2018 IL App (1st) 170823-U

No. 1-17-0823

Order filed November 7, 2018

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 6342
	)	
EDWARD VALENZUELA,	)	Honorable
	)	Maury Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse one of defendant's convictions where the evidence was insufficient to show he had constructive possession of a handgun. The circuit court properly denied defendant's motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978).

¶ 2 Following a bench trial, defendant Edward Valenzuela was found guilty of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced to five years' imprisonment. On appeal, he argues the evidence was insufficient to

prove him guilty of constructive possession of a recovered handgun and various types of ammunition, and the trial court erred in denying his motion for a *Franks* hearing. We affirm in part and reverse in part.

¶ 3 Defendant was charged by indictment with three counts of UUWF and two counts of possession of a controlled substance with intent to deliver after police executed a search warrant on March 2, 2012, at a residence on South Long Avenue (residence).[1] The warrant was based upon an affidavit signed and sworn to before the issuing judge by Chicago police officer Eric White and "John Doe." It authorized a search of defendant and the "whole house" on Long Avenue for "assault rifles, hand guns, ammunition, magazines, other firearm attachments, proof of residency and all other contraband" constituting evidence of UUWF. In the affidavit, White averred Doe told him that Doe, within the prior 72 hours, was let into the residence by defendant and observed an "AK47 assault rifle" in the corner of a second floor bedroom. Defendant showed Doe a chrome semiautomatic pistol in his bedroom. Doe had been inside the residence multiple times and had seen the same semiautomatic pistol in defendant's possession on previous occasions. White drove Doe past the residence and Doe positively identified the house. Doe further positively identified photographs of the house and defendant.

¶ 4 The search recovered heroin, cocaine, an air rifle, a handgun loaded with four live rounds, numerous other rounds of ammunition, "ballistic strike plates," defendant's personal items, drug paraphernalia, and cash.

[1] The parties agree that defendant was charged with one count of UUWF for possession of a firearm and two counts of UUWF based on possession of firearm ammunition. Although the record shows defendant was charged with three counts of UUWF, only the charging document for the UUWF for possession of a firearm is in the record.

¶ 5 Prior to trial, defendant filed a motion to suppress evidence and a request for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). In the motion, defendant alleged that he knew the informant John Doe to be Monica Gonzalez, the ex-wife of defendant's brother, Manuel Valenzuela.[2] Gonzalez was the subject of an order of protection which prohibited her from entering the residence listed on the search warrant. Defendant further alleged that White acted in reckless disregard for the truth when he failed to investigate the allegations made by Doe. According to defendant, he made a substantial preliminary showing that the search warrant contained false statements made knowingly or intentionally or with reckless disregard for the truth by White and these false statements were necessary to a finding of probable cause.

¶ 6 The State responded that no hearing was required because Doe appeared before the judge issuing the warrant, Doe was not Monica Gonzalez as defendant claimed, and no affidavits were filed in support of the motion for a *Franks* hearing.

¶ 7 Defense counsel then filed affidavits from defendant, Lesley Lopez, and Ana Serrano. Defendant averred, *inter alia*, that the allegations contained in the search warrant were false because only his girlfriend was invited into his bedroom and he did not possess any weapons in February 2012. In addition, he was aware of problems between Manuel and his ex-wife Gonzalez, who defendant learned was the informant. Defendant further averred that he received emails, attached as exhibits, from Gonzalez who "apologized for sending police to [his] house."

¶ 8 Lopez, defendant's girlfriend, averred that, during the 72 hours prior to the search warrant being signed, no one entered the residence on Long Avenue she shared with defendant other than Manuel and Serrano. Additionally, no one entered her and defendant's bedroom and

[2] As defendant and Manuel Valenzuela share the same last name, we will refer to the latter as Manuel.

no AK47 rifle or chrome semiautomatic handgun were located in that bedroom. Lopez further alleged that she was aware of a photograph that depicted Manuel standing in his bedroom at the residence with a chrome pistol tucked into his waistband. Additionally, Lopez described and attached an email, allegedly from Gonzalez, wherein Gonzalez admitted to telling police that she made up a story about defendant having a gun. She further averred that orders of protection prohibited Gonzalez from contacting Manuel or Serrano, and Gonzalez, who bragged about having a Chicago police officer as a boyfriend, was the informant.

