2017 IL App (1st) 150677-U

No. 1-15-0677

FIFTH DIVISION
September 22, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 13495
	)	
LEONARD JACKSON,	)	The Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

O R D E R

¶1 *HELD*: The trial court did not err in denying defendant's motion to quash arrest and suppress evidence where there was probable cause to support his seizure and the detention was not impermissibly extended. There was sufficient evidence to establish defendant constructively possessed the firearm recovered from the vehicle and sufficient evidence to support defendant's conviction of possession of a defaced firearm where the State was not required to show defendant knew the firearm was defaced. Defendant's challenge to his unsentenced, merged finding of guilt is not properly before this court.

¶2 Following a bench trial, defendant, Leonard Jackson, was found guilty of possession of a defaced firearm and aggravated unlawful use of a weapon (AUUW) for failing to possess a valid firearm owner's identification (FOID) card. Defendant ultimately was convicted of possession of a defaced firearm and sentenced to 26 months' imprisonment. On appeal, defendant contends: (1) the trial court erred in denying his motion to quash arrest and suppress evidence where the officers unconstitutionally extended his detention beyond the justification for the traffic stop; (2) the State failed to prove him guilty beyond a reasonable doubt where the evidence was insufficient to establish his constructive possession of the firearm recovered on the scene; (3) the State failed to prove him guilty beyond a reasonable doubt of possession of a defaced firearm where there was no evidence presented to show he knew the serial number had been removed from the firearm in question; and (4) the trial court violated his confrontation rights in allowing the State to introduce an Illinois State Police certification providing that he did not have a valid FOID card in support of his AUUW count. Based on the following, we affirm.

¶3 FACTS

¶4 Prior to trial, defendant filed a motion to quash his arrest and to suppress the evidence collected by the officers in this case. The trial court simultaneously heard the motion and trial evidence.

¶5 Officer Walter Bucki testified that on July 7, 2014, at approximately 10:49 p.m., he and his partner, Officer Gustavo Velazquez, were in a police vehicle conducting patrol when they witnessed a "minor traffic violation" near the intersection of 120th Street and Halsted Street in Chicago, Illinois. More specifically, the officers observed a Chevy

Impala heading southbound on Halsted Street proceed through a "solid red signal." Officer Bucki testified that he was driving the police vehicle. According to Officer Bucki, he proceeded behind the Impala and activated the police vehicle's emergency equipment prior to curbing the Impala at 840 W. 124th Street.

¶6 Officer Bucki exited his vehicle and used a flashlight to illuminate the driver's side area of the Impala. Officer Bucki stated that the area streetlights were illuminated as well. According to Officer Bucki, he observed four or five male, black occupants in the Impala. As Officer Bucki continued to approach the driver's side of the Impala to conduct a field interview, he observed the "front-seat passenger making furtive movements." Bucki added that the front-seat passenger "was hunched over and appeared as if he was trying to conceal something under the seat." In response, Officer Bucki called for "an assist vehicle" "[b]ecause [the Impala] was occupied by four or five individuals. It's just [himself] and [his] partner, and a movement like that could be someone trying to conceal a weapon. It's a dangerous situation."

¶7 Officer Bucki further testified that he and his partner waited approximately one minute for the assist vehicle to arrive. Once it arrived, Officer Bucki and Officer Velazquez begin "systematically having the individuals come out of the [Impala]." Officer Velazquez approached the front-passenger seat and defendant exited. After all of the remaining occupants had exited the Impala, Officer Velazquez "immediately went to the front passenger's side of the vehicle." According to Officer Bucki, while standing to the back of the Impala "slightly offset," he "observed [Velazquez] bend down and retrieve a firearm from under the front passenger seat." Officer Bucki testified that the

firearm was retrieved from the same location where defendant had exited the vehicle. Defendant was then placed into custody and transported to the police station.

¶8 According to Officer Bucki, he proceeded to the police station as well and inventoried the recovered firearm, along with nine live rounds. Officer Bucki testified that when he first observed the recovered firearm, he noticed that the weapon's serial number was not readable. "It had been defaced or etched off."

¶9 On cross-examination, Officer Bucki testified that he did not think defendant was the owner of the Impala, but he was not certain. In response to defense counsel's question, "when [defendant] was hunched over, you didn't know for sure what he was doing," Officer Bucki stated, "[t]hat's correct." Officer Bucki added that Officer Velazquez recovered the firearm from beneath the seat of the Impala. Officer Bucki never observed defendant touch the firearm. The firearm was never submitted for fingerprint testing.

