

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).

2026 IL App (4th) 251168-U

NO. 4-25-1168

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Stephenson County
DEILO D. ISHMON,	)	No. 23CF61
Defendant-Appellee.	)	
	)	Honorable
	)	Glenn R. Schorsch,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Steigmann and Justice Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court's judgment granting defendant's motion to suppress.

¶ 2 Defendant, Deilo D. Ishmon, was arrested and charged with unlawful possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2022)) after police discovered drugs while executing a search warrant for firearms inside his residence. Defendant subsequently filed a motion to quash the search warrant and suppress the evidence, which the trial court granted. The State now challenges that judgment on appeal, contending the warrant was supported by probable cause showing defendant had committed a weapons offense and, regardless, the good faith exception to the exclusionary rule applied to sustain the search and introduction of evidence obtained therefrom. For the following reasons, we reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On March 16, 2023, confidential informant John Doe and Freeport Police Officer Richard McElmeel appeared before a judge and signed and swore to an affidavit for search warrant, revealing the following. Doe first averred he knew defendant and knew him to have resided at a two-story duplex in Freeport, Illinois, for about three months, having visited defendant there several times. Doe averred that, within the last 72 hours, while visiting defendant in his living room, an unidentified subject entered, stating he had a confrontation with an individual and needed a firearm. The subject proceeded upstairs, only to return to the living room area shortly thereafter with a cardboard box containing three black firearms and a silver revolver. One black firearm was pocket-sized, while the other two were normal in size, with one having attached thereto a drum magazine. “While the firearms were in the living room a subject that was present took one of the black firearms[,] pulled the top slide back to place a round in the chamber. The subject placed the firearm in his pocket and left the residence,” advising he would later return with the firearm. When Doe also left the residence, the remaining firearms were still present in the same box in the living room.

¶ 5 Doe believed the firearms were real because of defendant’s “past” and “the subject pulling the slide back to chamber a round and the conversation regarding the confrontation the subject had with someone and them needing a firearm.” Additionally, Doe averred he had provided the judge with his real identity but was using an assumed name because he feared for his safety. Officer McElmeel averred Doe had assisted in multiple investigations, resulting in the recovery of narcotics and firearms. Based on past and current investigations, Doe had provided reliable information. Within 72 hours, Officer McElmeel met with Doe regarding this weapons investigation, and Doe relayed the above-stated facts. Doe identified defendant in a photograph, presented by police, as the subject in possession of multiple firearms at the duplex in

question.

¶ 6 Also within 72 hours, authorities went to the identified residence. Parked in front, they observed a silver 2002 Oldsmobile sedan registered to defendant. Some months prior, defendant was observed driving the Oldsmobile when subjected to a traffic stop. Further, defendant already had been convicted of being a felon in possession of a firearm in 2019 (Stephenson County case No. 19-CF-106), and therefore, he could not legally possess firearms. He did not have a firearm owners identification card. Doe and Officer McElmeel averred probable cause existed to believe defendant had committed unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1 (West 2022)) and aggravated unlawful use of a weapon (*id.* § 24-1.6), and evidence of these crimes was at the identified residence.

¶ 7 The judge found probable cause existed, based on the written affidavit, to search defendant's person and property and seize any firearms, firearms paraphernalia, and documents/items reflecting connection to the residence. Accordingly, the judge issued a search warrant on March 16, 2023. Officers executed the warrant the same day. In the process, they discovered 115 grams of cannabis, two scales, an iPhone, and a "[l]etter of abode" addressed to another individual at the subject address. Defendant was charged accordingly.

¶ 8 Defendant subsequently filed a motion to quash the search warrant and suppress the evidence, arguing a lack of probable cause because there was no evidence he possessed the referenced firearms. Defendant asserted nothing established he "said anything or *** ever touched or exercised control over the box and/or weapons" or of the upstairs. The evidence linking him to the duplex was minimal. Nothing indicated he was in exclusive control of the residence. Defense counsel asserted defendant was merely present in the same room where the firearms were located, which could have been legally owned by the other subject. Last,

defendant asserted it was not clear the subject who retrieved the firearms from upstairs was the same individual who handled the firearm, though he conceded this was the natural assumption.

¶ 9 The State responded the affidavit contained information establishing probable cause to show defendant was in constructive possession of the firearms and, regardless, police were justified in relying on the warrant in good faith.

¶ 10 Following a hearing with argument, the trial court granted defendant's motion, finding the warrant was not supported by probable cause under the fourth amendment (U.S. Const., amend. IV) and, for the same reason, the good faith exception to the warrant requirement was also inapplicable. Specifically, the court stated defendant

“did not actively participate in locating the weapons, he did not accept any funds for this individual coming and taking a firearm, there is no evidence that he returned the box back to where it was, that box could have been in any number of locations upstairs, and there was nothing to show that [defendant] knew the locations of where those weapons were.”

