2026 IL App (1st) 241541-U

No. 1-24-1541

Second Division
September 15, 2026

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, Plaintiff-Appellee, v. NAJOLIE EVANS, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 21 CR 07073 The Honorable William G. Gamboney, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Rochford and Martin concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the defendant's convictions of being an armed habitual criminal where the defendant orchestrated a transfer of firearms via phone calls made while detained at the Cook County Department of Corrections, and where the evidence was sufficient to establish proof of constructive possession leading to findings of guilt beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Najolie Evans was found guilty of two counts of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2022)) and two counts of

unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2022)).[1] The counts of unlawful use or possession merged into the armed habitual criminal counts, resulting in concurrent sentences of 10 years in the Illinois Department of Corrections (IDOC). In this direct appeal, defendant argues that the State failed to prove possession or transfer beyond a reasonable doubt, as defendant was detained in the Cook County Department of Corrections (CCDOC) at the time of the weapons' sale and thus unable to be in actual possession of the weapons in question, and the standard for constructive possession had not been satisfied. Defendant also argues that the State failed to prove that he ever transferred or sold the weapons. Furthermore, defendant contends that the circuit court improperly admitted recordings of CCDOC phone calls into evidence due to lack of an adequate foundation and inadmissible hearsay content, and requests that we remand for a new trial based on those purported errors. For the reasons set forth below, we affirm defendant's convictions.

¶ 3 BACKGROUND

¶ 4 Defendant was a detainee at CCDOC in May 2021, when the events which gave rise to this case occurred. Beginning at 11:57 a.m. on May 5, 2021, defendant made a series of outgoing calls using the CCDOC telephone system in which he instructed his girlfriend, Qajuanna Banks, to report her Glock firearm as stolen to the police department, and to then sell the Glock and a "MAC" firearm to help him post his bond of $7,500. The sale was to occur at an address on the 6300 block of Cottage Grove Avenue in Chicago, and the recipient was

[1] While the statute was amended in January 1, 2025, to change the names of these two offenses to "unlawful possession of a firearm by a repeat felony offender," and "unlawful possession of a weapon by a felon," respectively (see Pub. Act 103-822, § 20 (eff. Jan. 1, 2025)), the amendment did not change the elements of either offense (see *People v. Lanier*, 2025 IL App (1st) 242603, ¶¶ 60-61), and we henceforth adopt the names of the offenses as in use at the time of defendant's convictions.

an individual by the name of Marlon Welton, with whom defendant was detained at CCDOC at the time. Welton's girlfriend, Laresa Williams, was to receive the firearms on his behalf.

¶ 5 The firearms described over the calls were recovered by the Cook County Sheriff's Office during a compliance check at Welton's home on May 11, 2021. Defendant—together with codefendants Banks, Welton, and Williams—was subsequently indicted by grand jury on June 2, 2021, on two counts for being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2020)), two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2020)), and six counts of unlawful sale or delivery of firearms (720 ILCS 5/24-3(A)(d), (g), (k) (West 2020)).

¶ 6 The matter proceeded to a bench trial for defendant in the circuit court of Cook County on May 9, 2023. The State presented as its first witness Kimberly Hofsteadter, an investigator with CCDOC who testified that her official duties included providing phone and video records from CCDOC to outside agencies. Hofsteadter testified that detainees at CCDOC may make phone calls using the call system by registering a personal identification number (PIN) after they have been processed into custody. To make an outgoing call, detainees enter their PIN and booking number, and then must state aloud a verbal pass phrase which verifies their voice. Hofsteadter testified that on May 11, 2021, CCDOC had in place a phone system named Edovo. Under that system, the pass phrase that detainees used at the beginning of phone calls to verify their voice was "tomorrow is a new day." Hofsteadter testified that these outgoing CCDOC calls from detainees are recorded, and an automated message plays during the call to inform detainees that their calls are recorded and may be monitored. Hofsteadter stated that CCDOC saves the call recordings, as well as a call detail report which includes the detainee's living

unit, name, booking number and PIN, the phone they used, the timing and duration length of the call, the recipient phone number, and "how the call ended."

¶ 7 Hofsteadter stated that, prior to her testimony, she had reviewed the call detail reports from three separate calls made on May 5, 2021 (State exhibits Nos. 1, 2, and 3, respectively). The first two calls were linked to defendant's PIN, and occurred at 11:57 a.m. and 12:33 p.m. The third call, made at 4:40 p.m., was linked to Welton's PIN. Hofsteadter testified that this call began at 5:10 p.m., which the call detail report actually documented as the call's ending time. The State requested that its exhibits Nos. 1-3 be admitted, but the court required that the State lay a proper foundation for the evidence first. Hofsteadter testified that the call detail reports were true and accurate copies kept in the regular course of business of CCDOC. The State once again attempted to admit its exhibits Nos. 1-3, citing Rule 803(6) from the Illinois Rules of Evidence (eff. Jan. 25, 2023), which provides the hearsay exception for records of regularly conducted activity, or business records. Hofsteadter then testified that the process of generating the CCDOC call detail reports begins as soon as the phone call is initiated, and that the records are made contemporaneously with the call. The court read aloud Rule 803(6) (Ill. R. Evid. 803(6) (eff. Jan. 25, 2023)) and said that the State had still not satisfied the necessary foundation requirements pertaining to that rule, but allowed the State to review the rule over a recess.

¶ 8 Upon return, Hofsteadter testified that call detail reports are generated for every call made by a detainee at CCDOC, that it is the regular practice of CCDOC to generate call detail reports whenever a call is made by a detainee, and that, as an investigator, she is a custodian of these records at CCDOC. Defendant objected through counsel: "I don't think it's been established that these records were, in fact, generated for these particular phone calls on the

regular course of business *** or in fact the jail just reached back and printed this stuff up." Furthermore, the defense maintained, "it doesn't appear that the jail qualifies as a business under 803(6)." The court overruled defendant's objections and admitted the State's exhibits Nos. 1-3.

