

2018 IL App (1st) 134005-U

No. 1-13-4005

Order filed March 2, 2018

Fifth Division

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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 12315
	)	
RAYSHAWN CHERRY,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge, presiding.

---

JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for unlawful use of a weapon by a felon affirmed over his contention that the State failed to prove beyond a reasonable doubt that he knowingly possessed a shotgun.

¶ 2 Following a bench trial, defendant Rayshawn Cherry was convicted of unlawful possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2010)) and sentenced to 54 months' imprisonment. On appeal, defendant contends the State failed to prove he

possessed the requisite knowledge and control to establish possession of a weapon. For the following reasons, we affirm.

¶ 3 At trial, Detective David Hickey testified that, on July 16, 2011, he was part of the gang unit for the Chicago Police Department. He was conducting surveillance on defendant based on information an informant provided. During the course of his surveillance, Hickey went to Stroger Hospital with a description of the vehicle defendant would be driving. There were eight officers that were part of the team at the hospital. Hickey located the vehicle matching the description he had and observed defendant walk over to it. He knew defendant prior to July 16, 2011.

¶ 4 Defendant was alone and entered the driver's side of the vehicle. He drove toward 51st Street and Prairie Avenue. Hickey and other team members maintained surveillance on him. Defendant parked at 51st and Prairie, but remained in the vehicle while he had several conversations with various people.

¶ 5 Hickey subsequently teamed up with Officer Joseph Biggane. They retrieved an unmarked vehicle while other officers maintained surveillance on defendant. Hickey and Biggane were in plainclothes. They returned to 51st and Prairie, and then followed defendant as he drove to the 5100 block of Martin Luther King Drive. At some point, defendant drove to 65th Street and Cottage Grove Avenue, where he double parked in front of what appeared to be a club and activated the vehicle's hazard lights. Hickey did not see anyone enter defendant's vehicle, but another surveillance officer related to him that a woman entered the passenger side.

¶ 6 Defendant thereafter drove to Walgreens, located at 87th Street and Cottage Grove. Hickey and Biggane positioned themselves a few blocks away out of sight of defendant's vehicle and maintained contact with their partners who were watching the vehicle. Defendant's vehicle

eventually left the Walgreens parking lot. Hickey subsequently stopped the vehicle on 87th at approximately 12:10 a.m. on July 17, 2011.

¶ 7 Defendant was sitting in the passenger side of the vehicle. Hickey approached the passenger side and Biggane approached the driver's side. As Hickey approached, he observed defendant take a blue and black gym bag from his feet and place it behind the driver's seat. Hickey instructed defendant and the driver, a woman later identified as Kijwana Thompson, to exit the vehicle. Thompson gave consent to search the vehicle, and Hickey immediately went to where the gym bag was located behind the driver's seat. When he opened the door, he could see the "wooden stock of a shotgun." Hickey did not have to manipulate the bag in any way to see the stock of the shotgun sticking out. He recovered the gym bag and found inside a sawed-off .410 shotgun with a wooden stock and six-inch barrel. The shotgun was loaded with three .410 caliber shotgun shells.

¶ 8 Other officers searched the vehicle in Hickey's presence after he recovered the shotgun. Biggane searched the trunk and recovered a gun case with two Glock magazines and .22 caliber ammunition. Hickey spoke with defendant on the street with Biggane present. Defendant told Hickey that the shotgun was his, and "it was not the woman's shotgun." Defendant was transported to the police station and Hickey did not speak with him again. Hickey gave the shotgun and gym bag to Officer Michael Fleming to be inventoried. He identified the gym bag, shotgun, shells, and gun case in court.

¶ 9 On cross-examination, Hickey testified he wrote an arrest report for defendant hours after the incident. The arrest report did not state that the gym bag was open, and only stated that Hickey "observed inside the gym bag the wooden handle of the shotgun." He acknowledged that

defendant's confession that the shotgun belonged to him was not in the arrest report, but testified that it was included in a supplemental report. Hickey also wrote a General Offense Case Report and did not include defendant's confession, but that report referenced the supplemental report. The supplemental report was more detailed than the arrest report and stated that defendant said "in essence but not verbatim" that he had the shotgun that was recovered in the gym bag, but did not include that he said the gun was "not the woman's." The supplemental report was completed two days after the incident. Defendant's statement was not memorialized in writing.