¶ 11 This appeal by the State followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, the State argues the trial court erred in granting defendant's motion to suppress. The State contends the court had a substantial basis to conclude probable cause for the warrant existed where defendant had constructive possession of the firearms. The State also maintains the good faith exception to the exclusionary rule applied to sustain the search and the resulting evidence obtained therefrom.

¶ 14 The fourth amendment of the United States Constitution provides,
“The right of the people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const., amend. IV.

See Ill. Const. 1970, art. I, § 6; *People v. Caballes*, 221 Ill. 2d 282, 313 (2006). Therefore, for a search warrant to issue, a detached judicial officer must resolve the question of whether there is probable cause. *People v. Manzo*, 2018 IL 122761, ¶ 29. Probable cause exists if, based on the totality of the facts and circumstances known to the affiant when applying for the warrant, a person of reasonable caution would believe an offense occurred and evidence of the offense is at the location to be searched. *Id.*; *People v. Rojas*, 2013 IL App (1st) 113780, ¶ 15. Probable cause is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. *People v. Grant*, 2013 IL 112734, ¶ 11. In construing the affidavit for a search warrant, a reviewing court may not substitute its judgment for that of the issuing judge. *People v. Kornegay*, 2014 IL App (1st) 122573, ¶ 23. Rather, we decide only whether the issuing judge had a substantial basis to conclude probable cause existed. *Id.*

¶ 15 In this case, the State first argues the issuing judge had a substantial basis to conclude probable cause existed where defendant had constructive possession of the firearms. As before the lower court, defendant contests this claim. Constructive possession occurs when a defendant knows a firearm is present and exercises immediate and exclusive control over the area where the firearm is found. *People v. Hunter*, 2013 IL 114100, ¶ 19; *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. As to the latter requirement, a defendant’s control over the location where a weapon is found creates an inference of possession, and habitation in the residence

where the firearm is found is sufficient evidence of control to establish constructive possession. *Sams*, 2013 IL App (1st) 121431, ¶ 10. Where possession has been shown, an inference of guilty knowledge can be drawn from the surrounding facts and circumstances. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000).

¶ 16 Here, considering the commonsense facts before the issuing judge and the reasonable inferences arising therefrom, as we must, we conclude the warrant was supported by probable cause showing defendant illegally possessed firearms. See *People v. Pettis*, 2015 IL App (4th) 140176, ¶ 19. That is, a person of reasonable caution could have believed defendant “knowingly possess[ed] *** in his own abode *** any firearm or any firearm ammunition” after having been convicted of a felony, which is sufficient to establish the offense of unlawful possession of a weapon by a felon. See 720 ILCS 5/24-1.1(a) (West 2022); *Manzo*, 2018 IL 122761, ¶ 29; see also *People v. Price*, 375 Ill. App. 3d 684, 688-91 (2007) (noting an abode is a place of residence where an individual has established substantial and uninterrupted ties and which he treats as a home).

¶ 17 Doe averred defendant had resided at the two-story duplex for about three months. Around March 16, 2023, Doe observed defendant was present in the living room with a box containing three firearms, one of which had a drum magazine attached to it, and a single revolver. An unidentified subject had placed the box there after having entered the residence and advised defendant “they had a confrontation with someone and needed a firearm.” The subject then went upstairs and retrieved the box containing the four firearms and returned to the living room where defendant was located. The unidentified subject proceeded to take a black firearm, place a round in the chamber, pocket it, and leave the residence, announcing he would return the firearm later. Officer McElmeel averred Doe had conveyed these facts, identified defendant from

a photograph, and assisted in multiple past investigations that resulted in the recovery of narcotics and firearms. Doe had provided reliable information. Additionally, around March 16, 2023, authorities observed defendant's registered vehicle in front of the duplex. Some months prior, defendant was observed driving that vehicle.

¶ 18 Defendant does not now contest his prior felony precluding possession of firearms or knowledge of his prior felony. Indeed, defendant was convicted in 2019 of the very same weapons offense. Similarly, defendant does not challenge the veracity of the affiants' statements. As such, we presume them to be true. See *Manzo*, 2018 IL 122761, ¶ 32 (noting a sworn complaint supporting a search warrant is presumed valid).

