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2019 IL App (3d) 170423-U

Order filed October 8, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0423
STEVEN L. FOREST,)	Circuit No. 16-CF-235
Defendant-Appellant.)	Honorable Kevin W. Lyons, Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant’s guilt beyond a reasonable doubt. The circuit court did not err when it instructed the jury.

¶ 2 Defendant, Steven L. Forest, appeals his conviction and sentence. He argues that the State failed to prove his guilt beyond a reasonable doubt. Alternatively, he contends the Peoria County circuit court erred when instructing the jury. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)). The charge alleged that defendant committed the offense in that he knowingly possessed a firearm having previously been convicted of a forcible felony, robbery.

¶ 5 At trial, Arneshia Rias testified that on March 24, 2016, she owned a .45-caliber Taurus handgun that she had purchased from a pawnshop. Rias described the gun as silver with a black handle. Rias also identified a photograph of her gun. On that day, she stored the gun inside an unlocked gun box in the backseat of her vehicle. While driving, defendant flagged Rias down for a ride. Rias described defendant as a mutual acquaintance whom she had met through her ex-boyfriend. Rias gave defendant a ride. Rias told defendant that she planned to drive to her ex-boyfriend's house for money so that she could buy a holster for her gun. However, she did not tell defendant that she had a gun in her vehicle, but she did believe that defendant saw the gun box in the backseat.

¶ 6 During the drive, Rias stopped at a convenience store and entered the store. Defendant remained in the vehicle. Rias estimated that she remained in the store for "Five seconds. Not even," but acknowledged that she could have stayed inside the store longer so that she could purchase cigarettes. When Rias returned, defendant and her gun were gone. However, Rias did not see defendant take her gun. Rias then went to her ex-boyfriend's home and explained what had happened. She and her ex-boyfriend attempted to find defendant, but after unsuccessfully locating defendant, she reported the gun missing to police.

¶ 7 On cross-examination, Rias clarified that she did not check the gun box for her gun until she arrived at her ex-boyfriend's house. Upon arrival, she checked the box and realized that the gun was missing.

¶ 8 Next, Taliya Trent testified that on March 25, 2016 (the day after Rias' gun went missing), she encountered her ex-boyfriend, Devante Friend, and defendant on walk. Defendant walked toward a nearby house. Friend then spit in Trent's face and punched her. Trent observed a gun hanging from Friend's hip. Trent described the gun as silver with a black handle. Friend then entered the same house as defendant. Trent called the police.

¶ 9 Sean Smith, the vice president of the pawnshop that Rias purchased her gun from, testified to the sales receipt and serial number of the gun he sold to Rias. The serial number matched the number on the gun Rias identified in her testimony.

¶ 10 Peoria police officer Joshua Feeny testified that he responded to the incident between Trent and Friend. Feeny spoke with Trent first, then he approached the home that Trent observed defendant and Friend enter after the incident. Although Feeny observed movement inside the home, nobody responded when he knocked on the door. Feeny attempted to contact the owner of the house—who was not present—to inform the owner that the suspects were inside the home. Several other officers arrived later. About 15 to 20 minutes later, defendant and Friend exited the home. Friend and defendant were the only two people inside the home. The officers searched the home. Officers recovered a Taurus handgun wrapped in cloth in the basement rafters.

¶ 11 Officers and forensic investigators could not lift any sufficient fingerprints from the gun. A combination of the DNA of four individuals found on the gun prevented the investigators from comparing the sample to a single person.

¶ 12 The court held a recess. Outside the jury's presence, the following discussion between the court and parties occurred:

“[THE STATE]: Judge, before we call the jury in, could we address, I was going to offer a certified copy of [defendant's] conviction

in 09 CF 75. He was convicted of the offense of robbery. And [defense] counsel and I have talked. They will stipulate that that would be a forcible felony and that we would agree that the jury should not be told it's forcible, just that he had a prior conviction for a felony offense. I think the forcible part of the statute is a sentencing provision versus an element.

THE COURT: Okay. So what is it you agreed to?

[THE STATE]: That I will indicate that the defendant was convicted in 2009 of a felony offense.

THE COURT: Okay. And we'll not—you'll provide the certification, but it won't go back to the jury?

[THE STATE]: Correct.

THE COURT: Okay. So the jury will be told the defendant has a prior felony conviction, and you'll read the number.

[THE STATE]: Yes.

THE COURT: But we won't reveal to the jury that it's a forcible felony or the name of the felony.

[THE STATE]: Yes.

THE COURT: Okay. Is that what you agree to, [defense counsel]?

[DEFENSE COUNSEL]: Yes, [Y]our Honor.

THE COURT: Okay. Let's do that.

[THE STATE]: I'll do that first thing when they come out."

¶ 13 When the jurors returned, the State presented the stipulation that defendant had previously been convicted of a felony.

¶ 14 Defendant testified on his own behalf. Defendant had met Rias “probably like once before.” He denied receiving a ride from Rias on March 24, 2016. Defendant also denied ever possessing the gun on the day Friend and Trent had an altercation. According to defendant, Friend hid the gun. Defendant acknowledged that he “probably” told Officer Feeny that he did not know there was a gun in the house.

¶ 15 The State then recalled Feeny. Feeny testified that when he met defendant, defendant told him that he did not know of any guns inside the home and that “Trent must be on some stuff.”

¶ 16 During the jury instruction conference, the defense did not object to providing the jury with the instruction,

“To sustain the charge of Unlawful Possession of a Weapon by a Felon, the State must prove the following propositions

Second Proposition: That the defendant had previously been convicted of a felony offense.”

¶ 17 The court provided the above instruction to the jury. The jury found defendant guilty of unlawful possession of a weapon; the trial court sentenced defendant to six years’ imprisonment.