¶ 9 Serrano, Manuel's girlfriend, averred that she and Manuel moved into defendant's house after Gonzalez began "stalking" and "harassing" them. She acknowledged that she took a photograph of Manuel depicting him with a gun in their bedroom. Serrano explained that the gun from the photograph "was kept in the drawer of a television stand." She stated that Gonzalez never visited the Long Avenue residence.

¶ 10 The State filed a supplemental response to the motion for a *Franks* hearing. The trial court denied the motion for a *Franks* hearing, finding that it was uncertain whether the emails allegedly sent by Gonzalez were actually sent by her or were the product of a "hack[ed]" account. Further, the court found that Doe was sworn and appeared before the judge who issued the search warrant.

¶ 11 At trial, Chicago police officer Sean McDermott testified that he was part of a team executing a search warrant at a residence on South Long on March 2, 2012. No one was home when police executed the warrant. McDermott described the home as a single family residence with three upstairs bedrooms, a kitchen on the main level, and a front living room area. When

evidence was found, Officer White would photograph the item and McDermott would recover the item, place it in an evidence bag, and record in an evidence log where the item was found.

¶ 12 The officers searched the kitchen first. There, officers recovered two digital scales, one with residue on it, a digital money counter, a vacuum sealer, and various suspected narcotics. Specifically, officers recovered brick-like objects in the freezer that were vacuumed sealed and appeared to contain heroin. Further, they recovered suspected cannabis and cocaine, along with suspected narcotics ledgers reflecting dates and various dollar amounts.

¶ 13 In the second-floor bedroom at the rear of the residence, officers recovered a .45-caliber pistol with live rounds and an Airsoft rifle. In another second-floor bedroom, described by McDermott as the "main bedroom," officers recovered "a substantial amount of United States currency and various boxes of different calibers of ammunition." He "believe[d] there was nine millimeter and 357 recovered along with proof of residence." McDermott testified that the ammunition was recovered from a locked safe. The "proof of residence" item listed the name Edward Valenzuela on it.

¶ 14 McDermott identified People's Group Exhibit No. 1 as a social security card, a United States passport, a Sam's Club card, and a California birth certificate, all bearing defendant's name. The passport and Sam's Club card displayed defendant's picture on them. McDermott further identified two narcotics ledgers from 2011 and 2012. He also identified a photograph found in the home depicting "defendant in the kitchen area of the residence where [the officers] executed the search warrant" with "the butt of a pistol in the waistband of the defendant's pants." The pistol depicted in the photograph appeared to be the same one that was recovered in the search.

¶ 15 On cross-examination, McDermott acknowledged that he did not recover a lease or utility bill bearing defendant's name. An envelope recovered at the residence was addressed to defendant at a different address. McDermott acknowledged that he discovered two American Airlines tickets containing the name Manuel Valenzuela in the rear bedroom, which was the same room where the pistol, Airsoft rifle, and body armor, and a bundle of United States Currency were recovered. He explained that he recovered in the front bedroom a passport bearing the name of Manuel Valenzuela. He acknowledged that a birth certificate and social security card bearing the name Manuel Valenzuela were inside a police evidence bag but not contained on the evidence log. McDermott explained that these two documents were "recovered by asset forfeiture and not myself."

¶ 16 Officer White testified that he was a member of the team executing the search warrant and served as the photographer. After the warrant was executed and the evidence photographed, White went outside to load equipment into his squad car. A van pulled up and appeared it was going to pull into the driveway. The driver, identified in court as defendant, made eye contact with White and began driving away. White followed in his police vehicle and curbed the vehicle two blocks away. Inside the vehicle, defendant was the driver, a woman was in the front-passenger seat, and a child was in the back seat. White placed defendant into custody and gave him his *Miranda* warnings. White testified that defendant stated that "the drugs and gun belonged to [him] and that his girlfriend didn't have anything to do with it."

