

was found; (2) the trial court abused its discretion by refusing to exclude the deoxyribose nucleic acid (DNA) evidence because its probative value was substantially outweighed by its tendency to confuse, mislead, or unfairly prejudice the jury; (3) the State failed to prove him guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon where the evidence was "equivocal and rife with inconsistencies"; and (4) the trial court abused its discretion by denying the defendant's motions for a new trial where new evidence provided "strong proof of [the] defendant's actual innocence." For the following reasons, we affirm.

¶ 3 On October 1, 2009, the State charged the defendant with unlawful possession of a weapon (a .38-caliber handgun) by a felon. During the April 2010 jury trial, Anthony Williams, a police officer for the City of Carbondale, testified as follows. In late September 2009, Williams was involved in an investigation of a report of a vehicle burglary where a cell phone, credit cards, and a purse were stolen from the vehicle. After tracing the numbers of the stolen credit cards, the investigating officers learned the credit cards had been recently used at several businesses in Carbondale. The officers obtained surveillance videos from two of the businesses, and Williams reviewed these videos and observed an individual using one of the stolen credit cards.

¶ 4 Thereafter on October 1, 2009, Williams was driving an unmarked police vehicle in the 300 block of East Elm Street and noticed a man (later identified as the defendant) sitting on the porch of an apartment building located at 311 East Elm Street. According to Williams, the defendant was wearing a black coat, a black T-shirt, dark pants, and a black baseball cap with white stenciled letters on the right side. Williams observed that the defendant's clothing, specifically the baseball cap, was similar to what the person from the surveillance videos had been wearing. Williams decided to approach the man and determine his identity. As Williams was parking his vehicle on the north side of the apartment building, he observed the defendant watching him "pretty hard." He further observed the defendant

slowly stand up and walk toward the south end of the building. Before following the defendant, Williams requested dispatch send additional officers to his location.

¶ 5 Assuming the defendant's destination was the back of the apartment building, Williams walked around the opposite side of the building to meet him. Williams was not wearing his police uniform, but he carried his police radio, badge, gun, and handcuffs. As he turned the corner of the building, he noticed the defendant on the east side of the building. According to Williams, the defendant was "bent down and *** looked like he was putting something on the ground or manipulating something on the ground." Williams observed that the defendant was looking in his direction. However, he was unable to see what the defendant was manipulating on the ground because his line of sight was obstructed by gas meters located near the apartment building.

¶ 6 As Williams approached, the defendant stood up and Williams asked him to stop. Williams asked the defendant what he put on the ground, and the defendant said, "Nothing." Williams noticed the defendant acted "extremely nervous" and was physically shaking. When Williams conducted a pat-down search of the defendant's person, he could feel the defendant's whole body trembling. The defendant was placed in handcuffs after additional officers arrived on the scene. After the arriving officers took custody of the defendant, Williams searched the area behind the gas meters and found a brown paper bag containing a .38 Smith & Wesson revolver with five bullets in the cylinder. He also noticed small pieces of trash, cigarette butts, a piece of carpet, and a chair located near the area where the paper bag was found.

¶ 7 Williams arrested the defendant because it appeared obvious he had put the firearm on the ground, and the defendant was not allowed to legally possess a firearm because he had previously been convicted of a felony. After the defendant was taken to the Carbondale police department, Williams spoke with Shonvonda Jones, a resident of the apartment

building. Williams asked Jones whether she possessed any knowledge regarding the firearm, and she denied having any knowledge of the gun.

¶ 8 After Williams finished taking photographs and searching the area, he went to the police department to meet with the defendant. Detective Baril and Sergeant Stan Reno were also present at the meeting with the defendant. When the defendant was asked about the gun, he claimed it was not his gun, he had never possessed a gun, and he had not put anything on the ground. During the interview, the officers discovered the defendant had an alibi for the date the automobile burglary occurred and cleared him from any participation in that crime. Thereafter, Sergeant Reno exited the room. He later returned to inform the defendant that DNA evidence was found on the gun, and it matched the defendant's DNA. According to Williams, the defendant's response was "[w]ell, let's get on with the processing" or "[j]ust take me to jail."

