No. 3-09-0368

Order filed June 22, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit Peoria County, Illinois
Plaintiff-Appellee,	)	
	)	No. 08 CF 1191
v.	)	
	)	
ROY TED YOUNG,	)	The Honorable
	)	James E. Shadid,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Holdridge concurred in the judgment.

ORDER

Held: Where the trial court admonishes the prospective jurors regarding the four principles contained in Supreme Court Rule 431(b) and asks each prospective juror whether the juror "believed in the principle of law that [it had previously] stated," it has complied with the mandate of Supreme Court Rule 431(b). Where defendant is not entitled to an accomplice witness instruction, defense counsel's performance is not deficient for failing to request an accomplice witness instruction Where defendant's prior felony is dissimilar in nature from the charged offenses, no prejudice results from counsel's failure to stipulate solely to defendant's felon status. Viewing in the light most favorable to the State, the evidence is sufficient to sustain defendant's convictions for residential burglary,

unlawful possession of a weapon by a felon, and unlawful possession of firearm ammunition by a felon. Because the supreme court recently held that section 5-4-3 of the Unified Code of Corrections authorizes a trial court to order the taking a qualifying offender's DNA, and the payment of the analysis fee, only where that defendant was not currently registered in the DNA database, we find the trial court erred in ordering defendant to pay the $200 DNA analysis fee.

FACTS

Defendant, Roy Ted Young, was indicted for residential burglary, unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1 (West 2008)), and unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1 (West 2008)). The residential burglary indictment alleged that defendant knowingly and without authority entered the dwelling place of Bryan Mack, with the intent to commit a theft. The remaining indictments alleged defendant knowingly possessed a firearm and firearm ammunition while having a prior felony conviction.

Defendant's jury trial commenced January 20, 2009. After the venire panel was assembled in the courtroom, the trial court stated:

> "The charges in this case are contained in the indictment that I just read to you; however, that indictment is not to be considered by you as any evidence against the Defendant nor does the law allow you to infer any presumption of guilt against the Defendant simply because he is indicted. The indictment is the formal way in which Defendant is placed on trial.
>
> The Defendant is presumed to be innocent of the charges against him. That presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is

not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. This burden remains on the State throughout the case. The Defendant is not required to prove his innocence nor is he required to present any evidence on his own behalf.

He may rely on the presumption of innocence. He is not required to testify. If he does not do so, it cannot be used against him. Any juror that cannot accept this basic principle will not be able to serve."

The trial court subsequently asked each prospective juror whether they had "any problem with the principle of law that I stated to you." The court also inquired whether each juror would convict if the State met their burden of proof and acquit if the State did not. Each party was then afforded the opportunity to question the prospective jurors. Defendant never tendered an objection to the *voir dire* proceedings. The matter then proceeded to the presentation of evidence.

Bryan Mack testified that he lived in Peoria, Illinois. On September 25, 2008, he went to bed at 11:00 p.m. after working on his laptop. He was awakened at approximately 1:30 a.m. by four thumps. He looked outside his window and saw an unoccupied van that he did not recognize sitting in his driveway. He called the police after hearing more noise coming from inside the house. He looked out the window to describe the van to the dispatcher. He saw a man

in a white T-shirt moving rapidly along the passenger side of the van. The man went behind the van and opened the hatch. Mack did not see the man put anything in the van. Upon noticing a strip of light under his bedroom door Mack sought refuge in his attic.

Mack looked out through the attic vent and saw that the police had arrived. He saw that they had apprehended a male in a white T-shirt who was lying on the ground on the driver's side of the van. Another officer was on the passenger side of the van, attempting to pull another person out of the van. Both officers were needed to pull out the passenger who seemed slumped over, as if he had been asleep.

Mack reported the apprehension of two men to the dispatcher, but also told the dispatcher that he could still hear that there was someone in the house. He therefore stayed in the attic until police officers came into his bedroom and told him to come out. The police asked him to come outside and look in the van. He identified his 42-inch Sony flat screen television in the back of the van. He heard a communication over an officer's radio that a laptop and satchel had been located in the woods behind his house. The police asked him if he had a laptop. When he said yes, they escorted him back inside and asked him to point to where it was. Mack noted that his laptop had been on his bedroom desk when he went into the attic. He also noted that a satchel near the window of his bedroom containing an ipod, headphones, DVDs, a flash drive, and other items was missing.