¶ 9 The State then introduced exhibit No. 4, a call detail report from phone calls made on July 21, 2022.[2] Hofsteadter testified that at the time these calls were made, CCDOC had switched from Edovo to another phone system provider, now known by the name of ViaPath. The State's exhibit No. 4 was not associated with a detainee by name, but was linked to an ID number that Hofsteadter read aloud. Hofsteadter again testified that it was the regular practice of CCDOC to generate call detail reports in the course of its regularly conducted business. Defendant raised its prior objections and the court overruled, admitting exhibit No. 4 into evidence.

¶ 10 Hofsteadter testified that recordings of the calls documented in State's exhibits Nos. 1-4 were true and accurate recordings, and that there was no known system malfunction on the date of the recordings. Hofsteadter testified that she listened to the recordings for the first time "here in the jury room" using a disk played on a laptop computer. The court admitted the disk of the recordings, as State's exhibit No. 5, over defendant's objection. The State then questioned Hofsteadter about the capability of the CCDOC phone system to allow three-way calls. Hofsteadter testified that if a third line or party is added when the recipient phone number is a landline, the system will detect it and end the call. However, Hofsteadter testified that the

[2] As defendant called to our attention on appeal, Hofsteadter only testified to reviewing the recording of a phone call made at 5:17 p.m. on July 21, 2022, whereas the recording which corresponds to the call that the State later played into evidence at trial was made at 11:07 a.m. the same day. Both calls are documented in the call detail report as State's exhibit No. 4.

system generally does not detect third party or three-way calls made to numbers associated with smartphones.

¶ 11 On cross-examination, Hofsteadter testified that she had only listened to the four phone calls the one time, on the date of the trial. She had never previously conversed with any of the individuals on the calls, nor had she watched video footage of the detainees making the calls. Hofsteadter acknowledged that it was possible that an individual detainee could allow another detainee to make a call from his or her account in the phone system, or that they could initiate a call and then hand the phone over while relaying their PIN and the system pass phrase. She testified that detainees were required to change their PINs when CCDOC switched to the new ViaPath phone system. The pass phrase, "tomorrow is a new day" from the old Edovo system, also changed to a new pass phrase then, which she attested was along the lines of "my voice is my password." Defendant's counsel suggested that the system had changed because the old phone system failed to detect when an assigned detainee was not the same individual who provided the pass phrase. Hofsteadter testified that she had no knowledge of this potential basis for the change, nor to the degree to which this described problem persisted under the new system.

¶ 12 On redirect examination, Hofsteadter testified that the pass phrase "tomorrow is a new day" was not included in the audio files of the phone conversation recordings saved on the State's exhibit No. 5 disk, which had been tendered to the State via subpoena. Defendant's counsel inquired on re-cross whether the phone system's verification process recognized the cadence of the pass phrase words each detainee spoke at the initiation of a call, rather than the detainee's voice itself. Hofsteadter testified that she did not know the answer, as she was not a voice biometrics expert herself.

¶ 13 The State then introduced Ronald Jenkins, an investigator employed for five years in the "intel unit" of the Cook County Sheriff's Office whose work consisted of electronic monitoring investigations, including reviewing phone calls. Jenkins testified that on May 5, 2021, he listened to "three or four" of the phone calls that defendant had made to a female recipient. Jenkins made an in-court identification of defendant. Jenkins testified that he had previously listened to hundreds of phone calls made by defendant in the course of this investigation, and that he was "definitely" familiar with defendant's voice as it sounded over the phone. The State published an excerpt from defendant's first call made at 11:57 a.m. on May 5, 2021. Jenkins testified that it was defendant's voice on the recording. The State then played and Jenkins described an excerpt of the call in which defendant discussed with the woman on the line (later identified in the call as Qajuanna) that his bond had been set at $7,500, and that he had approximately $4,000 available to pay it through various sources. To come up with the remaining balance, defendant told Qajuanna that he was going to sell his "MAC" firearm for $1,200. Defendant instructed Qajuanna to report another firearm, a "glizzy" or "Glock 21," to the police department as stolen, and said that he would then find someone to purchase it, as well.

¶ 14 Jenkins testified that a MAC was an "Uzi-style pistol," and that the other firearm defendant had referred to on the call was a Glock. As the State resumed the playback of the call recording, defendant's counsel raised an objection that Jenkins could not testify as to the female call participant as no identification had been made, and also noted that Jenkins was relaying an opinion without being qualified as an expert. The circuit court allowed the objection and permitted the State to continue its questioning by directing its questioning

towards the witness's understanding of specific words in the call recording rather than the overall meaning of the conversation.

¶ 15 As the State continued to play excerpts of the first recording, Jenkins testified that he heard defendant refer to the "Glock 21," and a "pipe," which he understood to mean a firearm. Defendant's counsel again objected on the basis that Jenkins had not been made an expert. In response to the State's questioning, Jenkins testified that he had heard the term "pipe," and a related term, "pole," used to refer to a firearm thousands of times over his five years as an investigator and prior 31-year career as a detective with the Chicago Police Department. Jenkins later testified that he heard defendant on the recording use the word "lick," which Jenkins testified could be used in different contexts, but that he had heard it thousands of times and was familiar with its use as a slang term for firearm. Jenkins also testified that he had heard other slang terms used in the call "thousands of times," including the term "stick" to denote an extended firearm magazine, "gliz" to denote a Glock pistol firearm, "strap" to denote a firearm, and "G" to denote a sum of $1,000 (defendant explained to Qajuanna over the call that he was expecting to be paid "$1,200 for the MAC" and "a G for the glizzy"). Defendant raised a running objection to the witness's purported speculation about terminology when he had not been qualified as an expert. The court overruled the objection.

