

NOTICE

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2015 IL App (4th) 131110-U

NO. 4-13-1110

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 9, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
TASHEBA M. ADKINSON,)	No. 13CF1379
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's conviction for unlawful possession of a weapon by a felon. The court vacated the fines improperly imposed by the circuit clerk and remanded to the trial court for the imposition of statutory fines to be offset by *per diem* credit, where appropriate.

¶ 2 In November 2013, a jury found defendant, Tasheba M. Adkinson, guilty of unlawful possession of a weapon by a felon. In December 2013, the trial court sentenced her to eight years in prison.

¶ 3 On appeal, defendant argues (1) the State failed to prove her guilty beyond a reasonable doubt and (2) the circuit clerk improperly imposed certain fines against her. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In August 2013, the State charged defendant with one count of unlawful

possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), alleging she, having been convicted of a felony in Texas, knowingly possessed a firearm, a black .38 Smith & Wesson. Defendant pleaded not guilty.

¶ 6 In November 2013, defendant's jury trial commenced. The parties stipulated defendant was convicted of a felony in 2011. Rantoul police officer Jeremy Heath testified he was on duty on the evening of August 16, 2013, when he was dispatched to 30 Mahoning Lane in response to a caller that saw the front door of a mobile home open "all day long" and worried "something might be wrong." Heath arrived and found the mobile home dark with no lights on. He announced his presence and entered the residence through the front door. He began searching for any injured persons or suspects. Heath checked the residence and "saw a lot of personal property there in the kitchen." While in the bedroom, Heath located a loaded firearm, a .38 Smith & Wesson, on a shelf in the closet. He placed the gun in his pants pocket for his own safety and then continued to search the residence. During his search, Heath "located a letter addressed to the defendant in the kitchen." A dispatcher contacted defendant, who asked that Heath secure the residence. Heath locked the front door and left.

¶ 7 Officer Heath contacted defendant via telephone, and she stated she "had recently purchased" the mobile home "and was going to be renovating it." When Heath asked her who lived in the residence, defendant stated she did and no one else. Heath asked her if she had a firearm owner's identification card, and she stated she did not.

¶ 8 On cross-examination, Officer Heath stated the letter found in the residence was addressed to defendant but he did not recall the address. While on the phone with defendant, she gave her address as an apartment at 1715 East Florida Avenue in Urbana. Heath stated he found the gun with the handle and the trigger guard "slightly outwards" with a "Crown Royal liquor

bag slightly covering the front barrel and cylinder part of the gun."

¶ 9 Jack Young testified he owned the mobile-home park, which included the two-bedroom residence at 30 Mahoning Drive. He stated defendant purchased the home, and he and Pat Armstrong repaired pipes "while she was there." While making repairs, Young misplaced a utility knife. While looking for it, he found a pistol "located on a shelf in the laundry room." He stated the gun was lying underneath a Crown Royal bag. He did not think defendant was in his presence when he found the gun but he was not sure because of his hearing problem. He told Armstrong about the gun and they returned to searching for the knife.

¶ 10 On cross-examination, Young testified someone had turned the heat and the water on in the residence. He stated people come from Chicago looking for work and break into vacant homes. He stated defendant "bought the home with two checks" but her checks had not cleared. Neither the home nor the utilities were titled in defendant's name.

¶ 11 On redirect examination, Young testified defendant was "really excited about owning a piece of property of her own" and "had big plans for it." After defendant gave him the checks, Young gave her the key to the residence. As far as Young knew, defendant had moved in.

¶ 12 Patrick Armstrong testified he worked for Young servicing mobile homes. On August 11, 2013, he and Young went to the residence at 30 Mahoning Drive to repair waterlines. While in the laundry area, Armstrong saw a pistol sitting on the shelf with a "purplish bag over the top of it." He stated the "dark blue or black" gun was loaded and "the hammer was pulled back on it." When he noticed the gun, Armstrong stated defendant "was standing right beside [him.]" At some point, Young picked up the gun and Armstrong told him to put it down. After Young did so, defendant "put that bag over the top of it and pushed it back on the counter a little

bit." Armstrong stated he then finished fixing the water pipes.

¶ 13 Defendant exercised her right not to testify. Following closing arguments, the jury found defendant guilty. Defendant filed a motion for a new trial, which the trial court denied.

¶ 14 In December 2013, the trial court sentenced defendant to eight years in prison. The court also ordered defendant to pay \$250 for a genetic-marker analysis and awarded her \$220 in sentencing credit for 44 days spent in custody. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Sufficiency of the Evidence

¶ 17 Defendant argues the State failed to prove beyond a reasonable doubt that she committed the offense of unlawful possession of a weapon by a felon. We disagree.

¶ 18 As a matter of due process, the State must prove each element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316 (1979). "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)). "Circumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000).

¶ 19 To sustain a conviction for unlawful possession of a weapon by a felon, the State must prove defendant knowingly possessed a weapon and had a prior felony conviction. *People*

v. Brown, 327 Ill. App. 3d 816, 824, 764 N.E.2d 562, 570 (2002); see also 725 ILCS 5/24-1.1(a) (West 2012). The parties stipulated to defendant's felony conviction.

