

NOTICE

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2025 IL App (5th) 220832-U

NO. 5-22-0832

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Champaign County.
)	
v.)	No. 20-CF-956
)	
OLAJUJUAN T. JACKSON,)	Honorable
)	Randall B. Rosenbaum,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BOLLINGER* delivered the judgment of the court.
Justices Barberis and Boie concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's comments during its recitation of the judgment did not constitute plain error. The evidence was sufficient to prove beyond a reasonable doubt that defendant constructively possessed a firearm.
- ¶ 2 Following a bench trial, defendant was convicted of armed habitual criminal, a Class X felony, and sentenced to a term of imprisonment of 15 years. On appeal, defendant asserts that the trial court committed error by making two misstatements during its oral recitation of the judgment, and by denying his motion for a directed verdict, contending that the evidence was insufficient to prove beyond a reasonable doubt that he constructively possessed a firearm. For the reasons outlined below, we affirm the conviction.

*Justice Welch was originally assigned to the panel before his death. Justice Bollinger was later substituted on the panel and has read the briefs and listened to the recording of oral argument.

¶ 3

I. BACKGROUND

¶ 4 On August 26, 2020, defendant Olajajuan T. Jackson was charged by information with a Class X felony of armed habitual criminal (720 ILCS 5/24-1.7 (West 2018)). The information alleged that defendant knowingly possessed a Glock 44 pistol after having been convicted of two qualifying Class 2 felonies.

¶ 5 On August 29, 2022, after being properly admonished, defendant knowingly and voluntarily waived his right to a jury trial. On November 8, 2022, an amended information was filed, which indicated that he was “[e]xtended [t]erm [eligible] due to laser sight” as well as amending one of the Class 2 felony convictions to a Class 3 felony conviction.

¶ 6 The matter proceeded to a bench trial on November 16, 2022. The trial court confirmed with defendant that he still desired to proceed with a bench trial after the filing of the amended information. The State presented two certified convictions from Cook County: 14-CR-11330002, pertaining to a violation of the Illinois Controlled Substances Act (720 ILCS 570/101 *et. seq.* (West 2020)), and 2004-CR-3026001, involving the offense of unlawful use of a weapon by a felon.

¶ 7 Jennifer Acosta-Talbot, a forensic scientist specializing in forensic biology and DNA analysis at Springfield Forensic Science Laboratory testified first for the State. She was introduced as an expert in DNA analysis without any objections or inquiries from defendant.

¶ 8 Acosta-Talbot analyzed a swab obtained from the trigger of a pistol, a swab taken from the pistol grip, and a swab taken from the rear sight of a pistol. She was provided with and analyzed a known standard for defendant for comparison. The trigger sample contained a mixture of DNA from two individuals of equal contribution, and defendant’s profile “was consistent with what was there.” She stated that the probability of randomly selecting an individual with a matching profile was one in three. Her laboratory can test 23 locations on a DNA sample; however, for the trigger

swab, she examined only four locations, as these were the only data points sufficiently reliable for comparison.

¶ 9 She analyzed the swab obtained from the grip area and testified that it contained a mixture from two individuals. She was able to distinguish a predominant female profile at 11 locations and a minor male profile at eight locations. Defendant's profile was consistent with the minor male profile at all eight locations. The statistical analysis indicated that the probability of a random individual matching this profile was approximately one in 1,900 persons.

¶ 10 Acosta-Talbot testified that she analyzed the swab from the rear sight area and determined that it exhibited characteristics consistent with a mixture of two individuals. She identified a predominant female profile at five locations and a minor male profile at three locations. Defendant's profile was consistent with the male profile. She stated that the probability of a random person matching the profile was one in 350. She testified that all of her conclusions were reached to a reasonable degree of scientific certainty.

¶ 11 During cross-examination, Acosta-Talbot indicated that she was not supplied with a female sample to compare to the two primary female donors. She reiterated that one in three individuals could have been the donor of one of the profiles generated from the swab from the trigger area. She testified that, in her opinion, the three samples are not necessarily attributable to defendant's DNA; rather, they are "just consistent at this point." She was not provided with DNA samples from any other individuals for comparison. Additionally, she stated that it was conceivable that, if defendant handled objects that subsequently came into contact with the firearm over a prolonged period and with sufficient force, secondary transfer of DNA could occur.