¶ 19 These facts established defendant inhabited the residence when the firearms were observed, thus implying immediate control. See *People v. Hammer*, 228 Ill. App. 3d 318, 323 (1992) (“[C]onstructive possession of a firearm by a felon is established by showing that [the] defendant had knowledge of the weapon and that he exerted immediate and exclusive control over the area where the weapon was found.”); see also *People v. Rangel*, 163 Ill. App. 3d 730, 739 (1987) (“[A]lthough mere presence in the vicinity of the contraband is insufficient to establish constructive possession, control over its location gives rise to such an inference which is not undermined by the presence of others in the vicinity.”). Defendant undoubtedly also had knowledge of the multiple firearms, as they were in plain view, and the subject essentially entered advising defendant one would be unlawfully used to resolve a conflict; the subject then loaded the firearm in defendant's presence. See *id.* at 740. The issuing judge could conclude the subject specifically sought defendant's approval to obtain the loaded firearm, take it from the premises, and return it later. See *Rojas*, 2013 IL App (1st) 113780, ¶ 15 (noting reasonable inferences may be drawn). These facts demonstrate defendant had a greater possessory interest in

the firearms than mere presence on the premises. They support the conclusion defendant constructively possessed the firearms.

¶ 20 Defendant nonetheless argues the affidavit for the warrant reflects there were *four* people present—Doe, defendant, the unidentified subject who retrieved the firearms, and a *fourth party*, who “loaded one of the firearms and handed it” to the unidentified subject, who then left with the firearm. Defendant asserts it was the two visitors who had possessory interest in the firearms, not him. Defendant challenges the control requirement, adding there was no evidence showing his “relationship with the place where the weapons were being stored.” Defendant maintains he did not instruct the unidentified subject on where to find the box, nor did he “hold, touch, or even acknowledge the existence of the weapons” in Doe’s account. Defendant further points to the “letter of abode” discovered during the search, addressed to another individual at the address.

¶ 21 Defendant’s arguments suffer from several fatal flaws. First, we consider only the facts the issuing judge had before him at the warrant application proceeding and thus will not consider the later-discovered letter of abode. See *People v. McCarty*, 223 Ill. 2d 109, 153 (2006); *Pettis*, 2015 IL App (4th) 140176, ¶ 19. Second, affidavits for search warrant are usually drafted by nonlawyers in the haste of criminal investigations and so must be interpreted in a practical, not overly technical manner. *People v. Griffin*, 178 Ill. 2d 65, 77 (1997); *People v. Bryant*, 389 Ill. App. 3d 500, 514-15 (2009). Defendant confuses Doe’s reference to “a subject that was present” as being a separate individual. See *supra*, ¶ 4. The affidavit in this case, while inartful, does not demonstrate the existence of a fourth person when read in full, and defendant never presented any such evidence at the suppression hearing. See *McCarty*, 223 Ill. 2d at 153; *People v. Thornton*, 2020 IL App (1st) 170753, ¶ 23 (noting the defendant bears primary responsibility

for establishing the factual and legal bases for a suppression motion). Notably, at the hearing, defense counsel essentially conceded the most natural reading of the affidavit shows only three people were present in the living room: defendant, Doe, and the unidentified subject.

¶ 22 Third, the informant and officer appeared before the issuing judge under oath, and presumably, the judge had the opportunity to personally assess their demeanor and credibility. See *Kornegay*, 2014 IL App (1st) 122573, ¶ 29; but see *People v. Chambers*, 2016 IL 117911, ¶ 62 (observing the urgency of presearch proceedings will not always permit a magistrate the opportunity “ ‘to make an extended independent examination of the affiant or other witnesses’ ”). The issuing judge could have clarified these facts, and regardless, we remain deferential to the reading most consistent with probable cause. See *McCarty*, 223 Ill. 2d at 153 (noting a reviewing court must not substitute its judgment for that of the magistrate in construing an affidavit); *People v. Stewart*, 104 Ill. 2d 463, 477 (1984) (noting the general preference accorded to warrants in doubtful or marginal cases).

¶ 23 We thus reject defendant’s claim he was never alone with the firearms, as the affidavit and reasonable inferences flowing from it establish that very fact upon the unidentified subject’s exit and that of Doe, himself. Likewise, defendant’s argument he was unaware of the firearms *before* the unidentified subject’s entry is rebutted and immaterial, given what occurred in the living room. When the unidentified subject entered, he explained to defendant why he was there—he “had a confrontation with someone and needed a firearm.” He did not merely proceed upstairs to retrieve a gun without explaining his purpose to defendant first. Instead of merely taking a gun from the box and leaving, the subject brought the box of guns downstairs to where defendant was located, thereby showing him which one he was taking and loading it in front of defendant. Upon leaving, the subject felt the need to inform defendant he would return the gun

later. From these facts, an impartial judge viewing the affidavit for the warrant could reasonably infer defendant owned or had a greater possessory interest in the guns than the subject, establishing his control and knowledge of the contraband. See *Schmalz*, 194 Ill. 2d at 82; *Pettis*, 2015 IL App (4th) 140176, ¶ 25; *Hammer*, 228 Ill. App. 3d at 322-23.