¶ 17 The parties stipulated that Leann McDowell would testify the contents of items from defendant's home tested positive for heroin with one item weighing 998 grams, a second

weighing 995.8 grams, and a third weighing 198.4 grams. Two items tested positive for cocaine for a total weight of 58.3 grams.

¶ 18 The State admitted into evidence a certified copy of defendant's conviction from Arkansas for possession of a controlled substance with intent to deliver from February 9, 1998.

¶ 19 The trial court found defendant guilty of three counts of unlawful possession of a weapon by a felon and not guilty of possession of a controlled substance with intent to deliver. Defendant filed a written motion for a new trial arguing, *inter alia*, that the court erred in denying his motion for a *Franks* hearing. The court denied the motion for a new trial and sentenced defendant to five years' imprisonment.[3]

¶ 20 On appeal, defendant argues the trial court erred in denying his motion for a *Franks* hearing and, further, the evidence was insufficient to show he had constructive possession of the gun or ammunition recovered inside the house.[4]

¶ 21 *Franks* provides a defendant with a right under limited circumstances to challenge the veracity of an affidavit supporting a search warrant. *People v. Voss*, 2014 IL App (1st) 122014, ¶ 16. There exists a presumption of validity with respect to a search warrant's supporting affidavit. *Franks*, 438 U.S. at 171. Pursuant to *Franks*,

[3] The parties agree defendant was sentenced to five years' imprisonment. The mittimus reflects all three UUWF convictions and a five-year sentence on each, with no mention that the counts merged. In pronouncing sentence, the court made no mention of whether the counts merged or whether the sentences were concurrent. We note that the act of possession of a firearm is "materially different" from possession of firearm ammunition, and each can support multiple convictions. See *People v. Almond*, 2015 IL 113817, ¶¶ 48-50.

[4] Defendant's brief fails to comply with Illinois Supreme Court Rule 342 (eff. July 1, 2017), which requires, *inter alia*, an appendix that includes a table of contents stating "the names of all witnesses and the pages on which their direct examination, cross examination, and redirect examination begin." While compliance with Supreme Court Rules is mandatory and failure to abide by the rules may result in a brief being stricken, we nevertheless will address the merits of defendant's appeal. See *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶¶ 57-58.

> "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." *Franks*, 438 U.S. at 155-56.

¶ 22 In order to make a preliminary showing, a defendant's burden " 'lies somewhere between mere denials on the one hand and proof by a preponderance on the other.' " *People v. Chambers*, 2016 IL 117911, ¶ 41 (quoting *People v. Lucente*, 116 Ill. 2d 133, 152 (1987)). We review a trial court's ruling on a motion for a *Franks* hearing *de novo*. *Id.* ¶ 79.

¶ 23 In support of the *Franks* motion, defendant included his own affidavit as well as affidavits from Lopez and Serrano. Defendant averred, *inter alia*, that the allegations contained in the search warrant were false because only his girlfriend was invited into his bedroom at the residence on Long Avenue and, in February 2012, he did not possess any weapons, including a chrome semiautomatic pistol. He further stated Manuel and his family lived in the second floor rear bedroom, Gonzalez had "problems" with Manuel and his girlfriend, and that Gonzalez was the informant. Lopez averred that no one entered the residence besides Manuel and Serrano in the 72 hours prior to the warrant being signed, no one entered the bedroom she shared with defendant besides defendant, and no firearms were in that bedroom. She further averred that orders of protection prohibited Gonzalez from contacting Manuel or Serrano, and Gonzalez, who bragged about having a Chicago police officer as a boyfriend, was the informant. Finally, Serrano's affidavit describes past experiences she and Manuel had with Gonzalez, identifies a photograph depicting Manuel with a gun, and explains that the gun from the photograph "was

kept in the drawer of a television stand." She concludes that Gonzalez never visited the residence on Long Avenue.