Dedrick Eckwood testified that he had worked at Caterpillar on September 25, 2008, until 11:00 p.m. and was sitting on his front porch drinking a beer when defendant walked up at approximately 12:30 a.m. Defendant asked to use the telephone. After defendant completed his call, he asked Eckwood to take a ride with him. Eckwood agreed, as long as they stopped at the

liquor store before it closed. Defendant and Eckwood walked down the block to defendant's brother's van. Defendant had the keys and got in the driver's seat. Eckwood got into the back seat behind defendant; Mario Brownlow was already in the car asleep in the front passenger seat. Eckwood testified that he had drunk two 24-ounce beers on his porch.

Defendant told Eckwood that they were going to meet some girls at a house and then go to the liquor store. After a five to ten minute drive, defendant pulled into the driveway of a house and got out. Defendant knocked on the front door. After nobody answered, defendant walked around the house. Eckwood just waited in the van. While waiting, Eckwood fell asleep. Approximately ten to fifteen minutes later he was awakened when he heard the back door of the van shut. He did not see defendant bring anything to the van. Defendant asked Eckwood to get in the front seat to drive. Defendant then went back around the side of the house again. Right after Eckwood got into the driver's seat, the police arrived and took Eckwood out of the van. The police told him he was being "charged for burglary and a gun." Eckwood, however, was never charged.

Eckwood testified that he never saw a television and did not go into the house to remove anything. When defendant pulled into Mack's driveway, Eckwood had no idea defendant was going to burglarize the property. Eckwood never saw Mario wake up. Eckwood acknowledged on direct examination that he had a prior burglary conviction. He also acknowledged on cross examination that he had an unlawful delivery of a controlled substance conviction.

Peoria county deputies John Huston and Andrew Kinney responded to the dispatch. Huston approached the driver's side of the van and ordered Eckwood out of the driver's seat. Huston proceeded to order Eckwood to the ground and arrest him. Huston then went to the

passenger side to assist Kinney in removing Brownlow who had not responded to Kinney's commands.

While Huston and Kinney were applying handcuffs to Brownlow, they were advised by dispatch that the homeowner was still on the line and was saying there was a person still in the house. At that point, deputy Middlemas arrived and he watched the two handcuffed men on the driveway while Huston and Kinney went to the front door. They found that door locked so they went around the east side of the house to the back. Middlemas testified that as Huston and Kinney turned the corner along the side, Middlemas heard a back door slam. He stayed with the two suspects, but alerted Huston and Kinney that he had heard a door slam at the rear of the residence.

Kinney testified that as they got to the back of the house he heard a rustling in the woods directly behind the house. He went to the edge of the woods, 30 to 40 feet from the house, but did not see anything. Huston and Kinney, finding the back door unlocked, went in to check on the homeowner. They found no other suspects in the home and they went upstairs and told Mack to come out of the attic. When a fourth officer arrived on the scene to watch the two suspects, Middlemas went around back to the woods, but did not see anyone. When a canine unit arrived, he went into the woods to search. The canine found a satchel and laptop.

When performing an inventory search of the contents in the van, Kinney found a Smith and Wesson semi-automatic pistol wrapped in a T-shirt on the floor near the back seat of the van. No usable fingerprints were found on the television or the satchel. Defendant's fingerprint was, however, found on the magazine of the pistol discovered inside the van.

Defendant's brother testified that he owned the van and had not given defendant keys or

permission to use the van. Defendant did not testify. The parties stipulated into evidence a certified copy of defendant's conviction for unlawful possession with intent to deliver a controlled substance.

During the State's initial closing argument, the prosecutor stated:

> "I know you probably say, well, why would you bring us Mr. Eckwood as your witness, as your big time witness ***?. He who is caught there? He who has those felony convictions? I would simply say to you how else are the secret designs of the wicked to be proven but by their wicked companions to whom they have disclosed them."

The jury found defendant guilty of residential burglary, unlawful possession of a weapon by a felon, and unlawful possession of firearm ammunition by a felon. The matter proceeded to sentencing.

Following arguments in aggravation and mitigation, defendant elected to make a statement to the court in which he expressed regret for what happened to Mack and that he took responsibility for his part. The trial court then asked defendant what his role was in the offense. Defendant explained that he and Eckwood were walking down a street when they found the pistol, but defendant let Eckwood keep the pistol because he knew he could not be around them. The court inquired about the residential burglary and defendant replied that he was "under the influence" that night, and that he gave Eckwood and Brownlow the van, but did not know where they went or what they did after that. Defendant explained that he stayed and waited for them to come back but they never did come back. Defendant confirmed for the court that he did not go

with them that night. The court then asked the State to explain the circumstances of defendant's arrest. The State responded that defendant was arrested "after the fact." Specifically, defendant was arrested after the police spoke to Eckwood and Brownlow.

