

2018 IL App (1st) 162193-U

No. 1-16-2193

December 31, 2018

First 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 11764
	)	
DEANDRE HARRIS,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE WALKER delivered the judgment of the court.  
Justices Pierce and Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's convictions for unlawful use or possession of a weapon by a felon (UUWF) and possession of cannabis are affirmed over his contention that the evidence presented was insufficient to sustain his conviction for UUWF because the State failed to prove beyond a reasonable doubt that he constructively possessed the handgun recovered in his vehicle.

¶ 2 Following a bench trial, defendant Deandre Harris was convicted of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)) and possession of cannabis (720 ILCS 550/4 (West 2014)). He was sentenced to concurrent terms of two years'

imprisonment. On appeal, defendant contends that the evidence presented was insufficient to sustain his conviction for UUWF because the State failed to prove beyond a reasonable doubt that he knowingly possessed the handgun recovered during the search of his vehicle. We affirm.

¶ 3

### BACKGROUND

¶ 4 Defendant was charged by indictment with: two counts of UUWF in that he knowingly possessed on or about his person a handgun (count 1) and 15 rounds of ammunition (count 2) after having been previously convicted of the felony offense of manufacturing/delivery of cannabis under case number 97 CR 15775 (720 ILCS 5/24-1.1(a) (West 2014)); and one count of possession of cannabis (count 3) in that he knowingly possessed more than 30 grams but not more than 500 grams of cannabis after having been previously convicted of the offense in case number 97 CR 15775 (720 ILCS 550/4 (West 2014)). Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 5 The facts adduced at trial show that on June 1, 2014, Illinois State Police Trooper Marcus Nettles (Nettles) was patrolling Interstate 94 (I-94) in a marked squad car that was equipped with a dashboard video camera. At approximately 7:40 p.m., Nettles observed defendant driving a white Buick LeSabre travelling southbound on I-94. Nettles testified that defendant was driving too closely to the car in front of him and changed lanes without using his turn signal. Nettles activated his emergency lights and defendant stopped his vehicle on the exit ramp at 39th Street. Nettles followed defendant up the ramp and stopped his vehicle behind defendant. Nettles approached defendant from the driver's side and saw that defendant was the sole occupant of the vehicle. Nettles informed defendant that he was driving too closely to the vehicle in front of him and that he failed to signal when he switched lanes. Nettles asked defendant for his license and

proof of insurance. After defendant gave Nettles his driver's license and insurance card, Nettles returned to his squad to run defendant's name through the Law Enforcement Automated Data System (LEADS).

¶ 6 As Nettles was seated in his vehicle, he noticed a strong smell of raw cannabis coming from defendant's car. Defendant was parked directly in front of Nettles's squad car and there were no other vehicles in the vicinity. Nettles explained that he was trained to detect the odor of raw cannabis at the Illinois State Police Training Academy. After Nettles ran defendant's name through LEADS, he walked to defendant's vehicle. As he came closer to the driver's side, Nettles noticed the smell of raw cannabis was getting stronger. Nettles asked defendant if he had any illegal drugs in the car and if he had been smoking. Defendant replied that he smoked a "small joint" when he was exiting Interstate 290 (I-290) and merging onto I-94. Nettles explained that he was familiar with the term "joint" and understood it to mean that defendant was smoking marijuana. Nettles described that, based on his experience, defendant did not have glossy red eyes that would be associated with the smoking of marijuana nor did the odor emanating from the car smell like burnt marijuana. Nettles ordered defendant to exit the car and did a protective pat down search of defendant before placing him in the back seat of his squad car. Nettles requested an assist unit and began searching defendant's car.

¶ 7 Trooper Susanna Matias (Matias) arrived at the scene to assist with the search. As Nettles was searching the front seat, he noticed there were "a lot of air fresheners." Nettles explained that based on his experience, cologne and air fresheners are used to mask the odor of cannabis when being transported in a vehicle. As Nettles was searching the rear seat, he found a black bookbag underneath the driver's seat. The bookbag was zippered shut. Inside the bookbag,

Nettles recovered a plastic bag containing suspect cannabis. Matias also searched the vehicle. After approximately 15 minutes, Matias called to Nettles and showed him a gun inside the center console of the rear seat. Nettles recovered a Glock 31 semi-automatic handgun from the console. He removed the handgun's magazine and found it was loaded with live ammunition. Nettles also found the handgun had a round in the chamber totaling 16 live rounds of ammunition recovered. Defendant was placed under arrest and transported to the Chicago Police Department First District.

¶ 8 Nettles learned that the handgun recovered was registered. Nettles's dashboard camera recorded the entire incident but, certain audio portions failed to record. Nettles inventoried the cannabis, handgun, and ammunition at the police station. The dashboard video was published to the court.

¶ 9 On cross-examination, Nettles acknowledged that, in his written report, he did not include that he smelled the odor of raw cannabis and that he asked defendant if he had smoked "marijuana." Nettles also did not include defendant's statement about smoking a "small joint" in his report. Nettles did not observe defendant to stumble, trip, or fall when he exited his vehicle. Nettles did not see the handgun in the car when defendant was in the vehicle. Defendant did not appear to be nervous to Nettles nor did he look into the back seat of the vehicle. The bookbag containing the cannabis was zipped shut and did not have defendant's name on it. Nettles acknowledged that defendant did not appear to be panicked, sweating or stuttering and he was cooperative at all times.