¶ 16 In the remainder of the first call recording, defendant instructed Qajuanna to call an individual named "Polo" who "offered to sell my MAC," so that Polo could transport the "MAC" to Qajuanna. Qajuanna then called Polo with defendant still on the phone. Defendant explained to Polo how he was trying to procure the funds to post bond by selling "that one, two," and that he needed Polo to get "that to Qajuanna" "like ASAP" so that she could make it back home in time for a work shift starting at 2 p.m. Defendant informed Polo that Qajuanna

would order an Uber ride to transport him "to the crib" and back so that he could drop off the firearm to Qajuanna. Afterwards, defendant directed Qajuanna to remove the paperwork from the "Glock 21" case to place in a drawer, and to then place the "stick" and two "clips" alongside the "gliz" in defendant's "Hermes bag." Defendant proceeded to explain how Qajuanna should report her firearm as stolen, by notifying the police that it had been taken out of her car when she had left it unlocked.

¶ 17 The State then published excerpts of the second call recording from exhibit No. 5, occurring at 12:33 p.m. on the same day as the previous call. In the second call, defendant instructed Qajuanna to text another woman an address on the 6300 block of Cottage Grove Avenue, and to add her to a three-way call. Jenkins testified to hearing defendant's and two women's voices on the call recording. He attested that it was at this point in his original listening that he "got a team together *** to do investigatory work to find out exactly who [defendant's] contacts were." Through that investigation, he also began listening to the CCDOC phone calls of Welton.

¶ 18 The State published clips of a third phone call, beginning at 4:40 p.m. on the same day as the prior two calls. Jenkins testified that he recognized the voice of Welton from listening to two of his phone calls over the course of the investigation. Defendant raised an objection based on hearsay, and the court entered and continued the objection. On the third call recording, Welton spoke to a woman and informed her that she will be "grabbing" an Hermes bag containing "two straps." The woman told Welton to "tell this b*** to come outside," to which he responded that he would call and they could speak on the phone three-way. The woman referenced 63rd Street, and Welton responded, "yeah, right on Cottage Grove." Another man joined the call at that point, whose voice Jenkins identified as defendant's. Defendant then

gave directions to a building off Cottage Grove Avenue, explaining how to turn left before the bus stop, to a pink and gray structure with a gray side door in the alleyway. Defendant had the woman confirm that she observed the gray side door, and then said that his friend's girlfriend was coming down to meet her. Welton then returned to the phone and instructed the woman to "count the money in her f*** face" and to "pull y'all guns out." The woman confirmed that there was $2,200 present. Welton instructed the woman to check the bag, "make sure it looks good, examine it and make sure it's right." The woman confirmed that the friend's girlfriend had returned inside. Another woman's voice could then be heard on the recording, and the two women seemed to enter a car. A GPS announced "Cottage Grove Avenue" in the background. Welton said to the women that "that was a real swerve," and that he would like to pay for their meal after they dropped off the firearms. Welton instructed the women to place the Hermes bag on an overhead shelf in the closet of his residence as opposed to his bedroom, but after they remarked on the heaviness of the bag, he instructed them instead to place the bag inside a tote on the floor of the closet.

¶ 19 In between the playback of the call excerpts, Jenkins testified to the meaning of the term "MAC," which one of the women had used to describe the contents of the Hermes bag. He said the name "MAC" referred to the letters emblazoned on the steel frame of the firearm itself. Jenkins testified that he heard Welton describe the operation as a "real swerve," which he explained meant in that context that "they went on a mission" and "[t]he mission was accomplished because they picked the weapons up." Jenkins also testified that he heard the call participants reference a "tote," which he took to mean a plastic bin. Jenkins attested that he knew after listening to this call that Welton was still in CCDOC custody at the time, but was set to be released on house arrest the following day after the call was made. Jenkins passed

on this information to his team, who decided to conduct a compliance check at Welton's address after his release the next day. Jenkins testified that he was not present during the search but had knowledge of what was recovered. He testified that the team recovered a MAC semiautomatic pistol and a Glock which had previously been reported stolen. Jenkins also testified that he was familiar from "know[ing] the neighborhoods" with the pink and gray building referenced, which was situated on the northeast corner of 63rd Street and Cottage Grove Avenue.

¶ 20 The State then published exhibit No. 6, a photograph of the pink and gray building on the 6300 block of Cottage Grove Avenue. Jenkins testified that defendant had used this building as an address, and that it was "where the other female lives as well." Defendant objected based on hearsay, which the court sustained as pertaining to the woman but overruled as pertaining to defendant. Jenkins testified that the photograph was a true and accurate depiction of the building, and the court admitted the evidence over defendant's objection.

¶ 21 The State played excerpts of a final audio file, consisting of a CCDOC phone call recorded on July 21, 2022. Jenkins testified that he was working on the investigation relating to defendant's case at the time, and had listened to defendant's calls made at 11:07 a.m. and 5:17 p.m. that day. The State published the "[f]ourth and final jail call contained in State's Exhibit Number 5."[3] Jenkins identified the voice on the recording as defendant's. On the call, defendant could be heard uttering the phone system pass phrase, "With Global Tel Link, my voice is my password." After repeating the phrase, the call went through and defendant could be heard speaking with a woman. The woman expressed concern at being implicated in

[3] The recording which was published at trial corresponded with the 11:07 a.m. call from July 21, 2022, rather than the one made at 5:17 p.m. that evening.

defendant's activities. Defendant responded, "Who knew they would be tapping into another n*** calling a booking, though? Who knew that? *** How often does that happen? That don't happen that often bro." Defendant could then be heard saying, "If what? If I wouldn't've called you and told you to sell my pipes? If what? You didn't even do s***. I orchestrated everything while I was in here." Defendant told the woman that he was trying to "bond out" so he could come to her. She expressed feeling as if he had "sacrificed her," especially after being asked to sign an affidavit in support of him, and that she was hesitant to speak her mind over the phone. Defendant responded that he would not have been able to find "any other b*** with a FOID [firearm owner's identification] card" that would have been willing to do what she did for him, and that she did it because "he was her man."