The trial court sentenced defendant to 14 years' imprisonment for the residential burglary conviction and concurrent terms of 7 years' imprisonment for each of the convictions for unlawful possession of a firearm and firearm ammunition by a felon. In addition, the trial court assessed $1,319 in various costs, including "DNA fees and testing pursuant to statute." The trial court denied defendant's subsequent motion for a new trial and motion to reconsider sentence. This appeal followed.

ANALYSIS

A. *Supreme Court Rule 431(b)*

Initially, defendant next argues that the trial court erred by failing to comply with the mandates of Supreme Court Rule 431(b) (Rule 431(b)). "We review *de novo* the interpretation of a supreme court rule." *People v. Holmes*, 235 Ill. 2d 59, 66, (2009).

Rule 431(b), as amended, provides:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's

failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Official Reports Advance Sheet No. 8 (April 11, 2007), R. 431(b), eff. May 1, 2007.

In the interest of clarity, we note that defendant does not contend that the trial court failed to admonish the jurors regarding the four principles contained in Rule 431(b). Instead, defendant contends the court violated Rule 431(b) "because it misled each prospective juror by stating that the only 'principle' it had to agree to (or not have a 'problem with') was that relating to the presumption of defendant's innocence." Defendant also contends that the "trial court also failed to provide the prospective jurors with an opportunity to respond to all of the principles." Upon review, we find the trial court complied with the supreme court's construction of Rule 431(b) when it asked each prospective juror whether the juror "believed in the principle of law that [it had previously] stated."

We begin our analysis by pointing out that defendant failed to preserve his 431(b) contention for review. See *People v. McGee*, 238 Ill. App. 3d 864, 876 (1992) (holding to preserve a trial error for appellate review a defendant must both object at trial and raise the issue in his written post-trial motion). Recently, the supreme court held that a trial court's failure to comply with Rule 431(b) is not a structural error requiring automatic reversal. *People v. Thompson*, No. 109033, 2010 Ill. LEXIS 1536, *10-11 (October 21, 2010). Because there is no structural error for Rule 431(b) violations, we may only grant relief on defendant's forfeited

contention if there was plain error. *Thompson*, 2010 Ill. LEXIS 1536 at *17.

"Under the plain-error doctrine, a reviewing court may consider an unpreserved and otherwise forfeited error when (1) 'the evidence in the case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right, and thus a fair trial.' " *People v. Willhite*, 399 Ill. App. 3d 1191, 1194 (2010), quoting *People v. McLaurin*, 235 Ill. 2d 478, 489, (2009). However, before we consider application of the plain-error doctrine to the instant case, we must determine whether the trial court erred in its application of Rule 431(b). *Willhite*, 399 Ill. App. 3d at 1194.

The record reveals that the trial court satisfied the requirements of Rule 431(b). After the venire panel was assembled in the courtroom, the trial court informed the venire that it was going to address "some basic principles of law that apply to all criminal cases." The trial court proceeded to admonish the venire as a group on all four fundamental principles set forth in Rule 431(b). The trial court then questioned selected members of the venire individually. While the court did not ask the selected jurors about each of the fundamental principles it referred to earlier, it did ask each prospective juror individually whether they had "any problem with the principle of law that I stated to you." The court also asked each prospective juror whether they would convict if the State met its burden of proof and acquit if the State did not. Each party was then afforded the opportunity to question the prospective jurors.

While defendant stresses the fact that the trial court, when individually questioning the jurors' understanding, used the singular noun "principle," as opposed to the plural noun "principles," we find that when read in the context of the entire *voir dire* record, it is clear that

the court was referencing all four principles as a whole. Defendant's emphasis upon the use of the singular noun "principle" at one point in the record mischaracterizes the true nature of the *voir dire* proceedings. Moreover, we reject defendant's contention that the trial court "failed to provide the prospective jurors with an opportunity to respond to all of the principles." In doing so, we rely upon the holding in *People v. Calabrese*, 398 Ill. App. 3d 98 (2010).