¶ 10 The report did not include that Hickey set up surveillance at Stroger Hospital. The car he was surveilling was a Pontiac G-6, and it was registered to Thompson. He surveilled defendant for 2 hours and 40 minutes, but did not recall whether defendant committed traffic violations or other crimes because that was not the purpose of the surveillance. Hickey was in an enforcement car. He followed the Pontiac to Walgreens but could not see the vehicle when it was in the Walgreens parking lot. However, the police did not lose sight of the vehicle. Although Hickey did not observe defendant commit a crime, other officers stated that based on defendant's actions, they believed a crime was about to occur. Because Thompson gave Hickey verbal consent to search the vehicle, he did not obtain a written consent form. He did not observe defendant handle the shotgun; he only observed him handle the gym bag and could not say how long it had been in the bag or the vehicle. There was also a t-shirt and gloves inside the gym bag. Hickey did not have prior physical or verbal contact with defendant, and knew him only from photographs prior to July 16, 2011.

¶ 11 Officer Joseph Biggane testified that on July 16, 2011, he worked with Hickey in plainclothes and an unmarked vehicle as part of an enforcement unit. Shortly after midnight on

July 17, 2011, they stopped a blue vehicle and Biggane approached the driver's side. The occupants of the vehicle were asked to exit. Defendant was in the passenger seat. As he approached the vehicle, Biggane observed defendant move a bag from the front to the back of the vehicle. After defendant exited the vehicle, he observed the butt of a shotgun sticking out of the bag. Biggane recovered from the trunk a black gun box, which contained .22 caliber ammunition and two magazine clips for a Glock .45.

¶ 12 Biggane spoke with defendant at the police station with Officer Fleming present. Biggane *Mirandized* defendant, and asked for the location of the guns that matched the .22 caliber ammunition and .45 caliber magazines. Defendant stated that the .22 caliber rounds were for a gun used by the Met Boys, a faction of the Gangster Disciples. Defendant stated that the gun was "stashed" near 51st and Prairie, but the police never located the weapon. Defendant did not say he was in the Met Boys, but Biggane knew that he was.

¶ 13 On cross-examination, Biggane testified that he did not see defendant in physical possession of the bullets or the shotgun. He did not know who placed the bullets in the trunk or how long they had been there. Neither the bullets nor the box that they were in were sent to a crime lab for fingerprint analysis. To his knowledge, the gun was also not tested for fingerprints. Biggane did not memorialize defendant's statement about the bullets and the gang, and the interview was not audio or videotaped. Biggane was not part of the surveillance team. He did not observe the butt of the shotgun when defendant moved the gym bag to the back of the vehicle.

¶ 14 Chicago police officer Michael Fleming testified that he was part of the Gang Investigation Section and part of a surveillance team targeting defendant on July 16, 2011. At some point during the surveillance, the blue vehicle that defendant was in drove to a Walgreens

parking lot at the 8600 block of South Cottage Grove. Fleming was approximately 75 feet away and observed a woman, later identified as Thompson, exit the vehicle and go to the trunk. He also observed defendant exit the vehicle and remove a black and blue gym bag from the trunk and then enter the passenger side of the vehicle. Nothing obstructed Fleming's view of the trunk area. The parking lot was well-lit with artificial lighting. Fleming later inventoried items recovered from the vehicle that he received from Hickey. The items included a "bolt-action shotgun, some live rounds, magazines, and \*\*\* a gun case."

¶ 15 A video of the Walgreens parking lot was published in court. Fleming narrated the video, which first depicted a blue vehicle backing into a parking space. The video showed that, at 12:05 a.m., defendant exited the driver's side of the vehicle and went to the trunk where he removed the gym bag, while Thompson exited the passenger side and reentered on the driver's side. At 12:06 a.m., defendant entered the passenger side of the vehicle with the gym bag. The two sat in the vehicle until 12:10 a.m., when the vehicle left the parking lot.

¶ 16 On cross-examination, Fleming testified that he surveilled defendant for a few hours, starting at Stroger Hospital. Defendant eventually picked up Thompson at 65th and Cottage Grove around 11:15 p.m. The surveillance team was conducting "roving" surveillance so there was always at least one surveillance officer who had sight of defendant. Fleming did not hear from any other officers that they observed defendant commit a crime.