¶ 22 On cross-examination, Jenkins testified that he knew that defendant had previously used the pink and gray building as an address from "his history in the jail database." He could not recall when that history began or ended, and he did not know which specific unit defendant had used as an address previously. Jenkins testified that he had never seen defendant at the building personally. Jenkins himself had never been in the building, but had driven by many times. Jenkins testified that defendant was in CCDOC custody at the time of the phone calls and that his phone PIN had not changed when the system provider changed. Jenkins could not recall what division defendant was assigned at the time of the calls, and he testified that he had not watched any video footage of defendant conducting the calls from CCDOC. Jenkins testified that the firearms were originally at a woman's residence, the pink and gray building on the 6300 block of Cottage Grove Avenue, before they were recovered at Welton's address in Berwyn. On redirect examination, Jenkins testified that the pink and gray building was "where the young lady lived that was going to bring the guns down to meet *** Welton's

girlfriend." Jenkins testified that he was familiar with the gray side door of the building referenced in the CCDOC call recordings.

¶ 23 The State introduced its next witness, Cook County Sheriff's Office officer Enrique Claudio. Claudio testified that he was assigned to the team which conducted a compliance search of Welton's Berwyn address on May 10, 2021, to locate the firearms which were believed to have been sold to Welton. Welton had been newly released from CCDOC custody on electronic monitoring, and the sheriff's office was authorized to conduct random searches for contraband in compliance with the electronic monitoring contract. Claudio testified that on the day of the search, Welton and an unnamed woman were present. The search team gained access and Claudio recovered what he described as a "single black nine millimeter Glock 21 handgun" in the bedroom closet, located inside a Michael Jordan shoebox which was inside a larger brown cardboard box. Alongside the firearm were two loaded magazines. Claudio testified that another member of his team, Sergeant Anthony Holmes, shortly thereafter recovered another box in the hallway closet containing a MAC-10 firearm. Claudio testified that a photograph was taken of the two firearms after they were recovered. The State produced the photograph as exhibit No. 7. After viewing the photograph, Claudio testified that two of the three magazines which were recovered alongside the Glock firearm were loaded, and there were two high-capacity magazines belonging to the MAC-10 which were also recovered.

¶ 24 Claudio testified that he was wearing a body camera on May 10, 2021, that captured his recovery of the Glock firearm. The State submitted and the court entered over defendant's objection exhibit No. 8, a video containing Claudio's body camera footage, into evidence. Claudio testified that he did not himself take note of the firearm serial number during the inventory process.

¶ 25 The State's last witness was Anthony Holmes, who was assigned to the electronic monitoring unit that conducted the search with Claudio on May 10, 2021, at Welton's Berwyn address. Holmes testified that he searched the hall closet of the residence and found within it a blue bin containing a brown box which held a MAC-10 pistol. He testified that the firearm serial number was F11901. Holmes also observed the other firearm that was recovered, a Glock, which bore the serial number AEZN678. Holmes was wearing a body camera on the day of the search, and video of that footage was admitted without objection as State's exhibit No. 9.

¶ 26 The court admitted defendant's two prior certified convictions under case numbers 17 CR 1029501 and 12 CR 0847602, as State's exhibit Nos. 10 and 11, respectively.

¶ 27 Defendant moved for a directed finding, arguing that the State had not proven that the man whose voice was heard on the call recordings was defendant's. Defendant also argued that Jenkins was not qualified as an expert, and had never met defendant personally. Turning to Claudio's testimony, defendant argued that the Glock firearm recovered was a .45 caliber handgun, as opposed to a nine millimeter as the witness had testified. Defendant argued that there was no indication that he had transferred the firearms to Welton, and he characterized the contents of the CCDOC calls as possible "gloating," as opposed to definitive proof of sale or transfer. The State emphasized in response that defendant had laid out the plan in his recorded CCDOC calls, and that in his July 21, 2022, call defendant had admitted that he orchestrated everything. The State argued that defendant himself had described "my side door" at the pink and gray building on 63rd and Cottage Grove Avenue. The State conceded that the evidence was insufficient to convict on counts 5, 6, 9, and 10 involving the sale of firearms. The court

granted defendant a directed finding for those counts, and denied the motion on the other counts.

¶ 28 In closing, the State again emphasized that defendant was recorded stating that he had orchestrated everything, and that Welton had instructed the women heard on the calls to place the firearms in the tote in the closet, to which they responded "something to the effect of, [w]e're not going to put it up that high, it's too heavy."

¶ 29 The court ruled that it found the witnesses to be reliable, credible, believable, and consistent. Though noting some "minor impeachment," the court concluded that it did not amount to "anything significant that would affect [the witnesses'] credibility" towards the fact that defendant "was involved in some conversations relating to the sale of two weapons, a Glock and a MAC-10, and then sometime that day, those weapons were picked up and money was exchanged, and that a couple days later in Berwyn *** Cook County sheriff[']s police recovered a Glock and a MAC-10." The court found the evidence "actually compelling that this was [defendant] on the line." Regarding whether it was possible for a detainee to facilitate a transfer of or constructively possess weapons while in custody, the court stated that "someone can exercise control and possess an object of some contraband even though it's not within arm's length of them" and the "key language is exercises control." "Clearly," the court stated, "it's possible to do it, and in fact in this case, I believe it was done." On this basis, the court entered a finding of guilt on counts 3 and 4, for unlawful use or possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2022)). The court entered findings of not guilty for counts 7 and 8, for unlawful sale or delivery of firearms (720 ILCS 5/24-3(a) (West 2022)), as there was reasonable doubt pertaining to whether the weapons were held for 72 hours before sale.