¶ 24 The thrust of the three affidavits is that Gonzalez was the informant and, based on her contentious relationship with her ex-husband Manuel and his girlfriend, provided police with false information because she had ulterior motives. As it did in the trial court, the State disputes that John Doe is in fact Gonzalez. We find the identity of John Doe is of no consequence because these affidavits do not show that Officer White provided false statements knowingly or with reckless disregard for the truth. See *Franks*, 438 U.S. at 167 (the "deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant."). Even if Gonzalez was the informant and lied to White, the affidavits provided by defendant do not show White was untruthful or that he should have known Gonzalez/Doe's statements were false. See *People v. Garcia*, 2017 IL App (1st) 133398, ¶ 32. Also, the informant's information was not verifiably false, and White took measures to corroborate it. See *Lucente*, 116 Ill. 2d at 152-54. Specifically, White drove Doe past the residence on Long Avenue and Doe positively identified the house. Further, Doe positively identified photographs of the residence and of defendant.

¶ 25 Moreover, the record reflects that John Doe appeared with Officer White before the judge issuing the warrant, allowing the judge to, at a minimum, test the statements made by the informant. *Garcia*, 2017 IL App (1st) 133398, ¶ 32. If, as defendant claims, Gonzalez was John Doe, her presence would allow the judge to explore any ulterior motives she harbored before issuing the warrant. See *Chambers*, 2016 IL 117911, ¶ 63 (finding the presence of the informant before the issuing judge may be considered as a factor when determining whether a defendant

made a preliminary showing). This factor weighs against defendant, as does the fact that White did not fabricate Doe's existence. See *Garcia*, 2017 IL App (1st) 133398, ¶ 32.

¶ 26 Furthermore, the remainder of defendant's and Lopez's affidavits amount to general denials of the facts contained in the search warrant. Defendant and Lopez each denied that weapons were present in the bedroom they shared. They further denied that anyone was present in their bedroom besides themselves. Even taking these unsubstantiated denials as true, they cannot serve to establish a preliminary showing under *Franks* that White knew Doe provided a false statement to him or that he recklessly disregarded the truth. See *Garcia*, 2017 IL App (1st) 133398, ¶¶ 36-37. Accordingly, defendant was not entitled to a hearing pursuant to *Franks*.

¶ 27 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Hoye*, 311 Ill. App. 3d 843 (2000). In *Hoye*, the defendant was charged with various firearm and drug-related offenses following a search of his home and garage. *Hoye*, 311 Ill. App. 3d at 844. The search warrant was supported by two affidavits: one from a police officer and another from a confidential informant, who was the defendant's ex-wife. *Id.* at 845-46. The ex-wife's statements in her affidavit that she saw drugs in the garage within the previous 48 hours were in conflict with the three affidavits in support of the *Franks* hearing, which asserted that the ex-wife had never been in the garage and was not in the garage within the previous 48 hours. *Id.* at 845. The trial court granted the defendant's *Franks* motion, and the State appealed. *Id.* at 845-46.

¶ 28 The State argued the defendant was precluded from challenging the search warrant where a confidential informant, rather than a governmental agent, provided the affidavit containing false statements. *Id.* at 846. The appellate court affirmed the grant of a *Franks* hearing. *Id.* at 847. It held that, while a defendant could not impeach a police officer's affidavit by challenging

the truthfulness of the unsworn informant on whom the officer relied, the defendant could impeach the informant's own affidavit. *Id.*

¶ 29 Unlike in *Hoye*, here, a governmental agent, Officer White, was the affiant on the search warrant and the confidential informant did not provide his own affidavit. Further, defendant's assertion that *Hoye* is similar because both Gonzalez and the ex-wife in *Hoye* had not been present in the respective homes for a period of hours prior to the search is misplaced. In *Hoye*, the ex-wife provided an affidavit that could be impeached and, here, Doe did not. Accordingly, *Hoye* is distinguishable, and the trial court did not err in denying defendant's motion for a *Franks* hearing.

¶ 30 Defendant next argues the State did not prove him guilty of UUWF where it failed to show he had constructive possession of the firearm or ammunition. Specifically, he argues the evidence did not show he exerted immediate and exclusive control over the bedroom where the gun was found or the safe where the ammunition was recovered.

