

2026 IL App (1st) 250993-U
No. 1-25-0993
Order filed September 30, 2026

First Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent 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. 23 CR 12031
	)	
LEVAR GREEN,	)	Honorable
	)	Natosha Toller,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's conviction for aggravated unlawful use of a weapon over his challenge to the evidence that he constructively possessed a firearm.
- ¶ 2 Following a bench trial, defendant Levar Green was convicted of aggravated unlawful use of a weapon (AUUW) and sentenced to three years in prison. On appeal, defendant argues that the State failed to prove he constructively possessed a firearm that police recovered from his vehicle. We affirm.

¶ 3 Defendant was charged by information with unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2022)) and AUUW (*id.* § 24-1.6(a)(1), (a)(3)(C)).

¶ 4 At trial, Chicago police officer Timothy Doohan testified that at approximately 2:10 a.m. on October 2, 2023, he and his partner stopped a vehicle that ran a red light. Doohan approached the passenger-side door and observed defendant—whom Doohan identified in court—as the vehicle’s sole occupant. Defendant’s arm rested on the center console. Doohan shined his flashlight into the front passenger side of the vehicle, then the back seat, then returned the light to the front, whereupon he observed an empty, black holster on the center console underneath the radio by the gearshift, and a cell phone in a cupholder. Defendant permitted the officers to search the vehicle, and Doohan recovered a loaded semiautomatic handgun from inside the center console. Defendant made no furtive movements.

¶ 5 The State published video from Doohan’s body-worn camera. We have reviewed this video, which is included in the record. The video shows Doohan shine his flashlight into defendant’s vehicle, but the holster is not visible in the dark. After defendant exits the vehicle, Doohan asks him about the holster. Defendant first denies having a holster, then says his cousin has one. After defendant permits the search, Doohan opens the driver’s side door, reaches into the center console area, and signals to his partner, who arrests defendant. Doohan then retrieves a small black handgun from the center console.

¶ 6 The parties stipulated that defendant did not possess a valid Firearm Owner’s Identification (FOID) card on October 2, 2023. The State published certified copies of defendant’s 2000 conviction for manufacture or delivery of cannabis and a Texas vehicle record showing defendant was the registered owner of the vehicle he was driving on October 2, 2023.

¶ 7 Defendant testified that on October 1, 2023, he arrived in Chicago from Alabama around 2 p.m., intending to take his “child’s mother” to Alabama because he “didn’t want [his] kid to grow up in Chicago.” Around 3 p.m., defendant picked up his cousin Leo Clark, who was carrying a firearm in a holster. Around 4 p.m., defendant and Clark went to a friend’s house, where defendant left his vehicle unlocked. During the visit, defendant did not see Clark remove his firearm or holster, exit the house, go to the vehicle, or place the firearm or holster inside the vehicle. Defendant did not give Clark permission to place the firearm or holster in the vehicle.

¶ 8 Around 1:45 a.m., defendant left the friend’s house to pick up his “lady friend” and leave Chicago. About 10 minutes later, police stopped defendant and he placed his cell phone in the cupholder next to its charging cord. At that time, the holster and charging cord were on the center console underneath the radio, but defendant did not know the holster or firearm was in the vehicle. He did not see the holster when he entered the vehicle because the vehicle’s interior lights did not automatically activate when the doors opened.

¶ 9 The State argued in closing that defendant was the sole owner and occupant of the vehicle and therefore constructively possessed the firearm. The State contended that defendant’s testimony was not credible and emphasized that the holster was in plain view next to defendant’s cell phone and within his immediate reach.

¶ 10 Defense counsel countered that the firearm belonged to Clark. Defendant did not notice the holster in the dark, and the firearm was small and hidden in the console. Also, defendant cooperated with police, allowed them to search his vehicle, and denied knowledge of the holster.

¶ 11 The trial court found defendant guilty of UUWF and AUUW. In ruling, the court did not find defendant’s testimony credible. Rather, it made “absolutely no sense” that defendant spent

hours with his friend and cousin after coming to Chicago to take “his lady friend, who was giving birth to his child” to Alabama, that he left his vehicle unlocked for 8 to 10 hours despite believing Chicago was dangerous, and that he did not see the holster “in plain view” even though he placed his cell phone and charger “on top of” it. The court further observed that defendant was the sole owner and occupant of the vehicle and that the firearm was immediately accessible to him. The court thus determined that defendant knowingly possessed the firearm.

¶ 12 Defendant filed a motion to reconsider, arguing that the State failed to prove he knew the firearm was present. Defense counsel noted that the court had stated defendant’s cell phone was placed “on top of” the holster, whereas the evidence showed the cell phone was in the cupholder. The court denied the motion, stating in relevant part that “it was clear as day that the items were laid right there on top of the holster” and “[i]t was the holster that immediately drew the officer’s attention.”

¶ 13 At sentencing, the court merged the UUWF count into the AUUW count and sentenced defendant to the minimum term of three years in prison for AUUW.

¶ 14 Defendant appeals, arguing that the State failed to prove he constructively possessed the firearm because insufficient evidence showed he knew it was in his vehicle.