¶ 30 Defendant moved for a new trial based on insufficient evidence, which the court denied, citing the evidence contained in the four CCDOC calls produced at trial. The court summarized the evidence and delivered its ruling as follows:

> "[T]he predicament that [defendant] was in, that somebody had set his bond at $7500 and he seemed rather driven by the fact that he wanted to post that bond to get out of jail, which I can understand. In the course of reviewing the transcript and the disk it became pretty apparent that [defendant] made a deal with Mr. Welton that Mr. Welton would buy a Glock and a Mac, two firearms for a total of $2200.
>
> ***
>
> [T]he court finds these phone calls in conjunction with the testimony of the police officers compelling of the fact that the State had proved their case beyond a reasonable doubt."

In recounting the third call recording, the court stated:

> "Welton *** is on the phone talking about the Hermes bag and the two straps. Defendant, go to my side door right by the bus stop, turn left, it's the pink and gray building, my girlfriend will come down. [Defendant] talking to [Qajuanna], make sure you count the money. Welton says pull the guns out, check that bag too. Welton talks about Berwyn. And I should add there was no ruling on it during trial but these are coconspirators."

The motion for a new trial was denied.

¶ 31 In a presentence investigation report filed on June 14, 2023, defendant's address was listed at the 6300 block of Cottage Grove Avenue, and defendant reported that "he lived at the listed address for maybe a year with his girlfriend." At sentencing, defendant received

concurrent 10-year sentences for counts 1 and 2 for being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2022)), with counts 3 and 4 for unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2022)) merging into the former counts. A motion to reconsider the sentence was denied. This timely appeal followed.

¶ 32 ANALYSIS

¶ 33 Defendant first argues on appeal that the State failed to prove his possession of either of the two firearms beyond a reasonable doubt, thus warranting reversal. Specifically, as defendant was physically detained in CCDOC at the time of the alleged sale, he argues that both actual and constructive possession of the firearms were impossible, and the State failed to prove that he personally carried out the transfer or sale of the firearms.

¶ 34 *Sufficiency of the Evidence*

¶ 35 When an appellant challenges the sufficiency of the evidence for a conviction, we review the evidence in the light most favorable to the prosecution, such that "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis omitted.) *People v. Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 21 (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Our judgment may not be substituted for that of the trier of fact with regard to credibility determinations or the weight assigned to witnesses' testimony. *People v. Wade*, 2025 IL App (1st) 231683, ¶ 23. Instead, "due consideration must be given to the fact that the fact finder saw and heard the witnesses." *People v. Herman*, 407 Ill. App. 3d 688, 704 (2011). Under this standard, criminal convictions will be upheld "unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Wade*, 2025 IL App (1st) 231683, ¶ 23 (quoting *People v. Rowell*, 229 Ill. 2d 82, 98 (2008)).

¶ 36 Here, defendant was found guilty of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2022)) and of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2022)). Since the two counts of unlawful use or possession merged into the armed habitual criminal counts for sentencing, this appeal concerns the sufficiency of the evidence to support a conviction pursuant to the latter statute, section 24-1.7(a) of the Criminal Code of 2012 (*id.*). The offense required the State to prove (1) that defendant received, sold, possessed, or transferred a firearm and (2) had two or more prior qualifying convictions, as enumerated in the statute. See 720 ILCS 5/24-1.7(a) (West 2022). As defendant has not contested the certification of his prior convictions (see Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("[p]oints not argued are forfeited")), and the State has conceded that defendant's sale of the firearms could not be proven, at issue in this case is whether defendant possessed or transferred a firearm.

¶ 37 *Transfer*

¶ 38 Regarding the element of transfer, there is limited case law defining the statutory meaning of this term. Accordingly, defendant consults Black's Law Dictionary, which provides that transfer involves the conveyance or removal of an object from one place or person to another, or "to change over the possession or control of" that object. Black's Law Dictionary 1803 (11th ed. 2019). Defendant then argues, without citation, that unlike the transfer of the intangible quality of ownership, the transfer of the tangible firearm itself requires proof of actual possession, as opposed to constructive possession. In his reply brief on appeal, defendant expands this argument to address what he regards as the State's "apparent" application of an accountability theory of liability, as discussed in *People v. McIntyre*, 2011 IL App (2d) 100889, ¶ 12. Contrary to defendant's assertions, however, there is no indication in the record or in the

State's arguments on appeal that either the State or the circuit court relied on any such accountability theory of liability. As such, we decline to further discuss those arguments.

¶ 39 In a related area of criminal law—concerning delivery and possession with intent to deliver controlled substances (720 ILCS 570/401 (West 2024))—constructive transfer was demonstrated when a defendant "verbally manifest[ed] an intent to transfer and give up possession" to his agent in *People v. Stupka*, 226 Ill. App. 3d 567, 572 (1992). In that case, the defendant told an undercover agent where to recover a bag of cocaine—thus placing it within the control of the agent through his verbal directions. *Id.* Reasoning that "[t]he verbal directions to the heretofore concealed drug were the 'key' " to the constructive transfer, the appellate court held that "defendant clearly participated in setting up the drug transaction," and affirmed his conviction for the substantive offense. *Id.* at 572, 575.