¶ 9 On cross-examination, Williams testified he was approximately 75 to 80 feet from the defendant when he parked his vehicle. Additionally, he was approximately 30 to 35 feet from the defendant when he noticed him bending over. Williams admitted he testified during a hearing previously held in this case that the defendant was wearing a white coat. He also admitted he never observed anything in the defendant's hands during the entire encounter. He testified one reason he requested assistance was because the area was known as a source of criminal activity. He also testified that Sergeant Reno falsely told the defendant that his DNA matched the DNA found on the firearm. After seizing the firearm, Williams did not attempt to trace the firearm to another owner, and he was not aware of anyone else attempting to locate another owner for the firearm. Williams did not have any personal knowledge as to who was the registered owner of the firearm.

¶ 10 Stacie Speith, a forensic scientist with the Illinois State Police crime laboratory, testified that she developed DNA profiles from the DNA sample removed from the firearm

and from the buccal swabs taken from the defendant. Under normal circumstances, she would test 13 locations on the DNA molecule. However, the DNA sample from the firearm did not contain enough DNA to obtain a full profile, and she decided to instead test nine locations. After reviewing the sample taken from the firearm, Speith noted the DNA profile appeared to be a mixture of at least three individuals. She concluded approximately one in three (33%) African-American unrelated individuals, one in four (25%) unrelated white individuals, and one in three (33%) unrelated Hispanic individuals could be the contributing source of the DNA profile found on the firearm. She was unable to exclude the defendant as a source of the DNA.

¶ 11 Additionally, Speith determined a Y-STR analysis of the DNA mixture found on the firearm was necessary to isolate the Y chromosome. She explained the Y chromosome was only present in males, and consequently, the Y-STR results tended to be "much smaller than the trillion and quadrillion numbers" that result from the traditional DNA testing. She further explained the Y-STR analysis was helpful when a conclusive donor could not be determined or in cases of sexual assault where the sample contains a mixture of female and male DNA.

¶ 12 Speith testified she was unable to detect a DNA profile from four locations on the DNA molecule because either she needed more DNA in the sample or the sample was degraded due to environmental factors or age. She also detected three types of DNA at another location, which indicated the presence of three males. Based on the results of the Y-STR analysis, Speith concluded that the defendant could not be excluded as being the source of the DNA mixture found on the firearm. She further concluded the DNA profile found on the firearm would occur in approximately 1 in 100 (1%) African-American males, 1 in 33 (3%) white males, and 1 in 100 (1%) unrelated Hispanic males.

¶ 13 On cross-examination, Speith testified that DNA on the firearm could be detected for "many, many years" if it was stored in an air-conditioned room. However, exposure to heat

and humidity could contribute to the deterioration of the DNA on the firearm. She further testified that the firearm was delivered to the crime laboratory on January 25, 2010, and was returned to the police department on February 10, 2010, to be stored in the evidence vault.

¶ 14 After the State rested its case, the defendant testified as follows. The defendant testified he was friends with Shonvonda Jones and her husband. He went to Jones's apartment on October 1, 2009, to bring her two packs of Newport cigarettes to make amends for previously eating her potato chips. When he arrived, he knocked on the door and heard someone say "hold on" or "getting dressed." He then sat on the porch to wait for someone to answer the door. As he waited on the porch, he listened to his iPod through one earphone. He also smoked a cigarette because smoking was not allowed in the house.

¶ 15 He subsequently heard someone say, "Go around, come to the back." Following the instruction, he walked around to the back of the apartment building. The defendant testified he did not notice Williams's vehicle in the alley because the road had a lot of traffic. He also did not recall observing anyone with a gun, handcuffs, and a badge because it was "too far away." He denied trying to escape Williams by walking around to the back of the apartment. Before going to the door, he stopped to put his cigarette out because smoking was not allowed in the house. He put the cigarette out near the vicinity of the plastic chair located in the same area where the plastic bag containing the firearm was found. He went to the back door, but no one answered that door. He then attempted to walk to the front of the apartment.

¶ 16 The defendant testified he did not have a paper bag or a handgun in his possession during the entire incident. As he walked toward the front of the apartment, Williams approached him and informed him that a warrant had been issued for his arrest. He then requested the defendant's identification. He told the defendant to put his hands on his head and conducted a pat-down search. Williams asked the defendant what he put on the ground, and the defendant denied putting anything on the ground. Williams then placed the

defendant in handcuffs, and he was taken to a police car by other officers at the scene. The defendant testified he was nervous when Williams performed the pat-down search, but he was not shaking violently.