¶ 17 Fleming acknowledged that he could not see inside the gym bag when defendant exited the vehicle and took the bag out of the trunk. He did not observe what defendant did with the bag inside the vehicle. Although Fleming was not part of the team that stopped the vehicle, he knew when it was pulled over because he was in radio contact with the other officers. The order to stop

the vehicle was given within two minutes of the vehicle exiting the Walgreens parking lot. Fleming drove past the vehicle after it was stopped. Although Fleming inventoried the bullets, he did not personally see where they came from and did not see defendant in possession of the bullets.

¶ 18 The parties stipulated that the Walgreens located at 8628 South Cottage Grove Avenue in Chicago had a video surveillance camera system inside and outside of the store that captured various angles. The camera was not equipped with audio recording capabilities. Between 11 p.m. on July 16, 2011 and 1 a.m. on July 17, 2011, the cameras at Walgreens were working properly. The State's Exhibit 2 showed the relevant portion of the Walgreens recording and fairly and accurately depicted how the scene looked.

¶ 19 The State admitted into evidence certified copies of two of defendant's prior convictions for aggravated battery in case number 04 CR 2320401 and aggravated unlawful use of a weapon in case number 03 CR 0990601.

¶ 20 For the defense, Kijwana Thompson testified that on July 16, 2011, defendant was her boyfriend. She had a job hosting a grand opening for a barbershop on 75th Street and Cottage Grove. Defendant drove her vehicle, a Pontiac G-6, and dropped her off at the barbershop around 3 p.m. Thompson brought her wallet and the black and blue gym bag inside the barbershop. The bag contained her gym shoes, shorts, and defendant's shirt and shorts. She last looked in the bag at 2:30 p.m. that day. Thompson was wearing high heeled shoes so she brought the bag so she could change her shoes if her feet started to hurt.

¶ 21 Defendant picked her up from the barbershop. He was still driving her vehicle. Thompson had a plate of food with her and placed her gym bag in the trunk. Defendant did not

put anything in her gym bag. After driving away, they parked in the Walgreens parking lot so that Thompson could eat. She did not change her shoes at that point because she was eating. Thompson asked defendant to get her gym shoes out of her bag in the trunk. They both exited the vehicle at the same time. Thompson reentered on the driver's side and defendant sat in the passenger seat and placed the gym bag on the floor in front of him.

¶ 22 Once back inside the vehicle, Thompson's cousin called her to go to a family party at 87th and Eberhart Avenue. She did not change her shoes because she decided to wear her heels to the party. As she was driving, she heard sirens and a voice on a loudspeaker instructing her to stop her car. She pulled over and reached to get her insurance card and driver's license. Over the loudspeaker, an officer instructed them to put their hands out the window. Thompson dropped her license and insurance card, and she and defendant put their hands outside of their respective windows.

¶ 23 Thompson observed six officers walk toward her car with their guns pointed at them. One officer pulled defendant out of the passenger seat and placed him in the back of a detective car in handcuffs. Another officer pulled Thompson out of the driver's seat and took her to the back of a different police vehicle. When she asked why they were pulled over, an officer responded that they received a report that the car was stolen. Thompson asked the officer how the car could be reported stolen when she owned it.

¶ 24 The officer asked for her license and insurance and she told him she dropped her information in her car. The officer went to her vehicle and looked at her driver's license and insurance before throwing the cards back into the vehicle. All six officers searched her vehicle. The officers did not ask for consent to search her vehicle, and she did not give consent for the



search. She was screaming and crying while she was in the police vehicle because the officers were “demolishing” her car and “throwing everything everywhere.” She watched one detective retrieve a crowbar and pry the back seat of her car.

¶ 25 A detective then got into the vehicle she was in and drove her to defendant’s mother’s residence at 5130 South King Drive. There were other officers already present at defendant’s mother’s house and they all went inside. After approximately 10 or 20 minutes, one of the detectives emerged with a dark bag, but Thompson could not see what was inside. At some point she was transported to the police station.

¶ 26 Defendant was living with her at the time. Thompson did not have a gun case in her vehicle that day. She denied that defendant moved her gym bag to the back seat and denied going into the trunk while they were parked at Walgreens. Thompson identified photographs of her vehicle after it was “demolished” by the police. The photographs were taken on the evening of July 17, 2011 and depicted her back seat “pried off the car” and various belongings thrown about. Her car was not in that condition prior to being pulled over by the police.