¶10 The parties stipulated that if called, Rhina Checo, would testify that the serial number on the recovered firearm had been "obliterated." The State then moved to admit into evidence an Illinois State Police certification, in which Debbie Claypool, of the Firearms Services Bureau, stated that, "after careful search of the FSB files," defendant had never been issued a FOID card as of August 25, 2014. The certification was admitted without objection.

¶11 The State rested its case-in-chief and defendant filed a motion for a directed finding. The motion was denied.

¶12 Following closing arguments, the trial court announced its ruling. In so doing, the trial court stated:

> "I've reviewed the evidence, listened to the closing arguments of the attorneys. First off, there's a motion to quash arrest and suppress evidence. The officer testified that he had seen a traffic violation and that was the reason why he pulled over the vehicle. Therefore, there was articulable suspicion, or even probable cause, to stop the vehicle.
>
> Once he was approaching the vehicle, he said that he'd seen these moves that Mr. Jackson was hunching over and, in his experience, was—he could be hiding a weapon. So there are, again, a standard of articulable facts concerning suspicious conduct.
>
> The officer then got backup and then asked everybody out of the car and then they examined the front-passenger seat where they found a weapon.
>
> I find the State—first of all, that the motion to quash arrest and suppress evidence is denied, that the State has proved each and every element of Count 1, defacing a firearm, the identification marks of a firearm, and also Count 3 of aggravated unlawful use of a weapon. There will be a finding of guilty on Counts 1 and 3."

Defendant subsequently filed a motion for a new trial, which the court denied. At sentencing, the trial court merged defendant's AUUW count into the unlawful possession of a defaced firearm count and sentenced him to a 26-month prison term for possession of a defaced firearm. Defendant's motion to reconsider his sentence was denied. This appeal followed.

¶13 ANALYSIS

¶14 I. Motion to Quash Arrest and Suppress Evidence

¶15 Defendant first contends the trial court erred in denying his motion to quash arrest and suppress evidence where the officers unconstitutionally extended his detention beyond the mission justified for the stop.

¶16 At the outset, we note that defendant did not raise this exact argument in support of his motion to quash arrest and suppress evidence at trial. Nevertheless, the record is sufficient for us to consider the matter raised by defendant on appeal. See *People v. Jackson*, 389 Ill. App. 3d 283, 286 (2009).[1] We, therefore, consider the substance of defendant's contention.

¶17 We review a trial court's ruling on a motion to quash arrest and suppress evidence based on a two-part standard. *People v. Cummings*, 2014 IL 115769, ¶ 13. The trial court's findings of fact are reviewed for clear error and only reversed if they are against the manifest weight of the evidence. *Id*. The ultimate question of whether or not suppression is warranted, however, is a question of law that is reviewed *de novo*. *People v. Harris*, 228 Ill. 2d 222, 230 (2008).

¶18 Both the federal and state constitutions protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. A traffic stop is subject to the fourth amendment's reasonableness requirement. *Whren v. United States*, 517 U.S. 806, 810 (1996). "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Id*. Probable cause exists where the arresting officer has knowledge of facts

[1] In addition, the State has not argued the matter was forfeited.

and circumstances that justify a reasonable person to believe the defendant has committed or is committing a crime. *People v. Jones*, 215 Ill. 2d 261, 273-74 (2005).

¶19 We need not address whether the officers had a reasonable, articulable suspicion to detain defendant. Defendant does not challenge the officers' probable cause to initiate the traffic stop. Defendant additionally does not challenge the officers' ability, as a matter of course, to order the driver and other occupants out of the vehicle pending completion of the stop. See *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977); see also *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). Defendant, however, argues that once the occupants were secured, there was no justification for extending the traffic stop beyond the issuance of a citation to the driver.

¶20 The law states that a seizure supported by probable cause can become unlawful "if its manner of execution unreasonably infringes on the interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). For example, an otherwise lawful seizure may become unlawful "if it is prolonged beyond the time reasonably required" to complete the purpose of the seizure. *Id.* at 407. Courts have found traffic stops to become unduly prolonged in violation of the fourth amendment where police activity continues after the stop has been completed. *e.g.*, *People v. McQuown*, 407 Ill. App. 3d 1138, 1145 (2011) (wherein the "business portion" of the traffic stop lasted nearly 10 minutes, but the officer did not request a canine unit until 13 minutes thereafter). That said, in *Muehler v. Mena*, 544 U.S. 93, 101 (2005), the United States Supreme Court found that asking questions unrelated to the purpose of a seizure was not unlawful so long as the questioning did not extend the time the defendant was detained. Our courts have found that the return of paperwork, *e.g.*, a driver's license, vehicle

registration, or proof of insurance, signifies the conclusion of a traffic stop because it conveys that the driver is free to leave, and any ensuing search must be supported by grounds independent of the initial violation prompting the stop. *People v. Veal*, 2017 IL App (1st) 150500, ¶ 14 (and cases cited therein).