¶ 31 As an initial matter, we note the parties disagree on the proper standard of review to be applied. Defendant asserts our review is *de novo* because his challenge concerns whether the uncontested facts of the case were sufficient to convict him. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000). The State asserts that the sufficiency of the evidence standard of review should apply. See *Jackson v. Virginia*, 443 Ill. 2d 307 (1979). Defendant is challenging the inferences that can be drawn from the evidence, namely that he constructively possessed the gun and ammunition. Accordingly, his argument is a challenge to the sufficiency of the evidence presented at trial. See *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010).

¶ 32 When challenging the sufficiency of the evidence, the standard of review 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 offense proven beyond a reasonable doubt. *People v. Belknap*, 2014 IL 117094, ¶ 67 (citing *Jackson*, 443 U.S. at 319). "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Although the determinations of the trier of fact are afforded great deference, they are not conclusive. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 33 In order to sustain a conviction for UUWF, the State must prove the defendant (1) knowingly possessed a firearm or firearm ammunition and (2) had a prior felony conviction. 720 ILCS 5/24-1.1(a) (West 2012). Here, defendant does not contest that he had a prior felony conviction. Rather, he asserts the evidence was insufficient to show he knowingly possessed a firearm or firearm ammunition.

¶ 34 Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Where no evidence exists that a defendant had actual possession, the State must prove defendant had constructive possession. *People v. Spencer*, 2012, IL App (1st) 102094, ¶ 17. "To establish constructive possession, the prosecution must prove defendant (1) had knowledge of the presence of the firearm and ammunition and (2) exercised immediate and exclusive control over the area where the firearm and ammunition were found." *Id.* "Habitation of the location

where contraband is found can constitute sufficient evidence of control to establish constructive possession." *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 29.

¶ 35 A defendant acts with knowledge when it is proven he is aware of the existence of facts that make his conduct unlawful. *People v. Gean*, 143 Ill. 2d 281, 288 (1991). The element of knowledge is rarely established by direct proof, and is usually shown through circumstantial evidence. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. "Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found." *Spencer*, 2012 IL App (1st) 102094, ¶ 17. "Knowledge and possession are factual issues, and we will not disturb the trier of fact's findings on these questions unless the evidence is so unbelievable or improbable that it creates a reasonable doubt as to the defendant's guilt." *People v. Miller*, 2018 IL App (1st) 152967, ¶ 9.

¶ 36 Here, viewing the evidence in the light most favorable to the State, we find it was sufficient to prove defendant guilty beyond a reasonable doubt of UUWF with respect to the firearm ammunition counts. The evidence showed that, after a search, officers recovered .357 and nine-millimeter ammunition in the same front, "main" bedroom as the "proof of [defendant's] residence." Further, a social security card, a United States passport, a Sam's Club card, and a California birth certificate all bearing defendant's name were also recovered from the residence. Given this volume of evidence connecting defendant to the residence, including defendant's sensitive personal documents, the trial court could have properly inferred defendant had constructive possession of the ammunition.

¶ 37 Defendant contends that the State provided no evidence as to what "proof of residence" item McDermott was describing when he testified. Specifically, McDermott testified that a "proof of residence" item with defendant's name on it was recovered. It was defendant's responsibility to challenge any perceived ambiguity in McDermott's testimony at trial or risk an inference being drawn in the light most favorable to the State and against him on appeal. See *People v. Fountain*, 2011 IL App (1st) 083459-B, ¶ 26. Therefore, this unchallenged testimony, when viewed in the light most favorable to the State, establishes that defendant resided at the location of the search.

¶ 38 Defendant argues that, even if this "proof of residence" item from the front bedroom was rightfully introduced into evidence, it cannot establish control over the ammunition found within a locked safe in a separate bedroom. He further asserts there was no testimony that the passport, birth certificate, and social security card bearing his name were located near the firearm or ammunition locked in the safe such that we may infer defendant had immediate and exclusive control over the contraband. We disagree. McDermott testified that ammunition was found "along with proof of residence." A rational trier of fact could infer this "proof of residence" item, along with the other documents found, shows defendant constructively possessed the gun and ammunition. Finally, we reject defendant's assertion, presented without argument, that the trial court abused its discretion in admitting McDermott's hearsay testimony regarding the name on the "proof of residence" item. Where defendant fails to argue or cite relevant authority that the trial court abused its discretion or the statement was hearsay, defendant forfeits the contention. See *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 249.