¶ 18 **II. ANALYSIS**

¶ 19 On appeal, defendant argues that the State failed to present sufficient evidence to establish his guilt beyond a reasonable doubt. Alternatively, defendant contends that the circuit court erred in instructing the jury. We address each argument in turn.

¶ 20 **A. Sufficiency of the Evidence**

¶ 21 First, defendant contends that the State failed to prove that defendant knowingly possessed the gun found inside the home he and Friend occupied. When a challenge is made to

the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The relevant question is whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. See *People v. Pintos*, 133 Ill. 2d 286, 292 (1989).

¶ 22 As charged in this case, defendant commits the offense of unlawful possession of a weapon by a felon when: (1) defendant has a prior forcible felony conviction, and (2) defendant had knowing possession of the weapon. 720 ILCS 5/24-1.1(a), (e) (West 2016). An essential element of this offense is that the person knowingly possessed a firearm. *In re S.M.*, 347 Ill. App. 3d 620, 626 (2004). “Knowing possession” may be either actual or constructive. *People v. Stack*, 244 Ill. App. 3d 393, 398 (1993). At issue here is whether the State established that defendant knowingly possessed the firearm by constructive possession.

¶ 23 Constructive possession is established where (1) the defendant had knowledge of the presence of the weapon, and (2) the defendant exercised immediate and exclusive control over the area where the weapon was found. *Id.* Knowledge may be shown by evidence of defendant’s acts, declarations, or conduct from which it can be inferred that he knew the weapon existed in the place where it was found. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Control may be shown by evidence that defendant had the intent and capability to maintain control and dominion over the weapon, even if he lacked personal present dominion over it. *Id.*

¶ 24 Viewing the evidence in the light most favorable to the State, we find a rational trier of fact could have found beyond a reasonable doubt that defendant had knowledge of and immediate access to the gun recovered by the officers. Rias testified that she owned the gun and had placed it in the gun box in the backseat of her vehicle on the day she provided defendant with a ride. Rias stopped at a convenience store and when she returned, the gun and defendant were gone. Rias believed that she realized the gun went missing either when she returned from the convenience store or when she arrived at her ex-boyfriend's home. Rias's stolen gun was found the following day in a home occupied by only defendant and Friend. Although Friend was the individual seen carrying the gun on the day in question, the jury could have reasonably inferred that defendant had stolen the gun from Rias and shared it with Friend the following day. The delay by Friend and defendant in answering the door for police supports a reasonable inference that the two made an effort to conceal the gun in the basement of the home. From this evidence, we conclude that it was reasonable for the jury to believe defendant constructively possessed the gun.

¶ 25 B. Jury Instructions

¶ 26 Next, defendant argues the circuit court erred in instructing the jury on an essential element of the offense. The court instructed the jury that it must determine if the State proved that defendant had been previously convicted of a felony offense. Defendant contends that the court erred and should have instructed the jury to find that defendant had previously been convicted of a forcible felony as opposed to a felony. Upon review, we find that the circuit court did not abuse its discretion instructing the jury when defendant agreed to present his prior forcible felony conviction as only a felony at trial. See *People v. Rodriguez*, 387 Ill. App. 3d 812,

821 (2008) (we review a circuit court’s decision to provide a specific jury instruction for an abuse of discretion).

¶ 27 Unlawful possession of a weapon by a felon is a Class 3 felony when the prior conviction is a felony. 720 ILCS 5/24-1.1(a) (West 2016). However, as charged in this case, the offense is a Class 2 felony when the prior conviction is a forcible felony. *Id.* § 24-1.1(e). The term forcible felony includes a list of certain enumerated offenses that constitute forcible felonies. *Id.* § 2-8. The list also contains a residual clause that encompasses “any other felony which involves the use or threat of physical force or violence against any individual. *Id.*

¶ 28 At trial and in this appeal, defendant never argued that his prior felony conviction did not constitute a forcible felony. In fact, defense counsel conceded and stipulated that defendant’s prior felony conviction constituted a forcible felony. The defense’s stipulation is accurate as defendant’s prior robbery conviction is an enumerated forcible felony offense. *Id.* Unlike an unenumerated offense, the jury did not need to determine if the facts and circumstances of the prior conviction established that defendant used the threat of force or violence against an individual in the commission of the prior offense. In other words, defendant’s prior robbery conviction qualified as a forcible felony as a matter of law. All that the jury needed to find was that the State had proven the prior felony conviction. The circuit court did not need to instruct the jury to determine whether defendant had previously been convicted of a forcible felony as opposed to a felony.

¶ 29 Even if we were to assume that the circuit court abused its discretion in instructing the jury, we find that defendant affirmatively waived the argument by inviting the error. Defendant agreed that his prior conviction constituted a forcible felony. He also agreed that the jury should not be informed that the conviction constituted a forcible felony. A defendant cannot request to

proceed in one manner and later contend on appeal that the court of action constituted error. *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17. Defendant cannot now argue that the court erred by omitting the forcible nature of the prior felony conviction from the jury instructions when he agreed to how the stipulation should be presented at trial.

¶ 30 Finally, we would be remiss if we did not comment on the fact that it is entirely reasonable for trial counsel to stipulate to the forcible nature of defendant's prior felony conviction. Defense counsel also acted reasonably in agreeing to omit the forcible nature of the felony from the jury. Defense counsel conceded to the forcible nature of defendant's prior conviction, but agreed to proceed in this matter to avoid exposing the jury to the prejudicial details surrounding defendant's prior conviction. It follows that the circuit court did not need to instruct the jury regarding the forcible nature of the prior conviction.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 33 Affirmed.