

2019 IL App (1st) 181269-U

No. 1-18-1269

Order filed October 18, 2019

Fifth Division

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
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 17 CR 16383
)	
DARRYL PAIGE,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's convictions for being an armed habitual criminal and unlawful use or possession of a weapon by a felon are affirmed over his contention that the evidence at trial was insufficient to prove that he was in possession of a firearm.

¶ 2 Following a bench trial, defendant Darryl Paige was found guilty of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2016)), two counts of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2016)), and four counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5));

(a)(1), (a)(3)(C) (West Supp. 2017)). He was sentenced to concurrent terms of eight years' imprisonment for AHC, and one count of UUWF. On appeal, defendant contends that his conviction for AHC should be reversed because the evidence was insufficient to prove he possessed a handgun.¹ We affirm.²

¶ 3 Defendant was charged by indictment with one count of AHC, two counts of UUWF, and four counts of AUUW. Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Chicago police officer Angel Gutierrez testified that on October 25, 2017, he, along with Officer Stephen Born, Officer Scaduto and Officer Bubacz, participated in a traffic stop at 13037 South Daniel Drive.³ The officers conducted the traffic stop after Officer Born witnessed a passenger inside a vehicle not wearing a seatbelt. Officer Gutierrez exited and approached the front passenger side window. He saw three individuals in the vehicle, including defendant, who was not wearing a seat belt. Officer Gutierrez also saw defendant "removing his hands from inside the glove box and closing it quickly." The glove box was located in front of defendant's front passenger seat. Officer Gutierrez saw both of defendant's hands in the glove box before he shut it. Officer Gutierrez nonverbally signaled Officer Born that there was something in the car.

¶ 5 After Officer Born asked and was given permission to search the vehicle, Officer Gutierrez asked defendant to step out. Officer Gutierrez searched the vehicle. He started by

¹ Defendant's notice of appeal stated he was appealing from his convictions for both AHC and UUWF. His brief argues that the State did not prove he possessed the weapon at issue and therefore the evidence to support the AHC conviction was insufficient. However, defendant's possession of the weapon was an element of both offenses.

² In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

³ Officer Scaduto's and Officer Bubacz's first names do not appear in the record.

looking at the front driver's seat area, then under the seat area, and the glove box. When he opened the glove box, he found a black Springfield 9mm handgun loaded with six rounds. Nothing else besides the handgun was in the glove box. Defendant told Officer Gutierrez he did not have a firearm owners identification (FOID) card or a conceal carry license (CCL). Officer Gutierrez did not see defendant holding the gun.

¶ 6 Officer Born testified that on October 25, 2017, he was working as a tactical officer with Officer Gutierrez, Officer Scaduto, and Officer Bubacz on an anti-violence mission. Shortly before 11:00 p.m., on Daniel Drive, Officer Born witnessed a front passenger inside a vehicle not wearing a seatbelt. Officer Born activated his unmarked police vehicle's emergency equipment and performed a traffic stop. He and Officer Bubacz approached the driver's side, and Officer Gutierrez and Officer Scaduto approached the passenger side. Officer Born spoke to the driver of the vehicle, Jasmin Sutton. During Officer Born's conversation with Ms. Sutton, Officer Gutierrez signaled that the front passenger placed something into the glove box. Officer Born clarified that Officer Gutierrez said he saw the front seat passenger place something in the glove box.

¶ 7 After Officer Born learned that Ms. Sutton did not have a driver's license, he asked her to exit the vehicle. The two passengers were also asked to exit the vehicle. All occupants complied. Ms. Sutton gave consent to search the vehicle, and Officer Gutierrez recovered a handgun from the glove box. Officer Born identified defendant as the man who was seated in the front passenger seat and not wearing a seatbelt.

¶ 8 The State entered into evidence defendant's two prior convictions for: aggravated robbery in case number 07 CR 00609 (02), and aggravated discharge of a firearm in case number 07 CR 02512 (02).

¶ 9 Defendant moved for a directed verdict arguing that there was insufficient evidence to find him guilty. The court denied the motion.

¶ 10 Ms. Sutton was called as a witness by the defense. On October 25, 2017, before 11:00 p.m., she was going to the store with defendant, and another person. A friend owned the car she was driving. As the group waited in the car, which was parked outside of a friend's house, officers approached the vehicle and told her she was pulled over because they were looking for someone with a black hoodie and because she was not wearing a seatbelt. Ms. Sutton did not see defendant with a gun or reaching into the glove box. She did not see if the officers recovered anything from the vehicle after they searched it. When police pulled behind her vehicle, her attention was focused on them and determining what they wanted. When the officers approached the vehicle, her attention was on the rearview mirror.

¶ 11 The trial court found defendant guilty of AHC (count one), UUWF (counts two and three), and AUUW (counts four through seven). In announcing its ruling, the court stated that it "found that Officer Gutierrez and the other police officer's [sic] testified credibly. Officer Gutierrez said he saw defendant with his hands in the glove box, take them out, and close the glove box. The only thing in the glove box was the gun. Guilty all counts."

¶ 12 Prior to sentencing, defendant made a motion for a new trial. The court denied the motion stating:

“I reviewed my notes from the trial and took a second look at the testimony of the police officers as well as the defense witness. I found those officers to be credible.