"Possession may be actual or constructive. Actual possession need not be demonstrated if constructive possession can be inferred. [Citation.] Constructive possession exists where an intent and capability to maintain control and dominion over the substance exists. [Citation.] Constructive possession may be inferred from the facts, but evidence establishing constructive possession is often entirely circumstantial. [Citation.]" *People v. Neylon*, 327 Ill. App. 3d 300, 306, 762 N.E.2d 1127, 1133 (2002).

¶ 20 In the case *sub judice*, the State's evidence proved defendant's actual possession of the gun. Young and Armstrong discovered the gun in the trailer while repairing the water lines. Armstrong testified defendant was standing right beside him when he noticed the gun. After Young set the gun down, Armstrong saw defendant place the Crown Royal bag over it and slide it back on the shelf.

¶ 21 Based on the testimony from Young and Armstrong, the jury could infer the gun belonged to defendant. Had it not been defendant's gun, a reasonable person would not have simply placed a bag over it and kept it on the shelf. She did not tell Young or Armstrong that the gun was not hers. Moreover, she did not tell Young to remove the gun from her new home. Instead, defendant knowingly maintained control over the gun when she did not take steps to have it removed from the closet by police or someone who could lawfully possess it.

¶ 22 The State's evidence also established defendant's constructive possession of the gun.

"To establish constructive possession, the State must prove beyond a reasonable doubt that a defendant (1) knew a firearm was present; and (2) exercised immediate and exclusive control over the area where the firearm was found. [Citations.] The State may establish knowledge through evidence of a defendant's acts, declarations, or conduct, from which it may be inferred that he knew of the firearm's presence. [Citation.] A defendant's control over the location where a weapon is found gives rise to an inference that he possesses that weapon. [Citation.] Habitation in the residence in which the firearm is found is sufficient evidence of control to establish constructive possession. [Citation.]" *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10, 2 N.E.3d 441.

¶ 23 Here, Officer Heath observed the gun five days after Young and Armstrong had been in the trailer fixing the pipes. The gun was in the same position with the Crown Royal bag on top of it. Heath also found a letter addressed to defendant inside the home. Defendant admitted to Heath that she recently bought the mobile home and was the only person that lived at the residence. Based on the testimony from Young and Armstrong that defendant was aware of the gun's presence days before, the jury could reasonably infer she lived at the residence alone and her inaction in removing the gun over those several days established the gun was hers.

¶ 24 Defendant argues the State's evidence failed to prove she had sufficient control over the mobile home. However, Young testified defendant bought the mobile home. He gave defendant a key to the trailer and, as far as he knew, she had moved in. Defendant was present in the trailer when Young and Armstrong were conducting repairs, which occurred several days

prior to Heath's discovery of the gun. Defendant told Heath she lived at the mobile home alone. Heath also found a letter addressed to defendant inside the residence and noticed personal property.

¶ 25 While defendant argues she provided Officer Heath with a different home address, it is reasonable to assume she would lie about her home address given that she was a felon and had been seen in her new residence with a gun located therein. Moreover, the possibility that she still lived in Urbana did not foreclose her ability to maintain control over the trailer in Rantoul. Viewing all of the evidence in the light most favorable to the prosecution, coupled with the reasonable inferences that may be drawn therefrom, we conclude a rational trier of fact could have found defendant possessed the firearm and the State had proved the essential elements of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 26 B. Fines and *Per Diem* Credit

¶ 27 Defendant argues this court should vacate all fines imposed by the circuit clerk. See *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959 (stating the imposition of a fine is a judicial act and since "the circuit clerk has no authority to levy fines, any fines imposed by the circuit clerk are void from their inception"). Defendant also argues this court should order that any *per diem* credit be applied toward any eligible fines. We agree, and the State concedes.

¶ 28 In this case, the trial court did not specifically impose any fines orally at sentencing, and none are reflected in the written sentencing judgment or in a docket entry. The court did state defendant was "to pay all the financial obligations" and mentioned "all fines, fees, and costs as authorized by statute." A printout issued by the circuit clerk reflects numerous fines and does not reflect the *per diem* credit awarded toward defendant's eligible fines.

¶ 29 We need not engage in a lengthy analysis of the impropriety of the circuit clerk

imposing judicial fines, as our prior cases have addressed the issue. See *Warren*, 2014 IL App (4th) 120721, ¶¶ 75-171, 16 N.E.3d 13; *Larue*, 2014 IL App (4th) 120595, ¶¶ 54-73, 10 N.E.3d 959; *People v. Montag*, 2014 IL App (4th) 120993, ¶¶ 33-40, 5 N.E.3d 246; *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 24-39, 13 N.E.3d 1280. Instead, we vacate the fines imposed by the circuit clerk and remand for the trial court to impose the proper fines. The court shall also apply \$220 in monetary credit to those fines subject to *per diem* credit. *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 41, 24 N.E.3d 280 (stating defendants are entitled to a \$5-per-day credit against their fines for time spent in custody on a bailable offense); 725 ILCS 5/110-14 (West 2012); see also *People v. Williams*, 2013 IL App (4th) 120313, 991 N.E.2d 914 (appendix). We direct the appellate prosecutor to provide copies of its brief on appeal to the trial court and the circuit clerk on record. We direct our clerk to provide an extra copy of our disposition directly to the attention of the circuit clerk.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm in part, vacate in part, and remand with directions. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

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