¶ 40 Similarly, in *People v. Ward*, 215 Ill. 2d 317, 322-26 (2005), which involved the appeal of a conviction for the distribution of harmful material to a minor (720 ILCS 5/11-21 (West 2000)), our supreme court held that the defendant distributed, or transferred possession of, harmful material when she left the material with a minor with instructions to deliver it to her father. At that time, the supreme court held, "power and dominion" over the material was temporarily transferred to the minor, even if it was not in her exclusive control. *Id.* at 326.

¶ 41 Proceeding with the definitions of transfer that these cases provide, it is evident from the facts of the instant appeal and the witnesses' testimony at trial that defendant, through his CCDOC phone conversations, facilitated the conveyance or removal of two firearms which belonged to him and his girlfriend, from one place of residence (the 6300 block of Cottage Grove Avenue) to another (Welton's residence in Berwyn, where the firearms were recovered). Indeed, defendant communicated to his girlfriend his plans of selling two firearms to Welton

for $2,200, instructed her how to acquire the MAC-10 from Polo, provided directions to the building where his codefendants retrieved the weapons, and later described his own actions as having "orchestrated everything while I was in here." The firearms were soon after recovered at Welton's Berwyn residence, and their description closely matched what defendant had described to his girlfriend. Although defendant himself did not physically deliver or transfer the firearms, his actions represented a constructive transfer, performed by someone other than the original possessor but conducted through his direction. See *Stupka*, 226 Ill. App. 3d at 572. Through these actions, defendant caused a change in the possession, power and dominion of two firearms, which may be accurately described as a transfer. See *Ward*, 215 Ill. 2d at 326.

¶ 42 *Constructive Possession*

¶ 43 Even if the evidence had been insufficient to prove a transfer, the bases for defendant's convictions still stand due to his constructive possession of the firearms. For purposes of a conviction under the armed habitual criminal statute, possession may be actual or constructive. *People v. Dismuke*, 2017 IL App (2d) 141203, ¶ 44. To prove constructive possession, the State must demonstrate that the defendant "exercised dominion over the contraband," which requires proof of "intent and capability to maintain control and dominion" over it. *Id.*; see also *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)) (applying the same standard for constructive possession in an appeal of a conviction for unlawful use or possession of a weapon by a felon). Proof of residency is also relevant to demonstrate control over an area where contraband is located. *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999).

¶ 44 The State maintains that it established beyond a reasonable doubt that defendant constructively possessed the Glock and MAC-10 firearms on the date of May 5, 2021—when

the first three CCDOC phone calls occurred—and we find that there is sufficient evidence to support that conclusion. Defendant plainly expressed his dominion over the firearms when he explained to his girlfriend and another individual that he intended to sell his "two straps" with the goal of posting bond. He demonstrated the intent and capability to maintain control over those firearms when he explained to his girlfriend his plan to sell his firearms and how she should report the Glock as stolen, directed Polo to transport the MAC-10 to his girlfriend at "the crib," subsequently directed his girlfriend to transfer the Glock and MAC-10 to an Hermes bag for transport, and along with Welton, later directed the women on the line to the Cottage Grove Avenue apartment to retrieve the weapons for transport to Welton's Berwyn residence. Defendant further retroactively confirmed that intent when he said to his girlfriend that "I *** called you and told you to sell my pipes" and "orchestrated everything in here while I was locked up." The CCDOC call recordings additionally demonstrate defendant's control of the individuals involved in his endeavor of generating $2,200 in funds to help him post bond—throughout the calls, he did not ask the various individuals involved for their assistance, but rather directed and effectively coordinated their actions from afar in pursuit of his specific objective. These actions demonstrate defendant's capability of maintaining control and dominion over the firearms. See *Dismuke*, 2017 IL App (2d) 141203, ¶ 44; *Spencer*, 2012 IL App (1st) 102094, ¶ 17; *Frieberg*, 147 Ill. 2d at 361.

¶ 45 Although defendant asserts that it was impossible for him to have possession over the firearms while in CCDOC custody, one does not have to be physically present to exercise control over an object. See *People v. Tates*, 2016 IL App (1st) 140619, ¶ 20 ("A defendant's lack of control of the premises will not preclude a finding of guilt if the circumstantial evidence supports an inference that the defendant intended to control the contraband inside.").

Additionally, Jenkins testified that defendant had used the Cottage Grove Avenue building as an address "in the jail database," and that the building was "where the young lady lived that was going to bring the guns down to meet *** Welton's girlfriend." See *Jackson*, 2019 IL App (1st) 161745, ¶¶ 27, 33 (circumstantial evidence of defendant's knowledge of where the contraband existed and was recovered contributed to a finding of constructive possession). Regarding the question of defendant's constructive possession of the MAC-10 firearm, which initially appeared to be in the actual possession of Polo, we note that defendant exhibited no challenges in directing the firearm to be transferred to his girlfriend over the course of a 20-minute phone conversation. Such direction demonstrated a capability to maintain control and dominion over the firearm. See *Dismuke*, 2017 IL App (2d) 141203, ¶ 44; *Spencer*, 2012 IL App (1st) 102094, ¶ 17; *Frieberg*, 147 Ill. 2d at 361. Viewed in the light most favorable to the prosecution, the totality of this evidence supports a reasonable inference of defendant's constructive possession of the two firearms. See *Spencer*, 2012 IL App (1st) 102094, ¶ 17 ("the trier of fact is entitled to rely on reasonable inferences of knowledge and possession, absent other factors that might create a reasonable doubt as to the defendant's guilt"). Whether Polo or defendant's girlfriend, for that matter, had joint possession of the firearms at any point does not detract from a finding of constructive possession for defendant. See *Jackson*, 2019 IL App (1st) 161745, ¶ 27 ("Constructive possession is not diminished by evidence of others' access to contraband.").

¶ 46 *Admissibility of the CCDOC Calls*

¶ 47 Apart from his arguments regarding the element of possession, defendant also contends that we must remand this case for a new trial due to the circuit court's reliance on what he characterizes as inadmissible evidence in the form of the four CCDOC calls admitted at trial.

