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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of DeKalb County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-540
)	
KEVIN BAINES,)	Honorable
)	Robbin Stuckert,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction and sentence for aggravated unlawful use of a weapon is reversed following the decision in *People v. Burns*, 2015 IL 117387; defendant's conviction for aggravated unlawful possession of a weapon by a felon is affirmed; the cause is remanded for resentencing.

¶ 2 After a bench trial, defendant, Kevin Baines, was convicted of aggravated unlawful *use* of a weapon by a felon (720 ILCS 5/24-1.6(a)(1) (West 2012)), a Class 2 felony, and aggravated unlawful *possession* of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), a Class 3 felony. The trial court merged the counts and sentenced defendant to 3½ years' in prison as a Class 2 offender. Defendant appeals and challenges both convictions.

¶ 3 As the State points out, in *People v. Burns*, 2015 IL 117387, the supreme court invalidated the statute under which defendant was convicted of aggravated unlawful use of a weapon. *Id.* ¶ 25. Therefore, as the State concedes, defendant’s conviction must be reversed on the unlawful use count. The sole question in this appeal then, is whether a reasonable trier of fact could have found defendant guilty of aggravated unlawful possession. *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 4 Defendant concedes that at trial, the State offered sufficient evidence—by way of a certified copy of conviction—that defendant was a felon. He disputes, however, whether there was sufficient evidence to show he was in possession of a weapon.

¶ 5 At defendant’s trial, a Sycamore resident testified that she observed defendant and three or four young men in a silver compact car parked in front of her neighbors’ house all afternoon. The young men variously exited and reentered the car throughout the evening. After midnight, the witness saw the car parked in the same place; she called the police.

¶ 6 Jeff Wig, a Sycamore police officer, and his partner, responded to the call. When they arrived, the silver car attempted to leave. The sedan’s rear license-plate light was out; Wig and his partner initiated a traffic stop. Four people were in the sedan: the driver, Jacob Sloniger; defendant, in the front passenger seat; and Sanchez Lumpkins and Darren Matthews in the backseat. Wig testified that, as he was speaking to Sloniger, a backup officer shouted, “Gun!” Wig turned and observed an “assault rifle” between Lumpkins and Matthews. The buttstock of the rifle was visible; it measured about a foot and a half. The gun was placed at an angle, with the buttstock pointing up and the muzzle-end pointing down, under the front passenger seat. Wig testified that he asked Sloniger whether the rifle was an airsoft gun, and Sloniger said “no.” The officers had all the passengers exit the car and seized the rifle, which was later described as an

AK-47-type rifle. A search of the car revealed a backpack on the rear driver's-side seat. The backpack was partially open and contained 30 or 40 rounds that would have fit the rifle. Wig testified that, at the police station, defendant stated that his friends had picked him up in LaSalle County, and he denied knowing that the rifle was in the vehicle.

¶ 7 The trial court judge found defendant guilty, explaining that the evidence showed defendant had constructively possessed the rifle, which was found near the front passenger seat. The court found that the rifle was visible and easily accessible to defendant, given its positioning and size and the substantial time that defendant had spent in or near the car.

¶ 8 Defendant's primary contention is that the other young men in the car could have possessed the rifle, and not him. We have no reason to credit this argument though. To prove constructive possession, the State had to show that defendant knew the rifle was there and had control over the area where it was found. See *People v. Ingram*, 389 Ill. App. 3d 897, 899-900 (2009). Knowledge need not be proved directly, but it may not be inferred beyond a reasonable doubt merely from a person's presence in a vehicle in which the weapon is found. See *id.* at 900; *People v. Hampton*, 358 Ill. App. 3d 1029, 1033 (2005). Among the pertinent factors from which knowledge may be inferred are the visibility of the weapon from the defendant's position in the vehicle, how much time the defendant had to observe the weapon, and the size of the weapon. *Ingram*, 389 Ill. App. 3d at 900; *People v. Bailey*, 333 Ill. App. 3d 888, 890 (2002). Evidence that others also had access to the area where the weapon was found does not militate against a finding that the defendant had immediate and exclusive control of the same area; it merely supports a finding of joint possession. *Ingram*, 389 Ill. App. 3d at 901.

¶ 9 Applying these standards, we hold that the trial court properly found both knowledge and control beyond a reasonable doubt. The evidence, viewed in the light most favorable to the State

(and largely undisputed), established that the rifle was several feet long and that approximately 18 inches of it (the buttstock) had been in plain view, lodged between where the two backseat passengers had been sitting. The remainder was underneath the seat where defendant had been sitting. Defendant had had plenty of opportunity to observe the weapon; he had ridden in the car from LaSalle County, had been both in the car and in the car's vicinity while it was parked on the street for several hours.

¶ 10 Defendant notes that there was no evidence as to when the gun had been placed into the car and that Wig stopped the car when it was dark out. These facts provide a modicum of support for defendant, but the trial court reasonably concluded that they did not outweigh the strong factors militating the other way. Control was also proven. Defendant was one of four passengers who had had easy access to the rifle. For defendant, especially when he exited or reentered the car, it would not have been difficult to reach the gun that was lying in between the backseat and the area underneath his own seat. See *Ingram*, 389 Ill. App. 3d at 900 (State proved that defendant, who had been riding in front passenger seat, had had control of gun lying in plain view on floor behind driver's seat). We are given no basis to find the trial court's inferences regarding defendant's knowledge and control of the rifle were irrational; so we affirm.

¶ 11 Defendant's conviction for aggravated unlawful use of a weapon by a felon is vacated. Defendant's conviction for aggravated unlawful possession of a weapon by a felon is affirmed. The cause is remanded to the circuit court of DeKalb County for defendant to be resentenced as a Class 3 offender.

¶ 12 Vacated in part; affirmed in part; cause remanded.