¶ 17 The defendant further testified the officers failed to inform him that he was being charged with felony possession of a handgun until he was at the police station and the officers had cleared him of any involvement in the automobile burglary. At some point during the questioning, Sergeant Reno informed him that they had tested the DNA on the handgun and it matched his DNA. However, he did not believe Sergeant Reno because he knew DNA testing could not be performed that quickly.

¶ 18 On cross-examination, the defendant testified he had two packs of cigarettes when the officers took him into custody; however, one pack only had two cigarettes remaining at the time of the trial. He also admitted seeing Williams pull into the alley but denied recognizing that Williams was driving a police-type vehicle. He testified he started smoking a cigarette as he was walking around to the back of the apartment building, but he did not plan on smoking the entire cigarette. According to the defendant, when Sergeant Reno informed him that his DNA matched the DNA found on the gun, he told Sergeant Reno to stop playing and requested his attorney.

¶ 19 During closing arguments, the defense argued the photographs taken by Williams indicated that the gas meters were not blocking his view of the paper bag on the ground. According to the defense, this indicated that either Williams was not telling the truth or the defendant was putting something other than a paper bag on the ground. The defense also noted that Williams had physical contact with the defendant before touching the firearm, and the defendant testified he was sweating because it was a fairly warm day. Therefore, the defense concluded the defendant's DNA could have been transferred from Williams to the firearm. Further, the defense argued the DNA evidence was "rife with problems," pointing

out that the evidence might be contaminated, the statistical numbers generated by the DNA testing were not typical, the potential that the defendant's DNA was transferred to the firearm by Williams, and the inability to test all of the Y-STR markers due to degradation caused by environment or age.

¶ 20 At the conclusion of the trial, the jury found the defendant guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt. On June 25, 2010, the defendant filed a motion to vacate judgment and for new trial, arguing that new evidence was discovered that undermined and refuted Speith's testimony and the DNA evidence. Specifically, the defendant presented an affidavit of Shanedra Cole, which indicated she witnessed a conversation where Speith admitted it was difficult to obtain male DNA from the firearm due to the presence of female DNA and the first test on the handgun showed a significant amount of female DNA was present on the firearm. The defendant was unable to present this evidence at trial because it was not until after the trial that Cole brought the conversation to counsel's attention.

¶ 21 The defendant also indicated that David Lightfoot, a professor for genetics, biotechnology, and genomics at Southern Illinois University (SIU), reviewed the DNA reports and Speith's findings and concluded that the defendant never touched the handgun. According to the defendant, he was unable to present this evidence at trial because it was not until after trial that the defendant learned Lightfoot was willing to examine the DNA evidence and provide testimony *pro bono*.

¶ 22 On August 6, 2010, the defendant filed a supplemental motion to vacate judgment and for new trial, informing the court that DeWayne E. Jones, Shonvonda Jones's husband, had been arrested and charged with aggravated unlawful use of a weapon on June 30, 2010, an offense that involved the same type of weapon found in this case, a .38-caliber Smith & Wesson. The defendant argued that had this evidence been available at trial, the jury could

have reasonably concluded that Jones was more than likely the owner or possessor of the firearm found in the paper bag.

¶ 23 On September 8, 2010, the trial court held a hearing on the defendant's motions to vacate judgment and for new trial. At the hearing, the following testimony was presented. Lightfoot testified that the majority of his experience was in the area of plant biology and plant genetics, but he was qualified to provide an informed opinion regarding forensic human DNA evidence due to his experience in running the genomics facility at SIU. In his last 10 years of running the genomics facility, studies have been conducted on humans, aggression in kids with developmental disabilities, aggression in the general population, and human obesity. He first learned of the defendant's case when the defendant's mother, Miriam Van Zant, described to him the DNA evidence that was used to convict the defendant. Lightfoot was Van Zant's Ph.D. supervisor.