¶ 15 When considering a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Johnson*, 2026 IL 131337, ¶ 59; see also *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). We will not retry the defendant or substitute our judgment for the trier of fact’s regarding the weight of the evidence or the credibility of witnesses. *People v. Jones*, 2023 IL 127810, ¶ 28. We allow all reasonable

inferences in favor of the State and will not reverse unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.*

¶ 16 To sustain a conviction for AUUW as charged, the State must prove that the defendant (1) knowingly carried a firearm on or about his person or in a vehicle (2) without possessing a currently valid FOID card. See 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2022); *People v. Woodhouse*, 2026 IL App (1st) 240827, ¶ 23. Possession may be actual or constructive. *Jones*, 2023 IL 127810, ¶ 30. Actual possession means the firearm was on the defendant's person, whereas constructive possession means the defendant had knowledge of the firearm and exerted immediate and exclusive control over where it was found. *Id.*

¶ 17 Defendant does not dispute that he exerted immediate and exclusive control over his vehicle, that the firearm was found in his vehicle, or that he did not possess a valid FOID card at the time of his arrest. Rather, he argues that the State did not prove he knew the firearm was inside his vehicle for purposes of constructive possession.

¶ 18 Knowledge is a question of fact to be determined by the trier of fact. *Jones*, 2023 IL 127810, ¶ 27. It is generally proved through circumstantial evidence. See *Woodhouse*, 2026 IL App (1st) 240827, ¶ 26. "Factors from which knowledge may be inferred include (1) the visibility of the weapon from the defendant's position inside the vehicle, (2) the period of time in which the defendant had an opportunity to observe the weapon, (3) gestures by the defendant that indicate an effort to retrieve or hide the weapon, and (4) the size of the weapon." *People v. Wade*, 2025 IL App (1st) 231683, ¶ 27. These factors are not exclusive—courts also consider other relevant circumstantial evidence, including whether a defendant owned and controlled the vehicle where the firearm was recovered. See *Woodhouse*, 2026 IL App (1st) 240827, ¶¶ 26-27, 30.

¶ 19 Here, a rational trier of fact could infer from defendant's control of his vehicle that he knew of—and thus constructively possessed—the firearm. See *id.* ¶ 26 (“Proof that a defendant had control over the premises where the contraband is located gives rise to an inference of knowledge and, therefore, possession.”). The record shows that defendant was the sole owner and occupant of his vehicle when police stopped him. The holster was “in plain view,” such that Officer Doohan noticed it from outside the vehicle, and the firearm was within defendant's immediate reach. Indeed, defendant testified that he placed his cell phone in the cupholder within the center console area next to the holster. Doohan also observed defendant's arm resting directly on the center console containing the firearm.

¶ 20 Moreover, the trial court found defendant's testimony not credible, and we will not disturb that finding. See *Jones*, 2023 IL 127810, ¶ 28 (reviewing court will not substitute its judgment for the trier of fact's regarding witness credibility). The court considered and rejected defendant's arguments—both in closing and in his motion to reconsider—that the firearm belonged to his cousin, and that defendant did not know his cousin left it in his vehicle. On appeal, defendant effectively asks this court to reweigh the evidence in his favor, which we cannot do. See *id.* (it is not the reviewing court's function to retry the defendant or to reweigh the evidence).

¶ 21 Defendant further argues the trial court improperly inferred that he knew of the firearm because “knowledge of an empty holster does not equate to knowledge of a concealed firearm.” However, we draw all reasonable inferences in the State's favor (*id.*), including this one. And to the extent defendant claims that, even had he noticed the holster, the State “must also prove that [he] exercised immediate and exclusive control over the handgun,” we disagree. As discussed, for

constructive possession, a defendant must exert immediate and exclusive control over the area where the contraband is found; here, defendant's vehicle. See *id.* ¶ 30.

¶ 22 In so holding, we acknowledge evidence that the firearm was small, black, and concealed in the center console of a dark vehicle, and that defendant made no effort to retrieve or hide the firearm during the traffic stop. Viewed in the light most favorable to the State, however, the evidence at trial supported the court's factual determination that defendant knew the firearm was in his vehicle and thus constructively possessed it. See *id.* ¶¶ 33-34, 37 (where the defendant was the owner, driver, and sole occupant of the vehicle, a rational trier of fact could determine she knew of the contraband inside); see also *Woodhouse*, 2026 IL App (1st) 240827, ¶ 30 (same). Accordingly, the evidence was sufficient to convict defendant of AUUW.

¶ 23 Finally, defendant contends that the trial court misapprehended the facts when it stated he placed his cell phone "on top of" the holster, when in fact the cell phone was in the cupholder.

¶ 24 A "minor misstatement" of the evidence does not violate due process where it does not affect the basis of the trial court's ruling. *People v. Williams*, 2017 IL App (1st) 150795, ¶ 39; see *People v. Schuit*, 2016 IL App (1st) 150312, ¶ 107 (the trial court's minor misstatement "did not result in a mistake in the decision-making process"). Here, the trial court's finding of guilt was based primarily on defendant being the vehicle's sole owner and occupant and the holster being "in plain view." The exact position of the cell phone in relation to the holster was not crucial to the defense. As such, whether defendant's cell phone was "on top of" or merely next to the holster did not materially affect the basis of the court's finding that defendant knew of the firearm.

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

¶ 26 Affirmed.