¶ 24 Significantly, the issuing judge could have found defendant maintained constructive possession of the firearms, even if jointly possessed with the other subjects. See *People v. Givens*, 237 Ill. 2d 311, 335-38 (2010). Defendant's reliance on *People v. Wise*, 2021 IL 125392, and *United States v. Griffin*, 684 F. 3d 691 (2012), to support his argument to the contrary is misplaced. In *Wise*, the supreme court concluded the evidence was insufficient to convict the defendant beyond a reasonable doubt of being a felon in possession of a firearm (720 ILCS 5/24-1.1(a) (West 2014)) where officers found a firearm with ammunition inside a glove, located in a third-row passenger seat armrest of the minivan the defendant was driving but did not own. *Wise*, 2021 IL 125392, ¶¶ 1-6, 34. Evidence showed the defendant knew the gun was present, but he likewise did not own it, and the gun was 5 to 10 feet away, near a passenger. *Id.* ¶¶ 6-7, 34. The officer did not see the defendant touch the weapon, nor was it fingerprinted. *Id.* ¶¶ 7, 34. The court concluded evidence of the defendant's constructive possession was lacking because he did not have the gun "on or about his person." (Internal quotation marks omitted.) *Id.* ¶¶ 22, 34-35, 38-39.

¶ 25 In *Griffin*, the Seventh Circuit concluded the evidence was insufficient to convict the defendant beyond a reasonable doubt of being a felon in constructive possession of a single shotgun stored behind the kitchen door and of ammunition on the stairs of the defendant's home (18 U.S.C. § 922(g)(1) (West 2012)). *Griffin*, 684 F. 3d at 693-94. The defendant, a convicted felon, resided there with his parents, and at the same time, authorities had discovered multiple

firearms and sets of ammunition belonging to the father. *Id.* The court concluded, in cases of joint occupancy, the government had to demonstrate a “ ‘substantial connection’ ” between the defendant and the contraband itself, not just the residence, to establish the control requirement for constructive possession. *Id.* at 697-99. The government had failed to do so, as there was no nexus showing the defendant was a true possessor, instead of a mere bystander. *Id.* at 695, 698-99.

¶ 26 In relying on these cases, defendant confuses evidence to establish “control” sufficient to convict with evidence necessary to establish probable cause. As stated, probable cause is governed by commonsense considerations, and the calculation concerns the *probability* of criminal activity, not proof beyond a reasonable doubt. *Grant*, 2013 IL 112734, ¶ 11.

Moreover, unlike in *Wise*, this case addresses whether the firearms were illegally present in defendant’s abode, not “on or about his person.” 720 ILCS 5/24-1.1 (West 2022); see *People v. Adams*, 242 Ill. App. 3d 830, 832 (1993) (distinguishing premises from person). While there was insufficient evidence the defendant in *Wise* owned the vehicle containing the firearm, in this case, defendant does not contest he was a resident of the home where firearms were stored and present. We emphasize that Illinois law states habitation in the residence where the firearm is found is sufficient evidence of control to establish constructive possession. *Sams*, 2013 IL App (1st) 121431, ¶ 10; *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (same); see *Givens*, 237 Ill. 2d at 337-38 (evidence of control, even if joint, over the premises where contraband is found is sufficient for constructive possession).

¶ 27 We therefore also reject defendant’s reliance on *Griffin*’s requirement of a “ ‘substantial connection’ ” between the defendant and the contraband. *Griffin*, 684 F. 3d at 98. The Seventh Circuit is not binding, and no Illinois cases cite *Griffin* or its substantial connection

test. See *Dew-Becker v. Wu*, 2018 IL App (1st) 171675, ¶ 23 (federal decisions are not binding in Illinois). Additionally, we believe such a requirement makes little sense in the context of a warrant application proceeding. The facts and defendant's criminal background established more than his mere presence. See *People v. Hill*, 226 Ill. App. 3d 670, 672-73 (1992) (concluding another person's access to the weapon did not negate the defendant's constructive possession); cf. *Sams*, 2013 IL App (1st) 121431, ¶¶ 13-14 (finding the evidence insufficient to establish constructive possession where the officers' testimony showed only that the defendant exited a house in which a gun was later discovered not in plain view). Contrary to defendant's argument, additional information was not necessary to establish control.

¶ 28 Based on the foregoing, there was a fair probability that police would find contraband and evidence of a crime in defendant's residence and thus a substantial basis to conclude probable cause existed for the warrant. See *Pettis*, 2015 IL App (4th) 140176, ¶¶ 18, 26. The trial court's finding to the contrary was in error. See *id.* Accordingly, we need not address whether the good faith exception applied.

¶ 29 III. CONCLUSION

¶ 30 Based on the foregoing, we reverse the trial court's judgment granting defendant's motion to suppress and remand for further proceedings consistent with this order.

¶ 31 Reversed and remanded.