¶ 24 According to Lightfoot, the DNA evidence "sounded very fishy," and he agreed to review the reports and give his own opinion of the evidence. His opinions of the DNA evidence contradicted Speith's conclusions and was set forth in his affidavit filed in the trial court. According to the affidavit, Lightfoot concluded that the evidence indicated the defendant did not handle the weapon in question due to certain alleles in the defendant's DNA not being present on the firearm. He determined that the majority of the DNA found on the firearm was female in origin, which suggested an elevated risk of false priming and contamination. He concluded further that if the defendant's DNA was on the firearm, it was a "very small minority of the DNA on the gun, which further suggest[ed] contamination may have occurred." He also noted that DNA testing of this nature normally yielded a result in which the probability of a match was more certain and that a typical result would be that one in several billion people would match the DNA profile of the individual in question.

¶ 25 On cross-examination, Lightfoot admitted he never performed any tests on the firearm

itself, he did not develop a DNA profile from the defendant's DNA and the DNA found on the firearm, and he did not discuss the DNA evidence with Speith prior to reaching his own conclusions. He also admitted that in his employment as a professor at SIU, he had never developed a DNA profile of a human being for forensic purposes.

¶ 26 Speith testified that she had a conversation with John Wisely, Jackson County court security, following her testimony in this case. During the conversation, she admitted that she may have informed Wisely that the first test on the DNA sample taken from the handgun indicated the presence of a significant amount of female DNA. She stated that the predominant component of the DNA mixture found on the firearm was female, and she conducted the Y-STR analysis to isolate the male DNA.

¶ 27 On October 26, 2010, the trial court denied the defendant's motion to vacate judgment and for a new trial and supplemental motion to vacate judgment and for a new trial. On December 17, 2010, the trial court sentenced the defendant to five years' imprisonment to be followed by a one-year period of mandatory supervised release. The trial court gave the defendant credit for 442 days previously served. The defendant appeals.

¶ 28 First, the defendant argues the trial court abused its discretion when it barred evidence pertaining to other handgun incidents in the immediate vicinity of 311 East Elm Street, which were close in time to the recovery of the handgun at issue in this case. Further, the defendant argues the erroneous exclusion of this evidence was prejudicial because the State's case "was built upon inferences based on purely circumstantial evidence and some far-from-dispositive DNA evidence." We disagree.

¶ 29 Prior to the jury trial, the defendant issued a subpoena *duces tecum* directed to Lieutenant Stan Reno of the City of Carbondale police department commanding him to appear at the jury trial being held in this case and to bring the following documents:

"Any and all records of reports of incidents involving presence or discharge

of firearms by persons other than police officers occurring within a 1/4 mile radius of the 300 block of East Elm Street, Carbondale, Illinois, during the twelve-month period immediately prior to October 1, 2009, *including but not limited to* any incidents involving:

Victim a/k/a 'Poochy'

Durrell Berry (sp.)

David Spencer[.]"

¶ 30 In response, the State filed a motion to quash subpoena *duces tecum* or, in the alternative, motion *in limine*, arguing the subpoena "[was] both vague and overbroad and [would] not lead to any relevant evidence." Specifically, the State argued the subpoena was vague because it referred to an individual as "Victim a/k/a 'Poochy' " and no other identifiers were provided. The State argued the subpoena was overbroad because it requested any and all records of incidents involving the presence or discharge of firearms within a quarter-mile radius of a city block during a one-year period. Additionally, the State argued the material was irrelevant to the issues in this case because any evidence that a person possessed a firearm within one quarter mile of 300 East Elm Street during that one-year period did not indicate that it was the same firearm found by Williams. Instead, the defendant's argument was based on pure speculation and conjecture, and the requested evidence was therefore inadmissible.

¶ 31 On April 12, 2010, the trial court granted the State's motion to quash the subpoena *duces tecum* and stated as follows:

"Well, the problem is this evidence is not relevant to the charge before this jury. Say he's charged with possession of crack cocaine. So he's arrested in an area that sells crack cocaine. It has nothing to do with [the defendant's] guilt or innocence. Could have been arrested in a gun shop full of guns available, but they have to prove he was

in possession of this weapon."

¶ 32 At the jury trial, the defendant made an offer of proof outside the presence of the jury with regard to this evidence. Specifically, the defendant elicited testimony from Williams that the area surrounding 311 East Elm Street had been the site of a number of recent shootings, which included one shooting that occurred approximately one block from the apartment building and less than one month before the defendant was charged in this case. Williams further testified that all of the firearms involved in the shooting were not recovered during the investigation.