¶ 27 On cross-examination, Thompson testified that she complained to various family members that the police tore up her vehicle, but did not file a complaint with the police regarding her vehicle. After defendant’s arrest, however, she filed a complaint with the police, alleging that they were harassing her about an unrelated matter.

¶ 28 Her “alarm key” for her car was broken and had to be pressed firmly to get into the trunk. Thompson did not look in the gym bag after defendant retrieved the bag from her trunk at Walgreens.

¶ 29 On redirect, Thompson testified that she filed a complaint against the police and signed a sworn affidavit. Lieutenant Sanchez was one of the officers named in her complaint for harassing her. In the complaint, she alleged that, on September 16, 2011, officers came to her grandfather's house and told her that she should not help defendant and took her to a police station where they held her for two hours, causing her to miss school. The police returned to her grandfather's house a second time and tried to break down his door because she refused to exit the house. The complaint also alleged that the police asked her about defendant's criminal history and confiscated a gun that she owned.

¶ 30 Vernita Foggs testified that she lived in the apartment building located at 5130 South King Drive on July 16, 2011. On that date, she worked until 11:30 p.m. and stopped at a lounge on her way home. When she finally arrived home, she observed a crowd of people and police cars in front of the building. She additionally observed "a whole lot of policeman [*sic*]" in apartment 302, where Darlene Cherry lived. She did not see Darlene on the scene. Foggs knew Darlene often went to the lounge that she had been at that night. She returned to the lounge and spoke with the barmaid, "Chicken," who was friends with Darlene, regarding the police at Darlene's apartment. Foggs subsequently returned home, and the police were still at her building. Foggs knew Darlene as a neighbor, but did not know her personally.

¶ 31 On cross-examination, Foggs testified that there were approximately 8 to 10 officers at the apartment building. The officers were both in uniform and plainclothes. She could see some of the officers inside Darlene's unit, but did not know what occurred inside.

¶ 32 Darlene Cherry, defendant's mother, testified that, on July 16, 2011, she lived at 5130 South King Drive in apartment 302. Defendant did not live with her at that time. She left her

apartment around 11:15 p.m. on the day in question. Darlene identified the shotgun and claimed ownership of it. She had last observed it on July 16, 2011 around 11 p.m. in a black bag in her closet where she keeps her shoes. Her friend, Ronald Jackson, gave her the gun in 2008. Jackson gave her a bag containing the shotgun, a box with ammunition and two clips. She identified the box, ammunition, and clips from the State's exhibits that the officers previously identified. All of the items were in her closet on July 16, 2011.

¶ 33 On July 17, 2011, Darlene received a phone call from her daughter and returned home where she found her gate broken, apartment door ajar and the lock broken. Inside her apartment, moving boxes were open and the bag containing the shotgun and ammunition was missing. She called her building maintenance supervisor to fix the door. To secure her home that night, she pushed her couch against the door and slept on her couch. The following morning, several neighbors informed her that the police were in her house the night before. She did not call the police because she did not know what to think.

¶ 34 Darlene called the Office of Professional Standards (OPS) on July 18, 2011, to report that the police had been in her home without a warrant and took her belongings. She later received a letter from OPS, stating they received her claim, gave her a number, and assigned Sergeant Hoffman to her case. Darlene attempted to contact Hoffman, who never followed up with her.

¶ 35 On cross-examination, Darlene confirmed that the shotgun belonged to her, but acknowledged that she did not have a firearm owner's identification card or a gun license. She further acknowledged that she did not purchase the shotgun legally. Darlene did not know what the shotgun shells looked like, and did not know whether the .22 caliber bullets matched the shotgun. She did not own a .22 caliber handgun. She was not present when the police were inside

her apartment or when they broke her locks. She did not know the name of the neighbor that informed her that the police were in her home and acknowledged that her second floor neighbors did not hear anything the night the police were at her apartment.

¶ 36 Each time Darlene attempted to contact Hoffman, she was informed that Hoffman was not at the police station and no one knew when she worked. She informed defendant's lawyer that she could not contact Hoffman, and he instructed her to write a letter. She never informed the State's Attorney's office of her complaint and did not take pictures of the damage to her apartment. Aside from the bag containing the shotgun and ammunition, nothing else was missing from Darlene's apartment. She did not know where defendant was after midnight on July 17, 2011.

