

No. 1-11-3790

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 637
	)	
COURTNEY JOHNSON,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Justices Gordon and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant was found to have constructively possessed weapon found in his van, evidence was sufficient to sustain conviction for unlawful use or possession of a weapon by a felon; defendant's conviction and sentence were affirmed.

¶ 2 Following a bench trial, defendant Courtney Johnson was convicted of unlawful use of a weapon by a felon and sentenced to five years in prison. On appeal, defendant contends the evidence was insufficient to prove that he constructively possessed the weapon which was recovered in his van occupied by three other passengers. We affirm defendant's conviction.

¶ 3 Officer John Siques testified that on December 16, 2010, he was conducting narcotics surveillance in the area of 408 East 50<sup>th</sup> Place in Chicago. For 30 to 40 minutes, he followed a conversion van that was driven by defendant and observed three to four suspected drug transactions. After this period, the van parked in front of him. Officer Siques then saw the van's occupants look through the rearview mirror, jump the curb, and park in a lot. Officer Siques called enforcement. Officer Siques also testified to the year, make, model, and VIN number of the conversion van.

¶ 4 Officer Paul Schmitz testified that he responded to the police call at 408 East 50<sup>th</sup> Place. Upon arriving at the scene, Officer Schmitz approached the driver's side of a conversion van with tinted windows and curtains, where he saw defendant behind the steering wheel. Three other occupants were in the van. There were a couple feet of space between the driver's side bucket seat and passenger side bucket seat, as well as between the rear bucket seats. Officer Schmitz asked defendant to step out of the vehicle after defendant acknowledged that he did not have a driver's license and insurance. Defendant was handed off to another officer that was present so that Officer Schmitz could keep an eye on the other three occupants. He recalled that one person was in the front passenger seat, but could not recall whether the remaining two occupants were in the second row of bucket seats or were farther in the back.

¶ 5 After defendant was removed, Officer Schmitz looked inside the van where defendant had been sitting. By the driver's side area, Officer Schmitz saw the handle of a handgun protruding from underneath a piece of carpet. Using photos of the van, Officer Schmitz testified that the gun was found to the left of the center console, between the driver's seat and console. The rest of the gun, including the frame and barrel, was underneath the carpet. Officer Schmitz testified that the gun was sticking out towards the front of the car. He noted that if one opened the door and looked into the car, one would be able to see the gun almost immediately. The

handle and the bottom of the magazine were sticking out, "like facing towards you as you entered the vehicle." Officer Schmitz determined the gun was a loaded .45-caliber Ruger.

¶ 6 The State admitted a copy of a certified Secretary of State record that showed defendant was the registered owner of the van. The State also admitted a certified copy of defendant's 2008 conviction for unlawful use of a weapon by a felon. The State and defense counsel admitted into evidence photos of the van from behind and the passenger side, as well as photos of the second row of seats, the center console, and the carpet area where the gun was found.

¶ 7 The trial court ultimately found that defendant possessed and had control of the gun. The trial court found Officer Schmitz an extraordinarily credible witness. The trial court noted that an item could be shoved underneath the carpet area from behind or from the front. In its ruling, the trial court stated that the gun's position between the console and driver's seat was a critical factor. The gun was protruding towards the front of the vehicle. Further, it seemed impossible to the trial court that when officers were present, some other occupant could have hid the gun in a place where it was somewhat concealed. It would not be reasonable for the gun to be concealed in the back and "all of a sudden [*sic*] pop out on the other side." The court also found it significant that the van was the registered property of defendant. Defendant was sentenced to five years in prison.

¶ 8 On appeal, defendant contends that the State failed to prove he constructively possessed the weapon in the van. In particular, defendant argues that all four occupants of the van had access to the area where the gun was found, no evidence showed defendant could see the weapon, his fingerprints were not found on the gun, and he made no movements or statements that suggested he was aware of the gun's presence.

¶ 9 When a defendant challenges the sufficiency of the evidence, the reviewing court determines "whether, after reviewing the evidence in the light most favorable to the prosecution,

any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319, *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When weighing evidence, the trier of fact is not required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The reviewing court may not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992). The fact finder's verdict will not be overturned unless its verdict is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt as to the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 10 To sustain a conviction for unlawful use or possession of a weapon by a felon, the State must prove the defendant knowingly possessed a firearm and the defendant's prior felony conviction. 720 ILCS 5/24-1.1(a) (West 2010). Defendant challenges that he knowingly possessed the gun.

¶ 11 Criminal possession may be actual or constructive. *People v. Stack*, 244 Ill. App. 3d 393, 398 (1993). To prove constructive possession of a firearm, the State must establish that: 1) the defendant had knowledge of the weapon's presence; and 2) the defendant exercised immediate and exclusive control over the area where the weapon was found. *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). The element of knowledge may, and often must, be proved by circumstantial evidence. *People v. Rangel*, 163 Ill. App. 3d 730, 739 (1987). Further, a defendant's ownership of a car, his presence inside the car, and the partial visibility of a weapon from the outside have been held sufficient to establish a defendant's knowledge. *Id.* at 740, *People v. Rogers*, 18 Ill. App. 3d 940, 944 (1974). Control over the contraband's location gives rise to an inference that the defendant possessed the contraband. *People v. Janis*, 56 Ill. App. 3d

160, 163 (1977). Exclusive control is not diminished by others' access to the contraband. *People v. Williams*, 98 Ill. App. 3d 844, 849 (1981). Where the relationship of others to the contraband is sufficiently close to constitute possession, the result is joint possession, and not a finding that the defendant did not possess the contraband. *Id.*

¶ 12 Here, the evidence sufficiently shows that defendant knew of the gun's presence. Defendant owned the van and was in the driver's seat when Officer Schmitz approached the van. Further, Officer Schmitz testified that part of the gun was almost immediately visible when he looked into the van from outside. The elements of ownership, presence, and partial visibility are present here.

¶ 13 The evidence also sufficiently supports the trial court's finding that defendant had immediate and exclusive control over the gun's location. The gun was closest to defendant. It is not unreasonable to infer that, based on the gun's position and location, the gun was within arm's reach of defendant and within his immediate control. The presence of three other people in the van does not undermine this inference, particularly here, where no evidence showed that any other passenger exercised control over the gun.

¶ 14 A different result is not warranted by defendant's reliance on *People v. Gore*, 115 Ill. App. 3d 1054 (1983) and *People v. Day*, 51 Ill. App. 3d 916 (1977). In *Gore*, the defendant was driving a borrowed car with two passengers in the front seat when the police found a closed paper bag containing cannabis underneath the front passenger seat. Unlike *Gore*, here defendant was driving his own van and the gun was located near the driver's seat. In *Day*, the defendant was driving his own car with two other passengers in the front seat and four other passengers in the back seat when the police discovered a large grocery bag containing cannabis underneath the legs of the passenger sitting in the middle front seat, who was found to be in actual possession of the bag. Here, the police discovered the gun partially concealed under carpeting between the

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driver's seat and center console on the driver's side of the van, which was the area most accessible to and controlled by defendant as the driver.

¶ 15 The trial court's finding that defendant possessed the gun is not so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt of defendant's guilt. For the reasons stated above, we affirm the judgment of the trial court.

¶ 16 Affirmed.