A circuit court's admission of evidence will not be reversed on appeal absent a finding of abuse of discretion, which means that the ruling was arbitrary or fanciful or no reasonable person would adopt that same determination. *People v. Sangster*, 2014 IL App (1st) 113457, ¶ 47. The central inquiry is the correctness of the circuit court's evidentiary rulings, as opposed to the reasoning relied upon for its determinations, and we may affirm on any ground supported by the record. *People v. Safranek*, 2025 IL App (4th) 240967, ¶ 76.

¶ 48 Illinois Rule of Evidence 901(a) (eff. Jan. 1, 2011) provides that "the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Audio recordings may be admitted as evidence if a proper foundation has been laid establishing the authenticity and reliability of the recordings. *Sangster*, 2014 IL App (1st) 113457, ¶ 48. A phone recording may be authenticated through the "silent witness" theory, which is often employed when the original parties to the phone conversation do not testify. *Id*. Under this theory, a sufficient foundation has been laid when there is sufficient proof of the reliability of the process that produced the recording. *People v. Viramontes*, 2017 IL App (1st) 142085, ¶ 69. Such proof of reliability may include "evidence as to (1) capability of the device for recording; (2) competency of the operator; (3) proper operation of the device; (4) preservation of the recording with no changes, additions, or deletions; and (5) identification of the speakers." *People v. Smith*, 321 Ill. App. 3d 669, 675 (2001); see also *People v. Taylor*, 2011 IL 110067, ¶ 35 (holding in the Illinois Supreme Court that the *Smith* factors may be considered when determining the reliability of a process of producing a recording, but also noting that the *Smith* factors are not exhaustive and "[e]ach case must be evaluated on its own and depending on the facts of the case").

¶ 49 In defendant's case, the State established a foundation for the evidence through both Hofsteadter's and Jenkins's testimony at trial. Hofsteadter explained her experience as an investigator with CCDOC and testified to the process by which detainees make calls through the CCDOC phone system after registering with and entering a PIN, alongside a booking number and a verbal pass phrase which verifies the caller's voice. Hofsteadter further explained that the calls are recorded contemporaneously in the regular course of business for CCDOC, and that the phone system also generates a call detail report containing information such as the detainee's living unit, name, booking number, PIN, the timing and duration length of the call, the recipient phone number, and "how the call ended." Prior to her testimony, Hofsteadter had reviewed the call detail reports and listened to three of the four call recordings, which she found to be true and accurate. She testified that there was no known system malfunction on the date of the recordings.

¶ 50 Jenkins's testimony provided further support for the State's evidentiary foundation. Jenkins testified to listening to defendant's CCDOC calls as they occurred, which was in the normal scope of his duties as an investigator with the sheriff's office. Jenkins also identified defendant's voice on the call recordings at trial after testifying to having listened to hundreds of defendant's previous calls over the course of the sheriff's office's investigation. The circuit court ultimately found this testimony to be "reliable, credible, believable, and consistent."

¶ 51 Viewing these two sources of authentication in tandem, the circuit court's acceptance of the foundation laid by the State for the CCDOC call recordings does not appear to be an abuse of discretion. Although the circuit court noted some "minor impeachment"—possibly referencing the confusion in Hofsteadter's testimony about the timing of two of the calls and Jenkins's statement that detainees' phone PINs did not change over with the new system, which

contrasted with Hofsteadter's testimony that they had changed—this did not affect the court's overall assessment of the witnesses' credibility. Hofsteadter's testimony provided sufficient proof of the reliability as to the process that produced the recording, and Jenkins's testimony provided identification of the speakers on the call recordings and proof of the consistency of the recordings. See *Viramontes*, 2017 IL App (1st) 142085, ¶ 69; *Smith*, 321 Ill. App. 3d at 675; see also *Reynolds*, 2021 IL App (1st) 181227, ¶¶ 51-53 (finding that similar testimony which Hofsteadter had provided in another case involving CCDOC call recordings was sufficient to demonstrate the accuracy and reliability of the recordings). Upon review, none of the testimony appears arbitrary or fanciful, and we therefore hold that the circuit court's acceptance of the foundation laid for the evidence in question was not an abuse of discretion. See *Sangster*, 2014 IL App (1st) 113457, ¶ 47.

¶ 52 *Nonhearsay Statements*

¶ 53 Proceeding to defendant's arguments about the inadmissibility of two of the four recordings of CCDOC calls which were played into evidence at trial, we address each of those calls in turn. The third recording produced at trial, documenting a CCDOC call made by Welton which defendant joined to relay directions to the pink and gray apartment building on Cottage Grove Avenue, occurred at 4:40 p.m. on May 5, 2021. Defendant alleges that the contents of this call recording were inadmissible hearsay, as they contained out-of-court statements made by individuals other than defendant. We first note that Illinois Rule of Evidence 801 on hearsay—consisting of out-of-court statements offered to prove the truth of a matter asserted—definitionally excludes party-opponent statements, which may consist of the party's own statements made in either an individual or a representative capacity. Ill. R. Evid. 801(c), (d)(2). Here, defendant's statements directing the women to the Cottage Grove

Avenue apartment on the third CCDOC call fell squarely under the Illinois Rule of Evidence 801(d)(2) party-opponent statement category of nonhearsay. Though the State did not specifically cite Illinois Rule of Evidence 801(d)(2) in response to defendant's objection at trial, our primary concern is the correctness of the circuit court's evidentiary ruling, and we may affirm that ruling on any ground supported by the record. See *Safranek*, 2025 IL App (4th) 240967, ¶ 76.