¶ 12 During redirect examination, she testified that defendant did not provide her with other samples for comparison, although her laboratory would have accepted such requests. On recross-

examination, she stated that the swab from the trigger area was a mixture of two individuals, which could have been male or female.

¶ 13 Arthur Miller, a detective employed by the City of Champaign Police Department, testified next on behalf of the State. On December 22, 2020, he was court-ordered to collect a DNA sample from defendant, whom he identified in open court. He met with defendant at the Champaign County Satellite Jail, where defendant was present with his attorney. Defendant refused to comply with the request to provide the DNA sample.

¶ 14 David Griffet IV, testified next for the State. On January 5, 2021, he held the position of supervisor within the Street Crimes Task Force of the Champaign Police Department. On that date, he executed a court order requiring defendant to submit a DNA sample, which Detective Griffet collected using a swab from inside defendant's mouth. Detective Griffet identified defendant in court.

¶ 15 Prior to that, on November 11, 2020, Detective Griffet conversed with defendant following his being Mirandized. Defendant informed Detective Griffet that he was unaware of the presence of a firearm in the residence. Subsequently, defendant admitted to possibly having touched the firearm. During cross-examination, Detective Griffet stated that the conversation took place inside his vehicle after they departed from defendant's apartment. Defendant was seated beside him in the front seat, while Investigator Jim Kerner was positioned behind defendant. Detective Griffet, who had his body camera activated, testified that it should have been recording; however, he had not reviewed the footage for the court proceedings.

¶ 16 Jordan Hagemann, an officer with the City of Champaign, testified next on behalf of the State. On August 3, 2020, Officer Hagemann responded to 309 West Beardsley to investigate a reported domestic disturbance. At the scene, there was a male individual, identified as defendant

in court, and a juvenile female. During his investigation, he recovered a safe found in the residence's southernmost bedroom. Officer Hagemann questioned defendant regarding the safe, to which defendant stated that the safe did not belong to him and he was unaware of its contents. Defendant further indicated that he was merely a resident staying at the premises and was not listed on the lease. He also mentioned that he slept on the couch. As the safe was being removed from the residence, defendant subsequently attempted to assert ownership of the safe. He informed Officer Hagemann that any action taken regarding the safe would require a warrant. Defendant requested permission to remove the safe himself. Officer Hagemann offered defendant the opportunity to remove the safe, provided he was able to unlock it and confirm that it contained no firearms. In response, defendant departed the scene at a high rate of speed in a vehicle.

¶ 17 Officer Hagemann testified that he ultimately conducted a search of the safe in accordance with a search warrant. Inside the safe, on the top tray, was a Glock 44 firearm with a laser sight attached. He swabbed the firearm for potential DNA evidence, including the rear sight, the slide, the trigger, and the grip of the butt of the pistol magazine.

¶ 18 Officer Hagemann stated that upon inspecting the safe, he also discovered several identification items and documents, including an Illinois identification card belonging to defendant, which were located on the same tray as the firearm. Additionally, he found labor and court documentation related to substance abuse for defendant. The address on the paperwork was 309 West Beardsley, which corresponded to the address he responded to and from which he retrieved the safe. Retirement documentation for defendant was also located within the safe. However, Officer Hagemann did not find any documentation related to Lakeshia Richardson, the female present at the scene, inside the safe.

¶ 19 During cross-examination, Officer Hagemann testified that a social security card and Department of Corrections documents belonging to Terrance Harris were also discovered within the safe. He indicated that no DNA samples were obtained from Harris, nor was he interviewed. Defendant's 13-year-old son was also present at the scene. Officer Hagemann stated that the combination to the safe was supplied to him by Richardson and that the safe was situated in her bedroom adjacent to her bed.

¶ 20 During redirect examination, Officer Hagemann testified that Richardson did not immediately know the code to the safe and that she had to "think of what the code would be to the defendant's safe." This concluded the State's evidence.