¶ 33 The determination of whether to admit evidence as relevant is within the sound discretion of the trial court, and a reviewing court will not reverse that decision on appeal unless an abuse of discretion occurred. *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993). An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the position adopted by the trial court. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). Relevant evidence means any evidence that has a tendency to make the existence of a fact that is of consequence in the proceedings either more or less probable than it would be without the evidence. *Id.* at 455-56. A trial court may reject evidence on relevancy grounds if that evidence is remote, uncertain, or speculative. *Id.* at 456.

¶ 34 In the present case, the defendant sought to introduce evidence that the neighborhood surrounding 311 East Elm Street had been the site of a number of recent shootings, including a shooting that occurred less than one month prior to Williams finding the handgun at issue in this case. According to the defendant, this evidence is relevant because it makes it more likely that someone else had used a gun recently in that neighborhood, had cause to get rid of it quickly, and had placed the bag with the gun on the ground. However, in his offer of proof, the defendant did not present any evidence indicating that any weapon used in the

prior shootings was abandoned or hidden at 311 East Elm Street. The defendant also failed to show any link between the firearms used in the prior shootings and the handgun involved in this case. Instead, the defendant relies on mere speculation to conclude that the handgun found in the paper bag could have been placed there by someone involved in the recent shootings. Because the defendant's evidence was merely speculative, the trial court did not abuse its discretion by refusing to admit the evidence based on relevancy grounds. Accordingly, we find that the trial court did not err by excluding this evidence, and we need not address whether the exclusion of this evidence prejudiced the defendant.

¶ 35 Second, the defendant argues the trial court abused its discretion by denying his second motion *in limine* regarding the DNA evidence in this case. Specifically, the defendant argues the trial court should have barred the introduction of the DNA evidence at trial because (1) it was "laced with uncertainty" and (2) its probative value was substantially outweighed by its tendency to confuse, mislead, or unfairly prejudice the jury. We disagree.

¶ 36 On April 13, 2010, the first day of the jury trial, the defendant presented his second motion *in limine* to the trial court asking the court to prohibit the State or its witnesses from mentioning at trial the DNA testing conducted in this case because the evidence was "so indefinite and equivocal that its probative value [was] substantially outweighed by its tendency to confuse or mislead the finder of fact, or to waste time." The defendant concluded this evidence was indefinite and equivocal because the statistical probabilities indicated only that the defendant could not be excluded as having contributed to a mix of DNA shared by 1 in 100 unrelated African-American males, 1 in 33 unrelated Caucasian males, and 1 in 100 unrelated Hispanic males. Additionally, the defendant argued the jury may be "unduly influenced by the appearance and dramatic impact of an 'expert witness' providing 'DNA evidence,' as occurs in popular television programs and files, even though the evidence presented has little actual probative value." On April 13, 2010, the trial court

denied the defendant's second motion *in limine* without any explanation.

¶ 37 As explained above, a trial court's decision regarding the introduction or exclusion of evidence will not be reversed on appeal unless the trial court abused its discretion. *People v. Hansen*, 327 Ill. App. 3d 1012, 1015 (2002). A trial court has abused its discretion when its decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Maldonado*, 402 Ill. App. 3d 411, 416 (2010). Evidence is admissible if it is relevant to a disputed issue and its probative value is not substantially outweighed by the danger of unfair prejudice. *People v. Gonzalez*, 142 Ill. 2d 481, 487 (1991). Accordingly, relevant evidence becomes inadmissible when (1) its probative value is substantially outweighed by unfair prejudice, (2) it creates a confusion of the issues, or (3) it has a potential to mislead the jury. *First Midwest Trust Co. v. Rogers*, 296 Ill. App. 3d 416, 430 (1998).

¶ 38 However, questions concerning the reliability of statistical probabilities developed from DNA-evidence testing go toward the weight given to the evidence rather than its admissibility as evidence. *People v. Redman*, 135 Ill. App. 3d 534, 540 (1985); *People v. Liscomb*, 215 Ill. App. 3d 413, 436 (1991). Further, in *People v. Hickey*, 178 Ill. 2d 256, 279 (1997), the supreme court concluded that issues concerning the caliber of work of DNA testing, including laboratory protocol and the manner in which it was followed, quality control and quality assurance measures employed, and the possible contamination or degradation of DNA samples, are issues going toward the weight of the evidence rather than admissibility.