¶ 39 We find defendant's reliance on *People v. Ray*, 232 Ill. App. 3d 459 (1992), and *United States v. Herrera*, 757 F.2d 144 (7th Cir. 1985), to be distinguishable. In *Ray*, this court reversed the defendant's conviction for possession of a controlled substance where a six-month old cable bill was the only evidence showing the defendant's control of the premises and therefore insufficient to show constructive possession of the controlled substance. *Ray*, 232 Ill. App. 3d at 462-63.

¶ 40 In *Herrera*, the defendant was arrested for possession of heroin after walking out of a residence while carrying a bag containing heroin. *Herrera*, 757 F.2d at 147. He was later convicted of, among other offenses, possession of heroin found within a footlocker inside the residence he had left. *Id.* at 147-48. The Seventh Circuit reversed the conviction finding, "[t]he only certain link between [the defendant] and the footlockers is that the footlocker was in the house when [the defendant] picked up the heroin," which was insufficient to show dominion and control over the footlocker and its contents. *Id.* at 150.

¶ 41 Here, unlike in *Ray* and *Herrera*, multiple pieces of evidence recovered inside of the residence on Long Avenue showed defendant's constructive possession of the firearm ammunition found therein, including his birth certificate, passport, and social security card. Therefore, the evidence was not so unsatisfactory as to create a reasonable doubt of defendant's guilt.

¶ 42 However, while the evidence was sufficient to convict defendant of UUWF with respect to the firearm ammunition counts, we do not find the State proved defendant guilty beyond a reasonable doubt of UUWF based on possession of a firearm. The .45-caliber pistol was discovered in the separate, rear bedroom along with airplane tickets bearing Manuel's name. No

documents belonging to defendant were recovered in this room. The recovery of two airline tickets bearing Manuel's name shows that defendant did not have exclusive control over the rear bedroom.

¶ 43 We recognize that a person may have constructive possession of contraband even if other individuals have access to the same area where contraband was discovered. See *People v. Spencer*, 2016 IL App (1st) 151254, ¶ 25. "Exclusive control can include joint possession—if two or more people share immediate and exclusive control, or share the intention and power to exercise control, they each maintain possession." *Tates*, 2016 IL App (1st) 140619, ¶ 25. Here, however, there was only evidence connecting Manuel to the bedroom where the gun was found. There is no evidence connecting defendant to that bedroom, thus militating against defendant's constructive possession of the firearm. With respect to the photograph found in the residence depicting defendant armed with what McDermott believed to be the same gun that was recovered only the "butt" of the gun was displayed.

¶ 44 Defendant's alleged statement to White wherein he admitted that the "gun" was his, allegedly provided to White completely unprompted, is insufficient to connect defendant to the firearm recovered. Defendant's vague statement did not reference the firearm recovered or where it was recovered, or provide any identifying information beyond saying the "gun" was his. Although the determinations of the trier of fact are accorded great deference, they are not conclusive. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). We find it unreasonable for the trier of fact to infer that the gun defendant referenced was the same loaded .45-caliber pistol recovered, especially given that additional ammunition of different sizes was recovered from the residence. See *People v. Ross*, 229 Ill. 2d 255, 272 (2008) ("But merely because the trier of fact accepted

certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision").

¶ 45 In sum, based on the presence of Manuel's documents in the bedroom where the gun was recovered, and the absence of any evidence pointing to defendant's immediate and exclusive possession of the gun or the bedroom, defendant's conviction for UUWF with respect to the firearm under count 3 cannot stand. Accordingly, we reverse this conviction.

¶ 46 For the reasons set forth above, we reverse defendant's UUWF conviction with respect to possession of a firearm under count 3 but affirm the two UUWF convictions pertaining to firearm ammunition.

¶ 47 Affirmed in part; reversed in part.