¶ 21 The trial court admonished defendant regarding his right to testify. Subsequently, defendant moved for a directed verdict. No arguments of counsel were made, and the trial court denied the motion, stating:

"Um, well, the issue is whether a reasonable trier of fact, in this case the court, could find the defendant guilty beyond a reasonable doubt. It's in the light most favorable to the State. There were some questions that arguably cast some doubt on the issue, but I do believe that it meets the threshold here. And therefore, I'm gonna deny that motion."

¶ 22 Defendant testified on his own behalf. He resided in Rantoul; however, for a period, he stayed at 309 East Beardsley in Champaign, along with others, including Richardson, her father, his son, and her children. The residence was a two-story home. Defendant began residing there in September 2019 after relocating from Chicago and moved out on August 3, 2020.

¶ 23 Defendant acknowledged a photograph of the safe and testified that he had resided in the same house as the safe. He indicated that the safe was located in Ricardson's room and was present

when he moved in. Defendant did not place his documents into the safe. He stated that he was unaware of what was “going on inside the safe.”

¶ 24 Defendant indicated that Harris was a friend of his but stated that he did not place Harris’s documents into the safe. Defendant testified that he did not put the Glock 44 in the safe and was unaware of its presence therein. He did not recall whether he ever touched the weapon. Defendant stated that he did not remember informing Detective Griffet that he might have touched the gun. He then testified that he never touched the gun and stated that he had never seen the firearm before.

¶ 25 On August 3, 2020, he was in a verbal altercation with Richardson, who demanded his removal from the residence and subsequently called the police. Upon their arrival, law enforcement officers escorted him from the premises. The police noted the presence of a safe after Richardson informed them that defendant possessed a firearm within it. Defendant testified that the police inquired whether the safe belonged to him, to which he responded negatively, and he was permitted to leave. He further stated that he was unaware of the safe’s combination and was uncertain how his documents came to be inside. He mentioned that he had never seen the safe open, as he slept on a couch in the living room.

¶ 26 During cross-examination, defendant stated that he never informed the police that the safe was his. Subsequently, he testified that he had told the police it was his safe because he was “entrapped” into making that statement. Additionally, he testified that he sped away from the scene. This concluded defendant’s evidence.

¶ 27 During rebuttal, the State recalled Detective Griffet. He reiterated that on November 11, 2020, while transporting defendant, he engaged in a conversation regarding whether defendant had ever touched the firearm in question. Detective Griffet stated that defendant indicated he might have touched it. The State presented Detective Griffet’s bodycam footage as an exhibit. In the

footage, Detective Griffet and defendant are engaged in a conversation about the situation, and defendant stated to Detective Griffet that the gun was in the safe, which was taken from Richardson's house. Detective Griffet inquired whether defendant's prints or DNA would be on the gun, to which he responded, "Yeah. I might have touched the gun or whatnot, but that don't mean it's mine."

¶ 28 This concluded the evidence. Defendant moved again for a directed verdict. No arguments of counsel were made, and the trial court denied the motion, stating:

"Well, it's the same test of whether a reasonable trier of fact could conclude the defendant guilty beyond a reasonable doubt, but now it's based on the evidence viewed in light of all the evidence in the case.

There has been some testimony by the defendant, some rebuttal. I still believe that a jury or a trial judge could determine that the defendant's guilty beyond a reasonable doubt. And therefore, I'm going to deny the motion."

¶ 29 After hearing closing arguments, the trial court pronounced its ruling in open court. The trial court noted that this was a case based on circumstantial evidence, as no witness saw defendant in possession of the firearm. It identified "the real issue here is possession," specifically constructive possession.

¶ 30 The trial court further observed that defendant resided at the location where the safe was stored. The trial court noted the testimony of the State's witnesses, who stated that defendant claimed ownership of the safe, yet defendant also had stated that the safe was not his. The trial court stated:

"And the police said well, if you want to open it up and we see there's nothing illegal in there, you can certainly have it. And he did not do that and he left. That's

circumstantial evidence that perhaps he—it was his, but he didn’t want to open it up in front of the police officers suggesting perhaps that there was something in there he didn’t want police to see.”

¶ 31 The trial court noted that defendant’s documents were located inside the safe. The trial court further observed that the firearm contained a mixed sample from three distinct locations, comprising both male and female material. “It’s circumstantial evidence even though it’s not high probabilities that the defendant at least touched the gun at some point.”