¶ 39 In the present case, the defendant argues the DNA evidence was "so laced with uncertainty that its probative value was substantially outweighed by its tendency to confuse, mislead or unfairly prejudice the jury." In support of his position that the DNA evidence had a tendency to confuse or unfairly prejudice the jury, the defendant notes that DNA evidence

is "frequently cited in popular culture and news commentary and presented in such a way that it is seen as unassailable proof of either guilt or innocence."

¶ 40 We first note that the DNA evidence was used to show that the defendant could *not* be excluded as having handled the firearm found in the paper bag rather than conclusively establishing that the defendant *had* handled the firearm. The DNA-testing results indicated that approximately 1 in 100 unrelated African-American males, 1 in 33 unrelated white males, and 1 in 100 unrelated Hispanic males could not be excluded as having contributed to the DNA mixture found on the firearm. The results further indicated that the defendant could not be excluded as having handled the weapon.

¶ 41 Additionally, as indicated above, any issues concerning the reliability of the statistical probabilities or contamination of the DNA samples go toward the weight of the evidence instead of admissibility. The defendant argued to the jury that the statistical probabilities generated by the DNA testing reduced the pool of suspects to 3% of Caucasians, 1% of African Americans, and 1% of Hispanics. Also, the defendant noted the reason a sufficient DNA sample was unavailable to test all the genetic markers for the Y-STR test might be due to degradation of the sample caused by the environment or age. Therefore, the defendant had an opportunity to present any concerns with the DNA testing to the jury, which determined how much weight to afford this evidence. Accordingly, the trial court did not abuse its discretion in denying the defendant's second motion *in limine*.

¶ 42 The defendant next argues that the trial court erred by denying his motion for a directed verdict because the State failed to prove the defendant guilty beyond a reasonable doubt. Because the defendant failed to renew his motion for a directed verdict at the close of all the evidence, the defendant has waived his right to raise this issue on appeal.

¶ 43 When a defendant presents evidence following the denial of his motion for directed verdict, he waives any error in the trial court's ruling unless he renews the motion for directed

verdict at the close of all the evidence. *People v. Wilson*, 143 Ill. 2d 236, 245 (1991). In the present case, the defendant made a motion for directed verdict following the close of the State's case. However, the defendant failed to renew the directed verdict motion at the close of all the evidence. Therefore, the defendant has waived his right to challenge the trial court's ruling on that motion.

¶ 44 Further, the defendant argues the State failed to prove him guilty of possession of a firearm beyond a reasonable doubt. Specifically, the defendant argues the State's "wholly circumstantial evidence was equivocal and rife with inconsistencies." We disagree.

¶ 45 When a reviewing court is considering a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is the responsibility of the trier of fact to determine a witness's credibility and the weight to be given to their testimony. *People v. Kolton*, 347 Ill. App. 3d 142, 153 (2004), *aff'd*, 219 Ill. 2d 353 (2006). A reviewing court should give great deference to determinations made by the trier of fact, and a conviction should only be reversed where the evidence was so unreasonable, improbable, or unsatisfactory to justify a finding of guilt beyond a reasonable doubt. *Id.* at 153. A conviction based entirely on circumstantial evidence may be upheld where the "entire chain of circumstances leads to a reasonable and moral certainty that the defendant committed the crime." *People v. Brown*, 309 Ill. App. 3d 599, 608 (1999).

¶ 46 Under section 24-1.1 of the Criminal Code of 1961 (720 ILCS 5/24-1.1 (West 2008)), it is unlawful for a person to knowingly possess on or about his person a firearm if that person has been convicted of a felony. With regard to the first element, *i.e.*, the defendant knowingly possessed a firearm on or about his person, the State presented sufficient evidence for the jury to determine beyond a reasonable doubt that the defendant possessed the firearm.

First, Williams testified he was parking his vehicle when he observed the defendant watching him "pretty hard" and then move from the front porch of the apartment building to around the back. Williams followed the defendant around the building and noticed him bending from the waist. According to Williams, it appeared that the defendant was either putting something on the ground or manipulating something on the ground. Williams was unable to see what the defendant was manipulating on the ground because his vision was blocked by the gas meters. Williams testified the defendant began walking around to the front of the building after observing Williams watching him. After asking the defendant to stop, Williams asked him what he put on the ground, and the defendant responded, "Nothing." Williams also testified that the defendant acted very nervous and was physically trembling. After the defendant was placed in handcuffs, Williams searched the area where the defendant was bent over and found a paper bag containing a firearm. During the trial, defense counsel pointed out that the pictures taken of the crime scene indicated the gas meters were not obstructing Williams's view of the paper bag on the ground. However, Williams maintained that he was unable to see what the defendant was manipulating on the ground because his view was blocked by the gas meters.