The defendant in *Calabrese* argued that the trial court failed to strictly comply with Rule 431(b) because it did not individually question the prospective jurors whether they understood and accepted each of the four principles outlined in Rule 431(b). In rejecting defendant's claim, the court stated:

> "We *** agree that the trial court adhered to Rule 431(b)'s requirement that each juror be asked, individually or in a group, whether that juror understood and accepted *** [Rule 431's] principles, and each juror was given an opportunity to respond to specific questions concerning the principles. [Citation.] Here, the trial court asked each juror whether he or she accepted the principles that the court had described, and each juror had the opportunity to ask questions or state that he or she did not understand or accept the principles. Each juror, however, responded that he or she did understand and accept the principles.
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> Defendant argues that the trial court's method of inquiry did not provide the jurors an opportunity to respond to specific questions concerning the *** principles. He argues that the trial

> court's method of inquiry was 'so minimal that it is doubtful that the jurors even remembered what the judge was referring to when he asked if they accepted the legal principles that the judge mentioned earlier in the day.' Defendant essentially argues that the trial court was required to ask four separate questions to each juror as to whether he or she agreed with each stated principle. We disagree. The jurors were admonished as to all four *** principles and each juror was individually asked whether he or she accepted all four *** principles. Each juror, thus, had an opportunity to state that he or she did not understand what the trial court was asking or that he or she did not agree with or accept any of the principles. Further, each juror had the opportunity to ask questions at that time." *Calabrese*, 398 Ill. App. 3d at 121.

We find the trial court complied with Rule 431(b).

B. *Effective Assistance*

Defendant next argues he was denied the effective assistance of trial counsel because his trial attorney failed to request an accomplice witness instruction. Alternatively, defendant alleges that he was denied the effective assistance of counsel because his trial attorney failed to stipulate solely to defendant's felon status, as opposed to the precise name and nature of the prior conviction. Because defendant was not entitled to an accomplice witness instruction, we cannot say defense counsel's performance was deficient for failing to request an accomplice witness instruction. Moreover, because the nature of defendant's prior felony, unlawful possession with

intent to deliver a controlled substance, was dissimilar in nature from the charged offenses, defendant has failed to establish prejudice resulting from counsel's failure to stipulate solely to defendant's felon status.

Claims of ineffective assistance of counsel are governed by the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To establish a claim of ineffective assistance of counsel, a defendant first must establish that his counsel's performance was so deficient that his representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688. Once a defendant establishes that his counsel's performance fell below an objective standard of reasonableness, he also must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. The failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance claim. *People v. Colon*, 225 Ill. 2d 125, 135 (2007).

"The test for determining whether a witness is an accomplice for purposes of the accomplice witness instruction is whether there is probable cause to believe that the witness was guilty of the offense at issue as a principal or as an accessory under a theory of accountability." *People v. Kirchner*, 194 Ill. 2d 502, 541 (2000).

> "Thus, an accomplice-witness instruction should be given to a jury if the totality of the evidence and the reasonable inferences that can be drawn from the evidence establish probable cause to believe not merely that the person was present and failed to disapprove of the crime, but that he participated in the planning or commission of the crime; if probable cause is established the

> instruction should be given despite the witness' protestations that he did not so participate." *People v. Henderson*, 142 Ill. 2d 258, 315 (1990).

Here, the record reveals that Eckwood acquiesced to defendant's request to take a ride with him on the condition that defendant would take him to a liquor store before it closed. Defendant drove five to ten minutes, telling Eckwood they were going to meet some girls at a house before going to the liquor store. When they got to the house, Eckwood remained in the van while defendant found the front door locked and then went around to the side of the house. Eckwood testified that he never got out of the van, never went into the house, and never removed anything from the house. He testified that he fell asleep and was awakened when he heard the back or hatch door of the van closing. He never saw defendant put anything into the van. Defendant asked Eckwood to get into the driver's seat, which Eckwood did, as defendant went back around the house. Immediately thereafter, the police arrived on the scene and removed Eckwood from the van. Eckwood testified that he had no idea defendant was going to burglarize the property.

In light of the above facts, we find defendant was not entitled to an accomplice witness instruction. Although Eckwood was at the scene of the burglary and in the van where the pistol and ammunition were found, defendant's entitlement to an accomplice witness instruction was dependent on a showing of probable cause that Eckwood aided or abetted defendant in planning or committing the burglary or possessing the pistol or ammunition. There was no such evidence.