¶21 Here, defendant argues the officers had authority to curb the Impala as a result of the undisputed traffic violation and to order the occupants out of the vehicle. Defendant further posits that the officers had authority to detain the driver. Defendant, however, insists the officers had no justification to extend the traffic stop to conduct an investigatory search where there was no testimony that Officer Bucki suspected any crime had occurred other than the traffic violation. We disagree.

¶22 Officer Bucki testified that, when he initially approached the Impala to conduct a field interview after curbing the vehicle, he observed defendant make "furtive movements." Officer Bucki described defendant as hunching over, which Bucki believed could be indicative of him attempting to hide something. "[I]n deciding whether probable cause exists, a law enforcement officer may rely on training and experience to draw inferences and make deductions that might well elude an untrained person." *Jones*, 215 Ill. 2d at 274. Bucki testified that after observing defendant's movements and four or five males in the Impala, he called for backup, which arrived within one minute, because it was a dangerous situation in which defendant could have been hiding a weapon. Accordingly, taking Officer Bucki's skill and knowledge into account, we find there was probable cause to conduct the search of the area where defendant had been seated immediately prior. That search ultimately produced the firearm in question and led to

defendant's arrest. As a result, there was an independent basis to support the search other than the traffic violation for which the Impala was initially stopped.

¶23 In addition, the basis supporting the probable cause to search the front passenger area, where defendant had been seated, developed during the course of executing the traffic stop. It is clear from the evidence that the traffic stop had not concluded where Officer Velazquez searched the front passenger seat immediately after the occupants had exited the Impala. As far as we can tell from the record, there had been no exchange of documents to, or even from, the driver or communication of any kind that he was free to leave. See *Veal*, 2017 IL App (1st) 150500, ¶ ¶ 16-19. We, therefore, find Officer Bucki did not impermissibly extend the lawful stop in violation of defendant's fourth amendment rights.

¶24 Where we have determined the trial court did not err in denying defendant's motion to quash arrest and suppress evidence, we need not address defendant's ineffective assistance of counsel argument on that basis.

¶25 II. Sufficiency of Evidence

¶26 Defendant next contends the State failed to prove his guilt beyond a reasonable doubt.

¶27 A challenge to the sufficiency of the evidence requires a reviewing court to determine "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 crime beyond a reasonable doubt." (Emphasis in the original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the reviewing court's function to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 209

(2004). Rather, it is for the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). In order to overturn a judgment, the evidence must be "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶28 Defendant was convicted of possession of a defaced firearm. Section 24-5(b) of the Code provides that "[a] person who possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated commits a Class 3 felony." 720 ILCS 5/24-5(b) (West 2014).

¶29 A. Constructive Possession

¶30 Defendant argues the State failed to prove he constructively possessed the firearm recovered from the Impala.

¶31 When a defendant is not found in actual possession of the contraband at issue, as in this case, the State must prove constructive possession. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Constructive possession is proven by establishing: (1) the defendant had knowledge of the presence of the firearm; and (2) he or she exercised immediate and exclusive control over the area where the firearm was found. *Id*. The element of knowledge often must be proven by circumstantial evidence. *People v. Rangel*, 163 Ill. App. 3d 730, 739 (1987). In fact, "[k]nowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found. [Citation] Control is established when a person has the 'intent and capability to maintain control and

dominion' over an item." *Spencer*, 2012 IL App (1st) 102094, ¶ 17. That said, "a defendant's mere presence in a car where contraband is found is not enough to establish the defendant's knowledge of the contraband." *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Our court has established several factors from which knowledge may be inferred: (1) the visibility of the contraband from the defendant's location within the car; (2) the amount of time that the defendant had to observe the contraband; (3) any gestures or movements made by the defendant that would suggest that the defendant was attempting to retrieve or conceal the contraband; and (4) the size of the contraband. *Spencer*, 2012 IL App (1st) 102094, ¶ 17.