¶ 47 Williams testified he spoke with the resident of the apartment, and she was not aware that a paper bag containing a firearm was in her yard. Speith testified that the defendant could not be excluded as having contributed to the DNA mixture found on the handgun. However, the defendant denied handling the weapon and testified that he was disposing of a cigarette when Williams observed him putting something on the ground. Although the defendant's testimony contradicted the State's theory that he was disposing of the firearm when Williams observed him putting something on the ground, the jury was entitled to resolve the conflicts in testimony and disregard the defendant's version of events. The jury's decision to disregard the defendant's testimony was reasonable.

¶ 48 The defendant also attempted to discredit the DNA evidence by suggesting that (1) his DNA was transferred to the firearm by Williams when Williams performed the pat-down search and (2) the DNA sample was degraded due to environmental factors or age. It is the jury's responsibility to consider the testimony and arguments and reach a determination based on the evidence presented. This court will not substitute its own judgment for the judgment of the jury. Viewing the evidence in the light most favorable to the prosecution, we conclude that the jury was not unreasonable in finding the defendant had knowingly possessed the firearm on or about his person.

¶ 49 The second element, *i.e.*, the defendant must be a felon, was met because the parties stipulated that the defendant had previously been convicted of a felony. Accordingly, we find that the State proved the defendant guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 50 Last, the defendant argues the trial court abused its discretion by denying his motions for new trial where the new evidence provided strong proof of his innocence. Specifically, the defendant points to the following three types of new evidence that indicate he was innocent of unlawful possession of a weapon by a felon: (1) Cole's affidavit that indicated she overheard a conversation between Speith and a court officer where Speith stated the first test on the handgun indicated the presence of a significant amount of female DNA; (2) evidence indicating DeWayne E. Jones, Shonvonda Jones's husband, was arrested for the unlawful possession of a .38-caliber Smith & Wesson subsequent to the trial in this case; and (3) testimony of David Lightfoot where he analyzed the DNA reports prepared in this case and concluded that the defendant never touched the firearm.

¶ 51 In response, the State notes that the defendant failed to file his motions for new trial within the 30-day deadline established by section 116-1(b) of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/116-1(b) (West 2010)). However, the State

further notes it may have waived the untimeliness issue because it did not object to the untimely motions until after a hearing was held on the motion. On the merits, the State counters that the newly discovered evidence would not change the result on retrial.

¶ 52 Under section 116-1(b) of the Code (725 ILCS 5/116-1(b) (West 2010)), a motion for new trial must be filed within 30 days following the entry of a finding or the return of a verdict. However, the State may waive the issue of untimeliness on appeal by failing to object to an untimely motion and instead attacking the motion on substantive grounds. *People v. Raibley*, 338 Ill. App. 3d 692, 698 (2003). Additionally, the trial court has discretion to grant a request for a new trial until the time of the defendant's sentencing because the final judgment in a criminal case is the pronouncement of the sentence. *People v. Harper*, 347 Ill. App. 3d 499, 502 (2004). Therefore, no jurisdictional bar exists to prevent the trial court from entertaining a motion for new trial filed outside the 30-day period but before sentencing. *People v. Talach*, 114 Ill. App. 3d 813, 818 (1983).

¶ 53 In the present case, the defendant filed his motion to vacate judgment and for new trial on June 25, 2010, and his supplemental motion to vacate judgment and for new trial on August 6, 2010, more than 30 days from the April 13, 2010, guilty verdict. At the time the motions were filed, sentencing had not occurred. During the hearing on the motions, the State did not object to the timeliness of the motions until after the defendant presented testimony concerning the newly discovered evidence. Because the trial court had discretion to entertain a motion for new trial filed after the 30-day deadline but before sentencing, we will consider the defendant's arguments concerning his motions for new trial.