¶ 10 Matias testified that on June 1, 2014, at approximately 7:40 p.m., she responded to a call to assist Nettles at I-94 and 39th Street. When Matias arrived at the scene, she observed a white

Buick LeSabre, Nettles, and defendant. Matias assisted Nettles in searching the vehicle. Matias searched the Buick several times. She described the back seat of the vehicle as being “completely clean and clear” with no objects on the seat. During her search, Matias saw that the back seat had a center console that was closed. The console had a tab that she pulled down and a hinged compartment that she opened. Inside the compartment, Matias found a semi-automatic handgun. She tapped her flashlight on the window of the Buick to get Nettles attention then showed him the location of the gun. Nettles recovered the gun and placed it on the hood of his squad car.

¶ 11 On cross-examination Matias acknowledged she had to search the vehicle more than once before she found the handgun. Once Matias pulled the tab to the center console down, the console became an armrest that had a hinged top. When she opened the top portion of the armrest, she saw the handgun.

¶ 12 The State entered a certified vehicle record for the Buick LeSabre that listed defendant as the owner of the vehicle. The State also entered a certified copy of defendant’s conviction for cannabis and unlawful use of a weapon (Uuw) under case number 97 CR 15775. The parties stipulated that the suspect cannabis recovered from the vehicle tested positive for cannabis and the total weight was 436.3 grams. The State admitted the dashboard video into evidence.

¶ 13 The court found defendant guilty of all three counts. In doing so, the court noted that the evidence supported the inference that defendant knowingly possessed the gun and the cannabis where he was the sole owner of the vehicle, and exercised exclusive control of the vehicle at the time of the traffic stop.

¶ 14 After hearing arguments in aggravation and mitigation, the court sentenced defendant to concurrent terms of two years' imprisonment.<sup>1</sup>

¶ 15 ANALYSIS

¶ 16 On appeal, defendant challenges the sufficiency of the evidence to sustain his UUWF conviction.

¶ 17 The standard of review on a challenge to the sufficiency of the evidence is 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. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases, and it does not matter whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill. App. 3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 18 To sustain defendant's conviction for UUWF, the State was required to prove that he: knowingly possessed a weapon and he was previously convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2014).

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<sup>1</sup> Defendant's sentencing hearing is not included in the Report of Proceedings. The Common Law Record contains defendant's mittimus indicating the above sentence.

¶ 19 Defendant does not dispute that he is a convicted felon. Rather, he argues that the State failed to prove that he constructively possessed the handgun recovered during the search of his vehicle. Specifically, he maintains that the State failed to provide sufficient evidence that he had knowledge of the handgun.

¶ 20 Possession is a question of fact to be resolved by the trier of fact. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Where, as here, a defendant is not found in actual possession of a firearm, the State must prove constructive possession, *i.e.* that defendant knew a firearm was present, and exercised immediate and exclusive control over the area where the firearm was found. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. The element of knowledge may be proved by circumstantial evidence. *People v. McKnight*, 39 Ill. 2d 577 (1968). Absent other factors that might create a reasonable doubt as to the defendant's guilt, the trier of fact is entitled to rely on an inference of knowledge sufficient to sustain a conviction. *People v. Smith*, 191 Ill. 2d 408, 413 (2000).

¶ 21 The record shows that defendant was the sole owner of the vehicle. At the time the gun was recovered, defendant was the driver and the sole occupant of the vehicle. See *People v. Hammer*, 228 Ill. App. 3d 318, 323 (1992) (control over the location where the weapons were found gives rise to an inference that defendant possessed the weapons); See also *People v. Spencer*, IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)) (The State proves the control element by demonstrating that the defendant had the “ ‘intent and capability to maintain control and dominion’ over an item even if he lacks personal present dominion over it.’ ”).

¶ 22 Defendant relies on *People v. Bailey*, 333 Ill. App. 888 (2002) in support of his argument that the evidence presented was insufficient to find that he constructively possessed the gun. Here, unlike in *Bailey*, defendant was not merely a passenger in the vehicle, he was the sole occupant and driver. Moreover, unlike in *Bailey*, defendant was the owner of the vehicle. See *Bailey*, 333 Ill. App. 3d at 891-92 (“courts should also consider any other relevant circumstantial evidence of knowledge including whether defendant had a possessory or ownership interest in the weapon or in the automobile in which the weapon was found”).

Defendant also relies on *People v. Seibech*, 141 Ill. App. 3d 45 (1986). In *Seibech*, this court reversed the defendant’s conviction for unlawful use of a weapon and FOID violation based on the testimony of a defense witness, who testified that he had left the firearm in defendant’s car. *Seibech*, 141 Ill. App. 3d at 49. In reversing the conviction, the court in *Seibech* noted “while ordinarily one driving his own car with a firearm in it would be presumed to have knowing possession of a firearm, this presumption may be rebutted. In *Seibech*, the un rebutted defense testimony on this point effectively rebutted the State’s evidence.” *Id.* Unlike in *Seibech*, defendant did not present testimony from a witness who claimed ownership of the firearm and testified that he left the firearm in the car. After viewing the evidence in the light most favorable to the State, we find that it was sufficient to support the trier of fact’s determination that defendant constructively possessed the gun recovered from his vehicle.

¶ 23

#### CONCLUSION

¶ 24 The evidence presented supports the court’s conclusion that defendant was in constructive possession of the handgun recovered, and the evidence was sufficient to sustain his conviction for UUWF.



No. 1-16-2193

¶ 25 Affirmed.