¶32 Applying these principles in light of the facts presented in this case, we conclude the trial court's finding that defendant was in possession of the firearm in question was not against the manifest weight of the evidence. The evidence demonstrated that, at approximately 10:49 p.m. on the night in question, Officers Bucki and Valezquez were in their patrol vehicle when they observed a Chevy Impala run a red light. Officer Bucki curbed the Impala and began to approach the vehicle. Using his flashlight to add extra illumination to the area, Officer Bucki observed four or five black males inside the Impala. In particular, Officer Bucki observed defendant, who was seated in the front passenger seat, making "furtive movements." Defendant "was hunched over and appeared as if he was trying to conceal something under the seat." In response to the "dangerous situation" wherein Officer Bucki believed there "could be someone trying to conceal a weapon," he called for backup. Approximately one minute later, backup arrived and the officers instructed the men out of the Impala. Once all of the occupants had exited the Impala, Officer Bucki observed Officer Velazquez immediately proceed to the

front passenger side of the vehicle. While standing toward the rear of the Impala, Officer Bucki observed Officer Velazquez bend down and retrieve a firearm from under the front passenger seat where defendant had been seated. The firearm, which was defaced, was inventoried along with nine live rounds of ammunition. Based on the evidence, we find the State sufficiently established defendant's constructive possession of the recovered firearm.

¶33 Unlike the defendant in *People v. Bailey*, 333 Ill. App. 3d 888, 892 (2002), the State in this case demonstrated more than defendant's mere presence in a vehicle in which a firearm was recovered. Considering the factors demonstrating knowledge to show constructive possession, the evidence established that defendant made furtive movements, which Officer Bucki described as hunching over as if attempting to conceal something. There was no testimony regarding the size of the firearm, the length of time defendant had been in the Impala, or the exact positioning of the weapon when it was recovered other than that it was recovered from underneath the front passenger seat. However, defendant's movements combined with the fact that the weapon was recovered underneath the seat that he had just vacated created a reasonable inference that defendant was in constructive possession of the firearm.

¶34 We further find that the evidence established defendant had immediate and exclusive control over the recovered firearm. The fact that the other occupants of the Impala may have had access to the firearm does not defeat the finding that defendant possessed the gun.

¶35 Our court has instructed:

> " 'The law is clear that the exclusive dominion and control required to establish constructive possession is not diminished by evidence of others' access to the contraband. [Citation.] When the relationship of others to the contraband is sufficiently close to constitute possession, the result is not vindication of the defendant, but rather a situation of joint possession. To hold otherwise would enable persons to escape criminal liability for possession of contraband by the simple expediency of inviting others to participate in the criminal enterprise.' " *People v. Hill*, 226 Ill. App. 3d 670, 673 (1992) (quoting *People v. Williams*, 98 Ill. App. 3d 844, 849 (1981)).

Thus, the other Impala occupants' potential access to the firearm does not defeat defendant's constructive possession of the gun.

¶36 Moreover, we are not persuaded by defendant's insistence that the State failed to establish constructive possession because Officer Bucki did not observe the exact positioning of the firearm prior to its recovery. Officer Bucki testified that he was toward the rear of the Impala "slightly offset" when he observed Officer Velazquez retrieve the firearm from underneath the front passenger seat. His testimony was clear that Officer Velazquez proceeded to the front passenger immediately after all of the occupants of the Impala had left the vehicle. It is reasonable to infer that Officer Velazquez did so because of the furtive movements Officer Bucki observed after they curbed the Impala. Officer Bucki's testimony on cross-examination that he could not be sure what defendant was doing when he was hunched over does not undermine the evidence in support of constructive possession.

¶37 This case is similar to *People v. Grant*, 339 Ill. App. 3d 792 (2003), as cited by the State. In *Grant*, a vehicle was stopped for a traffic violation. *Id*. at 795. When the occupants were asked to exit the vehicle, the defendant was observed reaching back to put something on the front passenger seat. *Id*. at 796. The vehicle was searched once the occupants were secured and the officers recovered a firearm on the front passenger seat where the defendant had been seated. *Id*. Although in the case before us the firearm was not openly visible on the front passenger seat, but rather under the front passenger seat, our duty on review is to determine whether a reasonable trier of fact could find that defendant knew the firearm was in the Impala and that he constructively possessed it. See *Jackson*, 443 U.S. at 319. Based on the evidence presented, where we must allow all reasonable inferences from the record in favor of the State, we conclude the trial court did not err in finding defendant constructively possessed the firearm at the time in question.