While defendant calls our attention to the prosecutor's description of Eckwood as defendant's "wicked companion" during closing argument, we note that statements made during

closing arguments do not constitute evidence. *People v. Marci*, 185 Ill. 2d 1, 52 (1998). Moreover, the fact that the State initially threatened Eckwood with charges, but ultimately decided not to charge him has no bearing on the question of whether defendant was entitled to an accomplice witness instruction. Instead, this fact goes to Eckwood's credibility. Therefore, because defendant was not entitled to an accomplice witness instruction, we cannot say defense counsel's performance was deficient for failing to request an accomplice witness instruction.

Moving on to defendant's alternative argument, the State concedes that defense counsel's failure to stipulate solely to defendant's felon status, as opposed to the precise name and nature of the prior conviction, constitutes deficient performance.[1] Thus, the only remaining issue is whether defendant suffered prejudice sufficient to undermine confidence in the outcome of his trial.

Defendant suffered no prejudice requiring reversal in this case. His prior conviction was for unlawful possession with intent to deliver a controlled substance. In this case, defendant was charged with residential burglary, unlawful possession of a weapon by a felon, and unlawful possession of firearm ammunition by a felon. The crimes are dissimilar in nature. Little danger exists that the jury convicted defendant of these crimes based upon an improper propensity inference. See *People v. Meyer*, 402 Ill. App. 3d 1089, 1095 (2010). Therefore, defendant has failed to show that counsel's failure to stipulate solely to defendant's felon status resulted in prejudice sufficient to require reversal of his convictions. See *Meyer*, 402 Ill. App. 3d at 1095.

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[1] The State in its brief states: "While the People agree that that would have been the better practice [citation], the defendant in the instant case was not prejudiced by the admission of the nature of the prior conviction."

C. *Sufficiency of the Evidence*

Defendant next argues that the evidence was insufficient to prove his guilt beyond a reasonable doubt. We conclude that, viewed in the light most favorable to the State, the evidence was sufficient to sustain defendant's convictions for residential burglary, unlawful possession of a weapon by a felon, and unlawful possession of firearm ammunition by a felon.

When a defendant challenges the sufficiency of the evidence supporting his or her conviction, the inquiry 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. Collins*, 214 Ill. 2d 206, 217 (2005). It is the function of the trier of fact to weigh and resolve conflicts in the evidence and draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). We will not overturn a defendant's conviction as based on insufficient evidence unless the proof is so improbable, illogical, or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *Williams*, 193 Ill. 2d at 338.

Defendant acknowledges this standard, but contends that the evidence was insufficient because there was no evidence connecting defendant to the offenses and Eckwood lacked credibility. We believe the following factors, when viewed in the light most favorable to the State, support defendant's conviction for residential burglary.

First, while the police had Eckwood and Brownlow in custody, Mack reported to the dispatcher that he still heard someone inside the house. Middlemas then heard the back door slam and when Kinney got around to the back of the house he heard a rustling in the woods. Thus, the evidence clearly showed that there was a third individual who was in the house when

police arrived Second, Eckwood testified that the individual in the house when police arrived was defendant. While defendant requests that we reevaluate Eckwood's credibility, we refuse to do so. "Questions of credibility are to be resolved by the trier of fact." *People v. Koloraleis*, 132 Ill. 2d 235, 264 (1989). Third, Mack's satchel and laptop were subsequently found in the woods. Fourth, Mack's 42-inch Sony flat screen television was found in the back of the van. Fifth, the van was owned by defendant's brother. Sixth, defendant's finger print was found on the magazine of the pistol discovered inside the van.

We now turn to the question of whether the evidence, when viewed in the light most favorable to the State, supports defendant's convictions for unlawful possession of a weapon by a felon and unlawful possession of firearm ammunition by a felon. To sustain these convictions, the State needed to prove: (1) that defendant knowingly possessed a weapon and ammunition, and (2) that defendant had been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2008). The parties stipulated to defendant's prior felony conviction, so all that remained at issue was whether defendant knowingly possessed a weapon and ammunition.

At the outset, we note that possession is a question of fact to be resolved by the jury. *People v. Hester*, 271 Ill. App. 3d 954, 961 (1995). Criminal possession may be actual or constructive. *People v. Nesbit*, 398 Ill. App. 3d 200, 209 (2010). Where the possession is constructive, the State must prove that "defendant (1) had knowledge of the presence of the weapon, and (2) had immediate and exclusive control over the area where the weapon was found." *People v. Ingram*, 389 Ill. App. 3d 897, 899-900, (2009), citing *People v. Hampton*, 358 Ill. App. 3d 1029, 1031 (2005).

The record reveals that defendant was driving the van in which the pistol was found.

