

No. 1-14-2742

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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. 12 CR 1366
	)	
EDWARD NELSON,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Harris and Mikva concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The ruling of the trial court is affirmed where the evidence was sufficient to prove beyond a reasonable doubt that defendant knowingly possessed a firearm.

¶ 2 Following a jury trial, defendant Edward Nelson was convicted of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced to 7 years' imprisonment.<sup>1</sup> On appeal, defendant contends that the evidence presented at trial was

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<sup>1</sup> Defendant was also convicted of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)). However, the trial court granted a judgment of acquittal notwithstanding the verdict on this conviction and vacated it. The conviction is not at issue here.

insufficient to prove beyond a reasonable doubt that he was in actual, knowing possession of a firearm and therefore his conviction should be reversed. We affirm.

¶ 3 At trial, Officer David Zelig testified that, at approximately 2:35 p.m. on December 30, 2011, he was on patrol in an unmarked car with his partner, Officer Freeman, when he observed "an abandoned property" located at 216 North Leamington Avenue with "several individuals in and about the property, on the stairwell and on the porch itself." Zelig suspected narcotics transactions were taking place and initiated a narcotics surveillance of that address. Freeman dropped Zelig off at the intersection of Maypole Avenue and LeClaire Avenue, approximately one and a half blocks away. Zelig was in civilian dress but wore a black bullet-proof vest and was equipped with his firearm, handcuffs, and badge, which was displayed on his belt. He observed "an unknown female subject" walking his direction when he exited the vehicle and the two made eye contact. Zelig went to an area approximately 100 feet east of 216 North Leamington. He testified he had a clear view, in broad daylight, of the property and he conducted surveillance for approximately five minutes.

¶ 4 Officer Zelig observed three people on the porch of the house, including who he recognized in court as defendant. He then saw the same woman who had seen him exit his vehicle approach the house and have a short conversation with the people on the porch. She left. Defendant then stepped off the porch facing Zelig, crossed the property's lawn, and walked down the adjacent driveway. Zelig saw him use his right hand to place "a light brown object," of which three to four inches was visible, behind a tree near the driveway. Zelig believed defendant was concealing narcotics, so he radioed his team to "converge on the location." Sergeant Kroski and Officer Babbich arrived at the house and detained all three men on the porch "for investigation." Zelig, via radio, directed Officer Freeman to the tree by the driveway. Freeman returned from

that location and indicated to Zelig that he had recovered a firearm. Zelig later saw the recovered item and noted it was a firearm in a brown plastic bag. In court, Zelig identified the brown plastic bag containing the gun as being the same color as the object he saw in defendant's hand on December 30.

¶ 5 Officer Daniel Freeman testified that, after observing the three men on the porch at 216 North Leamington Avenue, he dropped Officer Zelig off in the area of Maypole Avenue and LeClaire Avenue, drove eastbound on Maypole, and waited to hear from Zelig, who was conducting surveillance. Within "the first couple of minutes" of his surveillance, Zelig relayed to Freeman that "some individual laid something down by a tree, move in." Freeman drove to the house and followed Zelig's directions to the tree at the end of the adjacent driveway. Near the base of the tree, Freeman saw a brown plastic bag. There was nothing else nearby. Freeman picked up the bag and felt what he believed was a gun. There was a revolver in the bag. Freeman removed two live rounds from the firearm. Zelig arrived on the scene and identified the bag that the firearm was in as being the same color as the item he saw defendant place behind the tree. Freeman inventoried the firearm at the police station.

¶ 6 The State entered into evidence certifications for defendant's two prior felony convictions for delivery of a controlled substance (No. 95-CR-27763 and No. 98-CR-2972).

¶ 7 Defendant acknowledged several previous felony convictions. He testified that, sometime after 12:00 p.m. on December 30, 2011, he left the home he shared with his mother to go to "the store" on Laramie Avenue and Maypole Avenue to "break a hundred dollar bill" for her. After getting the change, defendant went to 216 North Leamington looking for the owner and her live-in boyfriend because he wanted to offer his landscaping services. There were two men on the porch who informed him that the boyfriend had recently left. Defendant joined the men on the

porch and waited for him to return. He testified that no woman approached the porch and spoke to them. An unmarked "squad car" pulled up and two officers exited. The police placed all three men in handcuffs. They searched defendant and did not recover anything from his person. He denied having a gun on him that day and he denied placing a brown bag or a gun behind a tree.

