observed the white bag in the cargo area only after Dobran yelled "10-32," was incredible because Dobran removed the bag before he yelled "10-32."

¶ 33 At trial, Dobran testified that he actually yelled "10-32" before removing the white bag. Nonetheless, defendant maintains that Dobran's trial testimony as to when he yelled "10-32" is questionable for two reasons. First, he asserts that Dobran's testimony that Sarantopoulos was near him when he yelled "10-32" indicates that Dobran secured the white bag before he yelled "10-32." Second, defendant points to Dobran's testimony at the suppression hearing that the first thing he did after opening the cargo door was to remove the white bag. We need not resolve the

apparently conflicting testimony as to when Dobran yelled “10-32,” however, as the trial court stated that Dobran “grabbed the gun and bag with his left hand while drawing his handgun with his right hand and yelled 10-32, which [meant] gun or man with a gun.” The court’s statement indicates that it found that Dobran removed the white bag either before, or as, he yelled “10-32.” That finding supports defendant’s contention that Basile incorrectly testified at trial that he saw the white bag in the cargo area after Dobran yelled “10-32.”

¶ 34 Nonetheless, even if Basile was mistaken as to whether he saw the white bag in the cargo area, there was independent evidence that it was there. Indeed, there was no evidence to suggest that Dobran obtained the white bag from anywhere other than the cargo area. Therefore, Basile’s recollection of events as to whether he observed the white bag in the cargo area was not critical to the trial court’s finding that the white bag was in the cargo area. Moreover, to the extent that such a discrepancy reflected on Basile’s credibility, the court found that the officers, including Basile, were overall credible.

¶ 35 Defendant next contends that Dobran’s credibility was cast in doubt because Dobran testified at the suppression hearing that he saw what looked like the black handle of a handgun protruding from the white bag before he opened the cargo door, whereas at trial he testified that he did not see anything in the white bag until after he opened the door. In that regard, defendant urges that such a discrepancy was not harmless, because Dobran’s testimony was the “only evidence linking [defendant] to the handgun.”

¶ 36 Any discrepancy as to whether Dobran saw the handgun before or after he opened the door was wholly tangential to his testimony linking defendant to the handgun. Indeed, Dobran specifically testified that he saw defendant surreptitiously drop the bag in the cargo area. Therefore, any question as to Dobran’s credibility regarding when he first saw the handgun was

not critical to the outcome of the trial. Moreover, it was within the unique purview of the trial court to have assessed Dobran's credibility, and the court found that he was overall a credible witness.

¶ 37 In sum, although there were some inconsistencies in the testimony of the officers, both between themselves and between their testimony at the suppression hearing and the trial, those inconsistencies did not make their testimony so unbelievable, improbable, or unsatisfactory that it created a reasonable doubt as to whether defendant actually possessed the handgun. See *Jackson*, 232 Ill. 2d at 281. Indeed, considering the number of occupants in the SUV, the number of officers at the scene, and the activity occurring, it would be surprising if the officers' trial testimony was entirely consistent between themselves or with their prior testimony. When we view the evidence in the light most favorable to the State, we conclude that defendant was properly found guilty beyond a reasonable doubt of having actually possessed the handgun.

¶ 38 Not only was the State's evidence sufficient to prove that defendant actually possessed the handgun, there was ample evidence to support a finding that defendant constructively possessed the handgun. As discussed, to establish constructive possession, the State had to prove that defendant knew of the presence of the handgun and had immediate and exclusive control over the cargo area. See *Love*, 404 Ill. App. 3d at 788.

¶ 39 Although defendant's mere presence in the SUV was insufficient to establish his knowledge of the handgun's presence (see *Love*, 404 Ill. App. 3d at 788), several additional facts support the finding that he knew the handgun was in the white bag. The evidence established that he placed the white bag into the cargo area. In doing so, it would have been apparent to him that the white bag contained a handgun, as Dobran testified that the butt end protruded from the bag. That was corroborated, as the trial court explained, by the fact that the handgun was too

large to completely fit within the bag. Even if defendant did not place the white bag into the cargo area, he was seated in a position from which he could see the white bag and thus the handgun protruding therefrom. He also had ample time to have seen the handgun between the time of the initial stop and when Dobran seized the white bag. Finally, defendant was seen reaching into the cargo area in an apparent attempt to either conceal or retrieve the white bag. Therefore, when we consider the factors from which knowledge may be inferred (see *Love*, 404 Ill. App. 3d at 788), we conclude that the evidence, when viewed in the light most favorable to the State, supported a finding that defendant knew that the handgun was in the white bag.

¶ 40 Further, the evidence showed that he had exclusive and immediate control of the area in which it was located. He was seated immediately adjacent to the cargo area. The white bag was within his reach. He also moved in a way that appeared as though he was trying to conceal or retrieve the bag by reaching into the cargo area. All of that evidence supported a finding that defendant had immediate and exclusive control over the area in which the handgun was found. Therefore, the evidence was sufficient to support the finding that defendant constructively possessed the handgun.

¶ 41

### III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 43 Affirmed.