¶ 37 Odell Baylock, the maintenance supervisor for Darlene's building, received an assignment on July 17, 2011, to fix the door at apartment 302 at 5130 South King Drive. When he arrived at the apartment between 9 and 10 a.m., the deadbolt on the gate was broken off and the front door looked like it had been broken into because the doorjamb was "tore up." Baylock replaced the deadbolt on the gate and the locks on the front door, and repaired the doorjamb.

¶ 38 Defendant testified that, on July 17, 2011, after midnight, he was with Thompson, his girlfriend, near 87th and Eberhart Avenue in a blue Pontiac G-6. The police stopped the vehicle, but he denied making any statements to police. He did not tell Hickey that the shotgun belonged to him. Defendant did not move the gym bag from the front seat to the back seat, and he did not see the shotgun or the ammunition on the scene that day. He observed Sanchez at the scene, and had met him in the summer of 2008. Sanchez approached defendant when he was handcuffed in the back of a detective car. He asked defendant how to get into the trunk. When defendant told

him to firmly press on the key fob, Sanchez stated that defendant was lying and hit defendant in the face with his fist. Defendant denied telling the officers that the Met Boys used the .22 caliber bullets or giving directions to locate the gun associated with those bullets.

¶ 39 On cross-examination, defendant testified he was a passenger in the vehicle when they were pulled over. Three officers approached his side of the vehicle, and three approached Thompson's side. They were all in plainclothes. He acknowledged he was in possession of the Pontiac when Thompson was at work. He took the gym bag from the trunk to the passenger compartment when he and Thompson were in the parking lot at Walgreens. He acknowledged that his t-shirt was inside the bag. The shotgun belonged to his mother's friend, but his mother stored the gun at her house.

¶ 40 In rebuttal, the State called Officer Hickey to the stand. He testified that only two officers were in the vehicle that stopped defendant. Only one officer approached each side of the vehicle. Thompson exited the vehicle on her own, and Hickey removed defendant from the vehicle. Thompson was transported to the police station, but Hickey did not transport her. Two officers that were part of the gang enforcement unit, as well as other officers engaged in the covert operation, arrived after Hickey had pulled over the Pontiac. Lieutenant Sanchez eventually arrived on the scene, but Hickey did not observe the interaction between defendant and Sanchez.

¶ 41 The extent of Hickey's search was to remove the gym bag containing the weapon, although other officers searched the vehicle. He did not observe any damage to the inside of vehicle when he recovered the gym bag and denied causing damage or observing other officers cause damage to the vehicle. Hickey did not go to King Drive that night and later saw Thompson and defendant at the police station.

¶ 42 On cross-examination, Hickey acknowledged that he was aware other officers went to 5130 South King Drive that night. The arrest report that he prepared listed 11 officers that were involved in defendant's arrest and "other events," including himself, Biggane, and Sanchez. Hickey clarified on cross-examination that the 11 officers were involved in the entire event that led to defendant's arrest, and were not all present at the scene of the arrest.

¶ 43 Chicago police officer Darryl Hardy testified that he was on duty on July 16, 2011 as part of the Central Gang Enforcement Unit. He was part of an assist unit in a gun investigation. On July 17, 2011, he was called in to assist in pulling over a Pontiac, and defendant was in custody as a result of that operation. Hardy was on the scene when a shotgun with a sawed off handle was recovered from the vehicle. He did not observe anyone strike defendant when he was on the scene and did not observe injuries to defendant's face.

¶ 44 On cross-examination, Hardy testified that he was with his partner, Officer Brandon, in an unmarked car when he was called in to assist. He received instructions to meet at a staging point prior to pulling over the vehicle, but could not remember where that point was located. Once he was at the staging point, he received further instructions from Sergeant Lopez. Several unmarked cars assisted in curbing the Pontiac. He approached defendant's car when they stopped him, but could not recall which side he approached. He was possibly the third or fourth officer to approach the vehicle, and at some point both defendant and the driver were removed from the vehicle.

¶ 45 Hardy was on the scene for 30 to 45 minutes and was not aware that other officers went to an address on King Drive. He returned to his previous, unrelated assignment with his partner after assisting. Hardy was present when officers searched the vehicle but did not recall seeing

officers search the trunk. Sanchez arrived on the scene after him and approached the vehicle defendant was in, but Hardy did not see Sanchez have any contact with defendant. He did not write any reports in the case.