¶ 32 The trial court expressed concern that defendant initially refused to provide his DNA sample and questioned the refusal. The trial court observed that it heard on the body camera footage defendant stating that he may have touched the gun once but that it does not mean that it was his. “At that point if the court believed the defendant’s statement, it’s essentially a confession that he may actually have touched it at some point, but he was denying that it was actually his.”

¶ 33 The trial court expressed its belief in the credibility of the officers. The trial court observed that defendant’s demeanor during testimony was argumentative and that his statements were evasive and inconsistent. The trial court harbored “serious concerns” about defendant’s credibility. Additionally, it highlighted that defendant had altered his account concerning whether he had ever touched the firearm.

“The most compelling inconsistency by Mr. Jackson, however, is about the ownership of the safe. On the stand he said it wasn’t his. And after a few follow-up questions he finally said well, I might have said that it was mine, but I was entrapped. Then he went on to say no, it wasn’t his. And then eventually I believe he said it might have been his, or he kept changing his story.

If it was just the DNA on the gun, it wouldn't be enough for guilt. But if that's in conjunction with the fact that his ID and other papers are in the safe. And the fact is that he did say to officers: I might have touched it. He refused to give DNA samples. He changed his story about whether or not the safe was his.

When I look at the totality of the evidence here, not just individual pieces, but all of it together, the court has to determine whether that's proof beyond a reasonable doubt. There's no evidence that anybody else touched the gun. There's no evidence that the safe belonged to Lakeshia. None of her belongings were in there. It's all from the defendant. This isn't about ownership as the defendant apparently said to Griffet. It's not about ownership. I don't care who owns it. It's whether he constructively possessed it at some point on or about August 3rd of 2020."

The trial court determined that the State successfully met its burden of proof by establishing defendant's guilt beyond a reasonable doubt and that it also demonstrated the presence of the laser sight.

¶ 34 On November 30, 2022, defendant filed a motion for acquittal or, alternatively, for a new trial. He contended that the State did not establish his guilt beyond a reasonable doubt and argued that the trial court erred in denying the motions for a directed verdict. The motion was subsequently denied on December 21, 2022. Following a sentencing hearing on the same date, defendant was sentenced to a term of 15 years in the Illinois Department of Corrections. Defendant timely filed a notice of appeal.

¶ 35 II. ANALYSIS

¶ 36 On appeal, defendant raises two issues. First, he contends that the trial court erred in failing to accurately recall and consider critical testimony from the State's witnesses, which consequently

deprived defendant of his due process rights and a fair trial. More specifically, he asserts that the trial court made two significant and material misstatements: (1) that there was no evidence that anyone else touched the gun and (2) that all of the documents in the safe belonged to defendant. He further claims that, because the trial court relied on these two material misstatements, defendant was denied his right to a fair trial. Additionally, he maintains that these errors committed by the trial court were not harmless.

¶ 37 Defendant secondly contends that the trial court committed error in denying his motion for a directed verdict, asserting that the circumstantial evidence supporting constructive possession of the firearm was inadequate to establish guilt beyond a reasonable doubt. He argues that he “could not have exercised immediate and exclusive control over the safe, wherein the Glock 44 was found, when it was found in a bedroom he did not occupy and locked with a combination that only Ms. Richardson knew of and supplied.” He further contends that the location of the firearm and its contents contradict the assertion that he had immediate and exclusive control over the area where the firearm was located. He asserts that he did not constructively possess the firearm. Consequently, he urges that we should determine that the trial court erred in denying the motion for a directed verdict, as “the entirely circumstantial evidence of constructive possession of the Glock 44 was insufficient to sustain a finding of guilty beyond a reasonable doubt.”

¶ 38 In response, the State initially asserts that defendant forfeited any argument concerning any misstatements by the trial court during the pronouncement of its ruling, as defendant neither objected at the appropriate time nor raised the issue in a posttrial motion. Setting aside the issue of forfeiture, the State contends that this case should be reviewed under the plain error doctrine, which imposes the burden on defendant to demonstrate reversible error, in contrast to the harmless error doctrine advanced by defendant in his brief. The State maintains, however, that even under

the harmless error doctrine, defendant was not prejudiced by the trial court's "minor misstatement of facts" and that the DNA testimony was not the "crux of the case." The State's brief refers to several facts articulated by the trial court during the pronouncement of its ruling and highlights additional evidence supporting defendant's guilt. The State further argues that defendant failed to establish that his due process rights were violated when the trial court made the comments at issue. Moreover, the State asserts that the circumstantial evidence was sufficient to conclude that defendant had constructive possession of the firearm.