While we acknowledge that the pistol was found wrapped in a T-shirt in the back of defendant's brother's van, we note significantly that defendant's finger print was found on the magazine of the pistol.[2] Thus, the jury could reasonably infer that defendant knowingly possessed both the ammunition and the pistol.

Moreover, the fact that Eckwood and Brownlow also had access to the pistol and ammunition does not defeat a finding that defendant possessed the pistol and ammunition.

> "In reviewing a conviction for possession of a controlled substance, the dispositive issue is not whether a defendant had control over the place where the drugs were found, but whether the defendant had possession of the drugs themselves. Proof that a defendant had control over the premises where the drugs were located can help resolve this issue because it gives rise to an inference of knowledge and possession of the drugs [citation], but it is not a prerequisite for conviction. Indeed, not only does a defendant not need to control the premises, he does not even need to have actual, personal, present dominion over the drugs themselves. [Citation.] Constructive possession may exist even where an individual is no longer in physical control of the drugs, provided that he once had physical control of the drugs with intent

[2] Because defendant's finger print was found on the magazine, this case is distinguishable from defendant's cited case (*People v. Hampton*, 358 Ill. App. 3d 1029 (2005)), where the weapon was void of any fingerprints.

> to exercise control in his own behalf, and he has not abandoned them and no other person has obtained possession." [Citation.][3]
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> *People v. Adams*, 161 Ill. 2d 333, 344-45 (1994).

Again, we will not reweigh the evidence or make credibility determinations. We hold that there was sufficient evidence for all of the jury's conclusions and that, based upon this evidence, they were not so improbable, illogical, or unsatisfactory that a reasonable doubt exists as to the defendant's guilt.

D. *DNA Analysis Fee*

Finally, defendant argues that the trial court improperly ordered him to pay the $200 DNA analysis fee under section 5-4-3 of the Unified Code of Corrections (Unified Code). The issue raised by defendant involves the interpretation of a statute, which is a question of law that we review *de novo*. *People v. Donoho*, 204 Ill. 2d 159, 172, (2003).

Section 5-4-3 of the Unified Code mandates that any person discharged from mandatory supervised release after August 22, 2002, submit a DNA sample prior to his or her final discharge of release. 730 ILCS 5/5-4-3 (West 2008). Defendant contends that he can only be compelled to submit one DNA sample for the purpose of the database maintained by the Illinois State Police. The record reflects that defendant is already registered in the DNA database. Therefore, defendant asserts, the trial court was without authority to order him to pay the $200 fee associated with the DNA processing. Because the supreme court recently held that section

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[3] While we acknowledge that *Adams* involved drugs and not a weapon, we find this fact to be inconsequential as the court's legal reasoning is relevant and applicable to the general issue of possession.

5-4-3 authorizes a trial court to order the taking a qualifying offender's DNA, and the payment of the analysis fee, only where that defendant was not currently registered in the DNA database, we find the trial court erred in ordering defendant to pay the $200 DNA analysis fee.

On February 23, 2011, we entered an order staying defendant's appeal pending the supreme court's decision in *People v. Marshall*, 402 Ill. App. 3d 1080 (2010). On May, 19, 2011, the supreme court issued its decision (*People v. Marshall*, No. 110765, 2011 Ill. LEXIS 780 (May 19, 2011).

In *Marshall*, the defendant's DNA was already on file. The sole issue raised on appeal by defendant was whether the trial court properly ordered the defendant to pay the $200 DNA analysis fee under section 5-4-3. The *Marshall* panel found that defendant had forfeited that issue and that the trial court's order was not void because the order was authorized under section 5-4-3. *Marshall*, 402 Ill. App. 3d at 1083. In reversing that decision, however, the supreme court held that section 5-4-3 authorized a trial court to order the taking, analysis, and indexing of a qualifying offender's DNA, and the payment of the analysis fee, only where that defendant was not currently registered in the DNA database. *People v. Marshall*, No. 110765, 2011 Ill. LEXIS 780, at * 26-27 (May 19, 2011). It then found that since the defendant's DNA was already in the DNA database, the purpose of section 5-4-3 would not be served by ordering him to give a new sample and pay a fee for doing so. *People v. Marshall*, No. 110765, 2011 Ill. LEXIS 780, at * 26-27 (May 19, 2011).

We therefore reverse the trial court's judgment, and vacate that portion of the trial court's order requiring defendant to submit an additional DNA sample and requiring him to pay the $200 DNA analysis fee. We affirm defendant's conviction in all other respects.

Affirmed in part and vacated in part.