¶38 B. Possession of a Defaced Firearm

¶39 Defendant next contends the State failed to prove him guilty beyond a reasonable doubt of possession of a defaced firearm where there was no evidence showing he knew the firearm in question had been defaced.

¶40 As stated, section 24-5(b) of the Code provides that "[a] person who possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated commits a Class 3 felony." 720 ILCS 5/24-5(b) (West 2014).

¶41 Defendant's argument has been rejected and dismissed by this court in *People v. Stanley*, 397 Ill. App. 3d 598 (2009). In *Stanley*, the defendant similarly contended his conviction for possession of a defaced firearm should be vacated where the State failed to

present evidence suggesting he knew the identifying marks had been scratched off the gun he possessed. 397 Ill. App. 3d at 603. The *Stanley* defendant also alternatively argued that if such knowledge was not required, the statute was unconstitutional as tending to criminalize innocent conduct without showing a culpable mental state. *Id*. In extensively analyzing section 24-5(b) of the Code, the *Stanley* court noted that the statute, as written, did not provide a mental state, but found that the applicable *mens rea* for the offense was knowledge and that "the knowledge required applies only to the possessory component of the offense." *Id*. at 608. Accordingly, to prove a defendant guilty of possession of a defaced firearm, this court concluded that the State was required to demonstrate the defendant knowingly possessed the defaced firearm, but was not required to establish knowledge of the character of the firearm where defacement was not an element of the offense. *Id*. at 609. The *Stanley* court rejected the idea that possession of a defaced firearm was a strict liability offense. *Id*.

¶42 In holding that the State was not required to prove knowledge of the nature of the firearm, *i.e.* its defacement, our court addressed the arguable inconsistency with section 4-3(b) of the Code, which defendant also relies on in this appeal, as follows:

> "We recognize that it could be contended that there is an inconsistency between our holding and the language of section 4-3(b) of the Code. However, we find no such inconsistency exists. Section 4-3(b) provides, in part: 'If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element. [Citation.]' While this could arguably be read to require proof defendant knew of the nature of the defaced firearm, we

> find that this is not, in fact, the case. Instead, we discern that the elements of this offense are properly the *mens rea* and the possession, that is, the State must prove the knowing possession of the defaced firearm by defendant. The State, however, need not prove knowledge of the character of the firearm. Though the defacement unmistakably bears upon the commission of the offense, it is not an element of the offense." *Id*. at 609.

¶43 *Stanley* has since been cited with approval. See *Falco*, 2014 IL App (1st) 111797; see also *People v. Harris*, 2017 IL App (1st) 140777, ¶ 52 (extending *Stanley*'s analysis to aggravated vehicular hijacking wherein the State was required to prove only that the defendant knowingly took the motor vehicle by force or threat of force and that the victim was a "physically handicapped person," not that defendant had knowledge of the victim's handicap). In *Falco*, this court reiterated that, in order to prove the offense of possession of a defaced firearm, the State need only prove that the defendant's possession was knowing and not that the defendant knew the firearm was defaced. *Falco*, 2014 IL App (1st) 111797, ¶ 18.

¶44 We see no reason to depart from our holdings in *Stanley* or *Falco*, and reject defendant's request to adopt federal authority instead. As a result, the State was only required to establish that defendant knowingly possessed the firearm in this case, which we have found was supported by the evidence, and that the firearm was, in fact, defaced, which is not in dispute. We, therefore, conclude defendant's challenge to the sufficiency of the evidence in support of his possession of a defaced firearm charge must fail.

¶45 III. Confrontation Clause

¶46 Defendant finally contends the trial court violated his confrontation clause rights in allowing the State to introduce an Illinois State Police certification showing he did not have a valid FOID card to support the AUUW charge. Because no sentence was imposed on his finding of guilt, we decline to consider the contention.

¶47 "[I]t is axiomatic that there is no final judgment in a criminal case until the imposition of a sentence, and, in the absence of a final judgment, an appeal cannot be entertained." *People v. Flores*, 128 Ill. 2d 66, 95 (1989). Here, the trial court sentenced defendant to 26 months' imprisonment on the possession of a defaced firearm count and merged his AUUW count therein. No sentence was entered on the AUUW count. As previously determined, we are not reversing defendant's possession of a defaced firearm conviction. Accordingly, defendant's challenge to his unsentenced conviction is not properly before us. See *People v. Sandefur*, 378 Ill. App. 3d 133, 142-43 (2007).

¶48 CONCLUSION

¶49 We affirm the judgment of the trial court.

¶50 Affirmed.