¶ 8 The jury found defendant guilty of UUWF. The trial court denied defendant's posttrial motion and sentenced him to seven years' imprisonment. Defendant filed a timely notice of appeal.

¶ 9 On appeal, defendant contends that the State failed to prove that he had actual, knowing possession of the recovered firearm and thus the evidence was insufficient to support his conviction for UUWF and it, therefore, must be reversed.

¶ 10 When a defendant challenges the sufficiency of the evidence, the question is 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. *People v. Brown*, 2013 IL 114196, ¶ 48. On review, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). "[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in view of the record, a fact finder could reasonably accept the

testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 11 To sustain the conviction for UUWF (720 ILCS 5/24-1.1(a) (West 2012)), the State had to prove that defendant has a prior felony conviction and that he knowingly possessed a firearm. *People v. Hill*, 2012 IL App (1st) 102028, ¶ 40. Defendant does not challenge the evidence that he has a prior felony conviction. He argues only that the evidence was insufficient to show that he knowingly possessed a firearm. Possession of a firearm may be proved by showing that the defendant had actual or constructive possession of the weapon. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). Here, the State alleged defendant had actual possession of the recovered firearm. Actual possession is proved by testimony which shows that the defendant exercised some form of dominion over the weapon. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010) (citing *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987)).

¶ 12 Viewing the evidence in the light most favorable to the State, and making all reasonable inferences in its favor, a rational trier of fact could have found beyond a reasonable doubt that defendant possessed a firearm. Officer Zelig testified that, after observing a woman who he believed compromised his surveillance engage in a conversation with defendant, defendant placed a brown item behind a tree. Zelig testified he had a "clear view," in "broad daylight," of defendant as he walked from the porch, across the lawn, down the driveway, and to the tree where he concealed the item. He stated he moved closer when he saw defendant step off the porch and his view was never obstructed. Directed by Zelig, Officer Freeman then recovered a brown plastic bag containing a loaded firearm from behind the tree, just minutes later. In court, Zelig identified the recovered brown plastic bag as being the same color as the object he observed defendant holding. Actual possession is proved by direct evidence, such as eyewitness

testimony, demonstrating the defendant actually possessed the firearm. *People v. Rasmussen*, 233 Ill. App. 3d 352, 370 (1992). Zelig and Freeman's testimony is sufficient to show defendant actually possessed the firearm recovered by Freeman. *People v. Smith*, 185 Ill. 2d 532, 541 (1999) (the testimony of a single credible witness is sufficient to convict).

¶ 13 Defendant nonetheless claims that, as Officer Zelig was approximately 100 feet from the house, his opportunity to observe defendant was "extremely limited" and therefore his testimony was insufficient to support defendant's conviction. Defendant's argument essentially asks us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact, which is not the role of this court. *Siguenza-Brito*, 235 Ill. 2d at 224-25. A reviewing court will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). It was the responsibility of the trier of fact to determine witness credibility, the weight to be given to their testimony, and to resolve any inconsistencies and conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Here, the jury found Officer Zelig to be credible. We will not substitute our judgment for that of the jury on this matter. *Sutherland*, 223 Ill. 2d at 242. As mentioned, a reviewing court will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225. That is not the case here.

¶ 14 Defendant also argues that he made no statements and did not engage in any conduct from which the jury could infer he knew a firearm was in the bag. However, Officer Zelig testified that he saw defendant holding in his hand a brown item that was subsequently discovered to be a firearm in a brown plastic bag. It is a reasonable inference that defendant knew what was in the bag, as Officer Freeman testified he believed the item was a gun when he picked up the bag because he could feel it through the bag.

¶ 15 Finally, defendant argues that Officer Zelig's version of events is incredible and defendant's version plausible. Defendant argues his alleged act of openly and notoriously concealing a firearm after being told surveillance was underway is "so stupefying in its unlikelihood \*\*\* that no rational trier of fact could have accepted it as true." This argument relates to Zelig's credibility and is best reserved for the trier of fact. The jury was not required to accept defendant's explanation and elevate it to the status of reasonable doubt. *Siguenza-Brito*, at 224-25, 229. It could believe as much or as little of any witness testimony as it saw fit. *People v. Villareal*, 198 Ill. 2d 209, 231 (2001). Here, it credited Zelig's testimony over defendant's, and nothing in the record convinces us that the jury's finding was unreasonable.

¶ 16 Having found that Officers Zelig and Freeman's testimony was sufficient to support the jury's finding that defendant was a felon in knowing possession of a firearm, we affirm defendant's conviction for UUWF.

¶ 17 Affirmed.