¶ 54 The statements made by the other individuals on the third CCDOC call were also properly admitted as they fell into additional categories of nonhearsay. First, we note that "[s]tatements that are offered to show their effect on the listener or to explain the listener's subsequent course of conduct are not hearsay." *Sangster*, 2014 IL App (1st) 113457, ¶ 76 (citing *People v. Carroll*, 322 Ill. App. 3d 221, 223 (2001)). Here, Welton's statements on the call—in which he informed the woman on the line that she would be "grabbing" "two straps" contained in an Hermes bag located at a 63rd street address "on Cottage Grove," instructing her to "count the money," "make sure it looks good, examine it and make sure it's right," and directing her to place the Hermes bag inside a tote on the floor of the closet once at his residence—were offered not for the truth of the matter asserted, but to demonstrate their impression on Jenkins. See *Sangster*, 2014 IL App (1st) 113457, ¶ 76; see also *In re J.T.*, 2024 IL App (1st) 232041, ¶ 52 (holding in an appeal of an adjudication finding of child neglect that information received through a hotline call was admissible as nonhearsay evidence to demonstrate why an Illinois Department of Children and Family Services investigation commenced); *People v. Jones*, 153 Ill. 2d 155, 159-60 (1992) (holding that "an officer may testify to his investigatory procedures, including the existence of conversations, without violating the hearsay rule, and "[t]his is true even if a logical inference may be drawn that the

officer took subsequent steps as a result of the substance of that conversation"); *People v. Palmer*, 188 Ill. App. 3d 414, 423 (1989) (detective's testimony concerning out-of-court statements relating to a building towards which an offender fled prompted the detective to investigate the building described). The impression that Jenkins gathered from listening to Welton on the third CCDOC call, which took place during the course of his already-ongoing investigation of defendant's outgoing CCDOC calls, prompted the sheriff's office to investigate Welton and conduct a compliance check at his residence after his release from CCDOC. It was as a result of this impression that the two firearms were subsequently recovered in the exact location described on the call at Welton's residence. As in *People v. Banks*, 237 Ill. 2d 154, 181 (2010)—wherein out-of-court statements in the form of testimony regarding "flash messages" communicated to police vehicles via radio were nonhearsay, as it was admitted not for the truth of the matter asserted but to "explain the investigatory procedure followed in a case"—here, too, Welton's statements on the CCDOC call were admissible nonhearsay as they revealed the prompting information that led the sheriff's office to further the investigatory procedure pursued in defendant's case.

¶ 55 Welton's statements additionally fell into the nonhearsay category of statements which demonstrate the declarant's state of mind. See *People v. Miller*, 2013 IL App (1st) 110879, ¶ 49 (holding that an out-of-court statement is properly admitted if offered to show the declarant's state of mind rather than to prove the truth of the matter asserted). His proclamation to the women that the operation "was a real swerve" demonstrated, as Jenkins testified, that Welton viewed the actions described over the call as a mission which had been "accomplished because they picked the weapons up." This statement further prompted Jenkins and the sheriff's office to investigate Welton and conduct a compliance check at his residence upon

his release from CCDOC, leading to the recovery of the two firearms described over defendant's own CCDOC calls. Thus, although these statements on the third CCDOC call were made out of court and primarily not uttered by defendant himself, the circuit court's admission of them was nonetheless proper as the statements were not offered for the truth of the matter asserted but rather constituted admissible nonhearsay evidence offered to demonstrate the declarant's state of mind. See *id.*; see also *Sangster*, 2014 IL App (1st) 113457, ¶ 76; *J.T.*, 2024 IL App (1st) 232041, ¶ 52.

¶ 56 We also note that although the circuit court directly referenced Welton's statements in ruling on defendant's motion for a new trial, alluding to coconspirators (see Ill. R. Evid. 801(d)(2)(E) (defining statements made by coconspirators of a party during the course and in furtherance of a conspiracy as another category of admissible nonhearsay evidence)), the State has conceded on appeal that it did not intend to invoke the coconspirator statement rule as no charges of conspiracy were filed against defendant. As the totality of the evidence, viewed in the light most favorable to the prosecution, was sufficient to prove defendant's guilt beyond a reasonable doubt, we do not find that these brief references made in the delivery of the court's ruling pose an obstacle to our affirmance of defendant's convictions. See *Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 21; *Safranek*, 2025 IL App (4th) 240967, ¶ 76.

¶ 57 We similarly do not find an obstacle to our affirmance based on the circuit court's admission of defendant's July 21, 2022, phone call made at 11:07 a.m., in which defendant admitted that he "orchestrated everything" from CCDOC custody. Although Hofsteadter mistakenly referenced the 5:17 p.m. call from that day rather than the 11:07 a.m. one in her testimony, she testified to the accuracy and reliability of the CCDOC call recordings contained on the State's exhibit No. 5 disk generally, and Jenkins also testified to listening to that call as

it occurred and identified defendant's voice on the recording. Furthermore, as discussed above, the contents of the recording itself constituted nonhearsay party-opponent statements pursuant to Illinois Rule of Evidence 801(d)(2), as the portions played into evidence consisted entirely of defendant's own statements. As the circuit court found Hofsteadter's and Jenkins's testimony adequate to provide a proper foundation for the evidence, and the July 21, 2022, call recording was otherwise admissible as nonhearsay evidence, we will not substitute our judgment for that of the trier of fact on those evidentiary grounds. See *Wade*, 2025 IL App (1st) 231683, ¶ 23.

¶ 58 Finding no abuse of discretion, we hold that the evidence of defendant's CCDOC phone calls demonstrating his possession and directing the transfer of two firearms was sufficient to establish his guilt beyond a reasonable doubt.

¶ 59 CONCLUSION

¶ 60 For the reasons stated above, defendant's convictions are affirmed.

¶ 61 Affirmed.