

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Boone County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-2
)	
ANTONIO MORENO,)	Honorable
)	C. Robert Tobin III,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of possession of a weapon: because the dry weapon was found in snow nearby when defendant was apprehended after a chase, the jury could infer, despite the lack of any physical evidence, that defendant had possessed it.
- ¶ 2 Following a jury trial, defendant, Antonio Moreno, was found guilty of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), possession of cannabis (720 ILCS 550/4(c) (West 2012)), and resisting a police officer (720 ILCS 5/31-1(a) (West 2012)). He appeals, contending that he was not proved guilty of the weapons offense beyond a

reasonable doubt where no weapon was found in his possession and no physical evidence connected him to a gun found nearby at the time of his arrest. We affirm.

¶ 3 At 12:40 a.m. on January 6, 2013, Belvidere police received a report of shots fired at Maple and Eighth streets. Boone County Sheriff's deputy Brett Banaszak patrolled the surrounding neighborhoods for 10 to 15 minutes until he spotted defendant in the area of Pearl and 10th streets. Defendant was walking away from the location where shots were allegedly fired.

¶ 4 Banaszak pulled his car alongside defendant and asked if he could talk with him. Defendant said, "No problem." Defendant asked if he was in trouble. He had his hands in his pockets and Banaszak asked him to remove them. Defendant complied. In response to Banaszak's questions, defendant twice said that he did not know his name. He started backing away from Banaszak, saying that he just wanted to go home. Defendant again put his hands in his pockets. Banaszak again told him to take his hands out of his pockets and defendant complied.

¶ 5 Banaszak attempted to grab defendant's left wrist. Defendant pulled away and ran as Belvidere police sergeant Anthony Martin arrived at the scene. Banaszak pursued defendant and tackled him about 20 to 25 yards away. Banaszak did not lose sight of defendant as he ran. Banaszak searched defendant. He found no weapons, but found a bag of cannabis in his right front pocket. Martin arrived and found a gun on the ground two to three feet away from defendant. The temperature was 35 to 40 degrees and defendant was not wearing a coat or gloves.

¶ 6 Martin largely corroborated Banaszak's testimony. Belvidere police officer Michael Ball testified that he collected the gun. Although there was snow on the ground, the gun was not wet.

He transported defendant from the scene and spoke with him at the police station. Defendant told Ball that he had been walking from his home and that he ran from the deputy because he was drunk. He said that the gun was not his and that if it was his gun and it was loaded he would have shot at whoever stopped him.

¶ 7 Edward Rottman, a fingerprint examiner, processed the gun but found no prints suitable for comparison. He explained that a person touching an item will not necessarily leave fingerprints on it. If the surface of the item has a foreign substance on it, or if the person has something on his hand, the person might not leave a usable fingerprint on the object. Robert Berk, an expert in gunshot-residue testing, tested defendant's jeans and sweatshirt but found no evidence of gunshot residue.

¶ 8 Defendant testified that he ran from the officers because he had cannabis on him. The gun found at the scene was not his and he did not know where it came from.

¶ 9 The jury found defendant guilty of all charges. The trial court sentenced him to six years' imprisonment for possession of a weapon by a felon and concurrent 18-month terms for the misdemeanor convictions. Defendant timely appeals.

¶ 10 Defendant contends that he was not proved guilty beyond a reasonable doubt of unlawful possession of a weapon. He points out that no weapon was found on him when he was arrested. He further contends that, although a gun was found near him, his fingerprints were not found on it—although he was not wearing gloves—and his clothes tested negative for gunshot residue.

¶ 11 When a defendant challenges on appeal the sufficiency of the evidence supporting his or her conviction, we review the evidence in the light most favorable to the State to decide whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). We will not substitute our

judgment for that of the trier of fact on issues involving the weight of the evidence or the witnesses' credibility. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 12 To convict defendant, the State had to prove that he knowingly possessed a weapon on or about his person. 720 ILCS 5/24-1.1(a) (West 2012). Here, the circumstantial evidence was sufficient to prove that defendant possessed the gun prior to his arrest. Police responded to a call of shots fired. About 10 to 15 minutes later, they located defendant in the area, walking away from the scene of the shots-fired report. He appeared nervous and kept reaching into his pocket despite being instructed not to do so. He claimed not to know his name and, when Banaszak attempted to grab his arm, pulled away and ran. When defendant was taken into custody, the gun was found on the ground nearby. The gun was not wet, although there was snow on the ground, indicating that it had not been there very long. From these facts, the jury could reasonably conclude that defendant possessed the gun and discarded it upon being apprehended.

¶ 13 Moreover, it does not matter that defendant was not seen with the gun in his actual possession. In *People v. Ingram*, 389 Ill. App. 3d 897 (2009), a gun, although under the seat of a car, was clearly visible from the defendant's position in the backseat and, indeed, was in a position where he could easily have reached over and placed it there. *Id.* at 900; see also *People v. Harre*, 155 Ill. 2d 392, 400 (1993) (circumstantial evidence supported inference that defendant, moments before his apprehension, had been riding in a car on the way to a drug delivery with a weapon inches from his grasp, supporting his conviction of armed violence), *United States v. Collins*, 195 F. App'x 419, 423 (6th Cir. 2006) (defendant proved guilty of possession of a weapon where defendant conversed with another male, appeared to engage in a narcotics transaction, walked toward a van, and squatted down by the driver's side, where the

officer recovered a pistol; no one else was in the area and defendant was wearing easily identifiable clothing).

¶ 14 Defendant argues that no physical evidence connected him to the gun. Specifically, he points out that no usable fingerprints were found on the gun and that no gunshot residue was found on his clothing. The lack of physical evidence is not fatal. See *id.* Rottman, the fingerprint examiner, recounted several factors that could account for the lack of fingerprints on the gun. Defendant could have wiped the gun with his sweatshirt or on the ground. Moreover, the State did not have to prove that defendant was the one who fired the gun that was the subject of the original report. The lack of gunshot residue on defendant's clothes does not mean that he did not possess the weapon at some point.

¶ 15 Defendant directs us to *People v. Wright*, 2013 IL App (1st) 111803, where the State failed to prove that the defendant possessed the weapon that was found next to him when he was apprehended. In *Wright*, the court noted that none of the State's witnesses saw a gun in the defendant's hands or saw the defendant make any movements indicating he was discarding a weapon, and no physical evidence linked the gun to the defendant. The circumstantial evidence in the present case is distinguishable from that in *Wright*. In *Wright*, the gun was recovered in the basement of a residence where other people were present and the defendant did not live. Here, the gun was recovered next to where defendant was tackled on a lawn and there is no evidence of anyone else being present. Based on this evidence, a rational jury could conclude that the gun fell from defendant's person or he dropped it onto the lawn.

¶ 16 The judgment of the circuit court of Boone County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 17 Affirmed.