I don’t think the case was close. I think it was the defendant’s gun. He put it in the glove box. He got caught with his hands virtually coming out of the glove box, and it was his gun.”

¶ 13 The court sentenced defendant to eight years’ imprisonment for AHC, and a concurrent term of eight years for UUWF (count two). Counts three through seven merged into count two.

¶ 14 On appeal, defendant contends that we should vacate his conviction for AHC because there is insufficient evidence to prove him guilty beyond a reasonable doubt. He argues there was no proof that he possessed the firearm or even knew there was a firearm in the glove box.

¶ 15 When faced with a challenge to the sufficiency of the evidence we “must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements beyond a reasonable doubt.” *People v. Newton*, 2018 IL 122958, ¶ 24. “All reasonable inferences from the evidence must be drawn in favor of the prosecution.” *People v. Hardman*, 2017 IL 121453, ¶ 37. It is the fact finder’s role “to determine the credibility of witnesses, to weigh their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence.” *People v. Williams*, 193 Ill. 2d 306, 338 (2000). Our role is not to retry the defendant’s case. *Newton*, 2018 IL 112958, ¶ 24. For that reason, upon review, we will not substitute our judgment for that of the fact finder. *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 44. However, the deference given to the trier of fact’s determinations is not without limits; a reviewing court may reverse a conviction where the

evidence is “so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt.” *Newton*, 2018 IL 122958, ¶ 24.

¶ 16 Defendant received concurrent sentences for AHC and UUWF. In order to sustain defendant’s conviction for AHC, the State was required to prove beyond a reasonable doubt that he possessed a firearm after having been convicted a total of two or more times of any combination of offenses including: forcible felonies under Section 2-8 of the Criminal Code and several weapon offenses including aggravated discharge of a firearm. 720 ILCS 5/24-1.7 (West 2016). Defendant’s conviction for UUWF required proof that he possessed on or about his person a firearm after being previously convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2016).

¶ 17 In this court, defendant does not contest that he was previously convicted of qualifying offenses. Rather, he argues that the State failed to prove beyond a reasonable doubt that he possessed the handgun recovered from the glove box.

¶ 18 Possession is a factual issue to be determined by the trier of fact. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Where the defendant does not have actual physical possession, the State must prove constructive possession, “*i.e.* that defendant had knowledge of the presence of the weapon and exercised immediate and exclusive control over the area where the weapon was found.” *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003); accord *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). Knowledge may be demonstrated 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.” *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Control can be found when a defendant possesses the “intent and capability to maintain control and dominion”

over a possession, even if he may lack personal present dominion over it. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Frequently evidence of constructive possession will be entirely circumstantial. *People v. Faulkner*, 2017 IL App (1st) 132884, ¶ 39. “ ‘Knowledge and possession are questions of fact to be resolved by the trier of fact, whose findings should not be disturbed upon review unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt.’ ” *Id.* (quoting *People v. Luckett*, 273 Ill. App. 3d 1023, 1033 (1995)).

¶ 19 After viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have concluded that defendant possessed the handgun recovered from the glove box. We initially note that because there is no evidence that defendant had regular, ongoing control of the car, we will not infer his knowledge of the handgun from his mere presence in the vehicle. *People v. Hampton*, 358 Ill. App. 3d 1029, 1032-33 (2005). However, there are several other factors from which knowledge may be inferred, 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.” *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009); accord *People v. Bailey*, 333 Ill.App.3d 888, 891–92 (2002).

¶ 20 Here, when the glove box was closed the gun would not be visible. However, when it was open and the only item in it was a gun, common sense would dictate a passenger sitting directly in front of the glove box would see the gun. The trier of fact is not “required to disregard any inferences that do flow from the evidence.” *People v. Bogan*, 2017 IL App (3d) 150156, ¶ 26.

Although it is not clear how long defendant had to observe the gun, the record shows that defendant made a movement to conceal the weapon. Officer Gutierrez saw defendant taking his hands out of the glove box and closing it. Upon seeing this, Officer Gutierrez alerted other officers that defendant placed something into the glove box. Although Ms. Sutton did not see the movement, she was focused on the officers approaching the vehicle. That said, to the extent there was a conflict in the evidence, the trial court found the officer's testimony to be credible. We will not substitute our judgment for that of the trial court on this matter. *Brown*, 2013 IL 114196, ¶ 48. Based on defendant's actions to conceal the firearm it was not unreasonable for the trier of fact to conclude he had knowledge of the weapon. See *People v. Grant*, 339 Ill. App. 3d 792, 798-99 (2003) (sufficient evidence of constructive possession where an officer could not see defendant's hands but saw defendant reach back and place something on the passenger seat of a car, and a gun was found on the same seat).

¶ 21 In addition, defendant exhibited control over the firearm based on his actions to conceal it, and his proximity to the firearm. As mentioned, defendant's hands were in the glove box where the only item was the firearm. See *People v. O'Neal*, 35 Ill. App. 3d 89, 91 (1975) (contraband may be considered under the defendant's immediate control if it is within his easy reach). Thus, it was not unreasonable for the trier of fact to infer that defendant possessed the firearm. *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009).

¶ 22 In sum, the evidence presented was sufficient evidence to support the trial court's finding that defendant was in possession of a firearm and thus sustain his convictions for AHC, and UUWF. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 23 Affirmed.