¶ 46 Chicago police lieutenant James Sanchez testified that he was assigned to the Gang Investigations Unit. On July 17, 2011, he responded to the scene of a stopped vehicle on Eberhart. He was driving an unmarked vehicle. There were four or five police vehicles present on the scene when he arrived, and defendant was in custody in the back of a police vehicle. No one was in the vehicle with defendant. Sanchez asked defendant where the car keys for the Pontiac were located. He denied making physical contact with defendant and did not observe any other officers strike defendant. Several other officers were present. Sanchez did not observe injuries on defendant at the scene.

¶ 47 Sanchez observed Hickey in possession of the shotgun in the gym bag on the scene. He identified the shotgun and gym bag for the court. Sanchez did not participate in the search of the Pontiac. He was on the scene for 15 minutes before he relocated to an apartment building at 51st Street and King Drive. He went to the apartment to follow up on the ammunition that the police recovered from the Pontiac. Thompson had informed them that the guns that held the ammunition and magazine clips might be located at the address on King Drive. Thompson was with them at the apartment.

¶ 48 When he arrived with other officers at 51st and King, there were several apartment buildings and they did not know which apartment contained the guns. The officers rang doorbells and checked mailboxes at the apartment building. They eventually made entry into the lobby of one building, but no police personnel entered any of the units. They did not force entry into any

apartments and did not break doors at that location. Sanchez and the other police personnel remained at the apartment building for approximately 15 minutes, and they all left at the same time.

¶ 49 On cross-examination Sanchez testified that he was highest ranking supervisor at the scene on Eberhart. He estimated that there were possibly 10 officers present. Sanchez supervised several teams and knew of the investigation that involved defendant and a weapon earlier in the evening, but did not get involved until later that night. He had been listening to the team's progress over his radio and after they stopped defendant's car, Sanchez drove to the scene around 12:30 a.m.

¶ 50 At the scene, Sanchez spoke with Hickey, who showed him what had been recovered from the vehicle. He eventually spoke with defendant and asked where the keys were. Other officers were already searching the vehicle and they could not get into the trunk. Thompson told Sanchez that defendant had the keys, but he did not document that conversation. Although Sanchez was not present when defendant was searched, he learned that defendant had thrown the car keys under the squad car he was sitting in. He did not know who found the keys, but he was present when they were found. They were then able to open the Pontiac's trunk. Sanchez eventually spoke with Thompson regarding the King Drive address. She told him that she purchased additional weapons and defendant had them and they were possibly at his mother's house. Thompson had a box for a Glock and ammunition for a .22, so she told Sanchez that she bought a Glock and .22 gun. Sanchez acknowledged he did not document his conversation with Thompson.



¶ 51 Thompson accompanied the officers to the apartment building at King Drive, but did not get out of the car. She did not know what apartment defendant allegedly lived in. The officers knocked on several doors but no one answered.

¶ 52 Chicago police officer James Davoren testified that, on July 17, 2011, he received a call and relocated to an apartment building at 51st and King Drive. He met other officers, including Sanchez, at the location in an attempt to enter the apartment building to find defendant's apartment. They knocked on doors to see if they could locate defendant's unit but could not find where defendant lived. They did not enter any units and did not force entry into any units. The officers did not recover anything from the apartment building, and they all left around the same time.

¶ 53 On cross-examination, Davoren testified he did not personally determine where defendant lived prior to going to the apartment building. To his knowledge, no one on his team contacted the Secretary of State's office to determine where defendant lived. He observed a woman in the back of a car at the apartment building, and acknowledged that no one asked her in which apartment defendant lived in his presence. Davoren was not at the scene of defendant's arrest.

¶ 54 The parties stipulated that, if a member of the impound car lot were called, that individual would testify that on July 17, 2011, a 4-door 2005 blue Pontiac with license plate number L226799 was impounded. The vehicle was searched, and a report was generated, which indicated that there was no damage to the interior of the vehicle, including no missing seats. The only damage to the vehicle was various scratches and dents on its exterior.

¶ 55 Following closing arguments, the court extensively reviewed the evidence. The court did not find Thompson’s testimony credible, especially as it related to ownership of the gym bag and her claim that she had filed a police report but did not report that the police trashed her car. The court found Darlene Cherry’s testimony “similarly devoid of belief.” It noted, however, that the testimony regarding the police driving to Darlene Cherry’s apartment building at 51st and King Drive was not brought out by the State, but stated that “was really of no moment because according to the police no contraband was found there.” Ultimately, the court found defendant guilty of UUWF, and sentenced him to 54 months’ imprisonment.