¶ 54 To warrant a new trial based on newly discovered evidence, the evidence (1) must have been discovered since the trial, (2) must be of such a character that it could not have been discovered prior to trial with the exercise of due diligence, (3) must be material to the issue and not merely cumulative, and (4) must be of such a conclusive character that it will

likely change the result on retrial. *People v. Gabriel*, 398 Ill. App. 3d 332, 350 (2010). The trial court's denial of a motion for new trial based on newly discovered evidence will not be reversed on appeal unless the trial court abused its discretion. *People v. Villareal*, 201 Ill. App. 3d 223, 229 (1990). Because a motion for new trial is not favored, it should be subject to the closest scrutiny. *People v. Haun*, 221 Ill. App. 3d 164, 175 (1991).

¶ 55 First, the defendant argues the newly discovered evidence with regard to the DNA tests revealing the presence of a significant amount of female DNA on the firearm raised additional questions about the probative value of this evidence. We disagree. The record indicates Speith testified that a Y-STR analysis of the DNA sample was necessary to isolate the Y chromosome, a chromosome that is present only in males. Therefore, it logically follows that the DNA sample taken from the handgun contained female DNA.

¶ 56 Accordingly, the trial court did not abuse its discretion in denying the defendant a new trial based on this evidence because it would have been unlikely to change the result on retrial. Because we determine the evidence would not likely change the result on retrial, we need not discuss the remaining requirements for granting a new trial.

¶ 57 Next, the defendant argues the evidence revealing that Jones possessed a .38-caliber Smith & Wesson on June 30, 2010, indicated that Jones would be a suspect in possessing the firearm found in this case on October 1, 2009. According to the defendant, this evidence revealed other explanations for the presence of the firearm in the paper bag. However, the defendant's arguments concerning this newly discovered evidence are based on speculation. The defendant presented no evidence that the firearm found in the paper bag belonged to Jones or that Jones placed a paper bag containing a firearm in the apartment's yard. Evidence revealing that Jones possessed a .38 Smith & Wesson approximately seven months following the trial held in this case does not indicate that he possessed the firearm found in the vicinity where the defendant was observed putting something on the ground. Therefore, the newly

discovered evidence is not likely to change the result on retrial, and we need not discuss the remaining requirements. Accordingly, the trial court did not abuse its discretion by denying the defendant a new trial based on this newly discovered evidence.

¶ 58 The defendant next argues Lightfoot's opinion concerning the DNA evidence warranted the trial court granting him a new trial. After reviewing Speith's reports on the DNA evidence, Lightfoot concluded that the evidence indicated the defendant never handled the firearm because certain alleles present in the defendant's DNA were not found on the DNA samples taken from the firearm. According to Lightfoot, the results of the DNA testing indicated a risk of false priming and contamination because the majority of the DNA on the firearm was female. Lightfoot also concluded that if any of the defendant's DNA was present on the firearm, it was a very small minority of the DNA present on the firearm, which would suggest contamination occurred. He noted that DNA testing of this nature normally yielded results in which the probability of a match was more certain and that a typical result would be that one in several billion people would match the DNA profile of the individual in question.

¶ 59 In contrast, Speith, a forensic scientist with the Illinois State Police crime laboratory, concluded that the defendant could not be excluded from being the source of the DNA on the firearm. During her testimony, she explained that she determined it was necessary to conduct a Y-STR analysis to focus on the Y chromosome. She further explained that the Y-STR results tended to be "much smaller than the trillion and quadrillion numbers" that result from the traditional DNA testing because the Y-STR analysis isolates the male chromosome.

¶ 60 Although Lightfoot testified that he ran the Genomics Core Facility at SIU for 10 years, and he taught forensic classes on how to do DNA markers, the majority of his expertise was in plant DNA and plant diseases. At the hearing on the motions for new trial, Lightfoot admitted that he had never developed a DNA profile of a human being for forensic

purposes. Lightfoot based his conclusions on his review of the DNA reports prepared by Speith. He did not conduct an independent analysis of the DNA evidence found on the firearm. Based on Lightfoot's testimony and affidavit, we cannot say that this evidence would likely change the result on retrial. Because we concluded that this evidence would not change the result on retrial, we need not discuss the remaining requirements for a new trial. Accordingly, the trial court did not abuse its discretion by denying the defendant a new trial based on Lightfoot's opinions on the DNA evidence.

¶ 61 For the foregoing reasons, the judgment of the circuit court of Jackson County is hereby affirmed.

¶ 62 Affirmed.