¶ 56 On appeal, defendant contends that the evidence was insufficient to convict him of UUWF. Specifically, he argues that the State failed to prove beyond a reasonable doubt that he knowingly possessed the shotgun.

¶ 57 On a challenge to the sufficiency of the evidence, we inquire “ ‘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 omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 58 To sustain the conviction for unlawful use of a weapon by a felon, the State must prove that defendant had a prior felony conviction and that he knowingly possessed a firearm. 720 ILCS 5/24-1.1(a) (West 2010). Knowledge and possession are questions of fact to be resolved by the trier of fact. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). Defendant does not contest that he had a prior felony conviction, so we address only the elements of knowledge and possession.

¶ 59 Defendant argues that the evidence showed only that he moved the gym bag, but did not show that he opened the bag. Therefore, according to defendant, the State failed to prove that he knew a shotgun was inside the bag and possessed it. Further, he asserts that the evidence showed that there was reasonable doubt as to whether the shotgun was actually present at the scene.

¶ 60 Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Actual possession is proved by testimony that the defendant exercised some form of dominion over the contraband, such as trying to conceal it. *Id.* Where there is no actual possession, constructive possession is proved where the defendant knew the item was present and that he “exercised immediate and exclusive control over the area when the weapon was found.” *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). “Because possession is often difficult to prove directly, proving possession frequently rests upon circumstantial evidence.” *Love*, 404 Ill. App. 3d at 788.

¶ 61 “Knowledge of existence of a firearm within the defendant’s possession may be proved through circumstantial evidence.” *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). The mere presence of the defendant in a car, without more, is not evidence sufficient to prove he has knowledge of a weapon in the car. *Id.* A court may infer knowledge from other factors,

including: (1) the visibility of the weapon from the defendant's position in the car; (2) the period of time in which the defendant had the opportunity to observe the weapon; (3) any gestures by the defendant indicating an effort to hide the weapon; and (4) the weapon's size. *Id.* at 891-92. In addition, the court should consider any other relevant circumstantial evidence, such as whether the defendant had an ownership interest in either the weapon or in the car where the weapon was found. *Id.* at 892.

¶ 62 Here, the evidence was sufficient for the trial court to find defendant knowingly possessed the shotgun. The testimonial evidence from Officer Fleming and the video evidence showed that defendant had been driving the Pontiac for several hours prior to his arrest and had handled the gym bag when he transported it from the trunk to the passenger compartment of the vehicle. Officers Hickey and Biggane each testified that they observed defendant move the gym bag from the passenger seat to behind the driver's seat when they approached the vehicle after stopping it, and subsequently saw the butt of the shotgun protruding from the bag, raising the inference that defendant knew the weapon was inside the bag. *Bailey*, 333 Ill. App. 3d at 891 (knowledge may be inferred from the visibility of the weapon and defendant's gestures indicating an effort to hide the weapon). Critically, Hickey testified that defendant admitted the shotgun was his at the scene. Accordingly, the trial court was entitled to find that defendant's conduct showed he knew there was a shotgun in the gym bag and that he exercised control over the weapon by attempting to conceal it behind the driver's seat.

¶ 63 In reaching this conclusion, we reject defendant's contention that the officers' testimonies were fabricated and the defense witnesses "called into question whether the shotgun was even present" at the time of defendant's arrest. The court explicitly stated that both Thompson and

Darlene Cherry were not credible witnesses. See *Siguenza-Brito*, 235 Ill. 2d at 228 (It is within the province of the trier of fact “to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.”). Although the defense elicited testimony that, after arresting defendant, the police went to Darlene’s apartment in an effort to find other weapons and failed to make note of the visit in police reports, the trial court found that was not enough to raise a reasonable doubt as to defendant’s guilt because the police acknowledged that they were not able to recover anything from the apartment and there was, therefore, no need to document the excursion. Thus, the trial court expressly rejected the defense theory of the case. We note that the finder of fact, here the trial court, is entitled to choose which evidence to believe (*People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) (“a fact finder need not accept the defendant’s version of events as among competing versions”)), and it is not our province to second-guess the finding or to retry defendant on appeal (*People v. Hall*, 194 Ill. 2d 305, 329-30 (2000)).

¶ 64 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 65 Affirmed.