¶ 39 In his reply brief, defendant contends that the trial court's error was not harmless and disputes the application of the plain error doctrine as presented by the State. He additionally asserts that the State failed to establish beyond a reasonable doubt that he had constructive possession of the Glock 44.

¶ 40 A. Due process

¶ 41 Defendant argues that his due process rights were violated because the trial court misstated two points in its oral judgment. " 'The trial court's failure to recall and consider testimony crucial to defendant's defense' will result 'in a denial of defendant's due process rights.' " *People v. Moon*, 2019 IL App (1st) 161573, ¶ 36 (quoting *People v. Mitchell*, 152 Ill. 2d 274, 323 (1992)). "[I]n reviewing a conviction following a bench trial, we must presume the trial court 'considered only competent evidence in reaching its verdict,' unless shown otherwise 'by affirmative evidence in the record.' " *Id.* (quoting *People v. Simon*, 2011 IL App (1st) 091197, ¶ 91). "Where the record affirmatively shows that the trial court failed to recall crucial defense evidence when entering judgment, the defendant did not receive a fair trial." (Internal quotation marks omitted.) *Id.* We review *de novo* whether a defendant's due process rights have been denied. *Id.*

¶ 42 The State initially contends that defendant forfeited this issue by failing to object during the trial and by not raising it in his posttrial motion. We concur with the State’s position. The Illinois Supreme Court has consistently held that “for a criminal defendant to preserve an issue for review on appeal, the defendant must object at trial and raise the issue in a written posttrial motion.” *People v. Jackson*, 2022 IL 127256, ¶ 15. “[A] criminal defendant who fails to object to an error and raise the error in a posttrial motion has forfeited the error, precluding review of the error on appeal.” *Id.* Here, defendant did not object to the statements during trial, and while he filed a timely post-trial motion, he did not raise any argument concerning them. Consequently, the trial court was not afforded an opportunity to address the alleged error or to clarify its statements, either at the time of pronouncing its judgment or at the post-trial hearing. Defendant’s failure to object and raise it in a posttrial motion results in a forfeiture of this issue.

¶ 43 “When a defendant has forfeited appellate review of an issue, the reviewing court will consider only plain error. [Citation.] Harmless-error analysis is conducted when a defendant has preserved an issue for review. [Citation.] The application of plain-error or harmless-error review, therefore, depends on whether defendant has forfeited review of the issue.” *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). As noted above, defendant forfeited his review of the claimed misstatements. This forfeiture invokes the plain error doctrine as our method of review. “[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *In re N.H.*, 2016 IL App (1st) 152504, ¶ 75 (quoting *People v. Piatkowski*, 225 Ill.

2d 551, 565 (2007)). “Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion.” *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). “The first step of any plain error review is to determine whether any error occurred at all.” *In re N.H.*, 2016 IL App (1st) 152504, ¶ 76.

¶ 44 We note that the State asserts that defendant did not contend in his brief or reply brief that the misstatement issue warrants plain error review; rather, he solely relies on the doctrine of harmless error. “[W]hen a defendant fails to present an argument on how either of the two prongs of the plain-error doctrine is satisfied, he forfeits plain-error review.” *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010); see *People v. Leach*, 2012 IL 111534, ¶ 61 (“If a defendant fails to make a plain-error argument, we generally honor his procedural default.”); Ill. S. Ct. R. 341(h)(7) (eff. October 1, 2020) (Points not argued in brief are forfeited). Here, defendant did not argue that the trial court’s misstatement issue should be reviewed under the plain error doctrine. Furthermore, in his reply brief, defendant continues to assert that the harmless error doctrine is applicable and fails to provide any analysis pursuant to the plain error doctrine. Consequently, defendant has forfeited his argument regarding the trial court’s comments on appeal. However, because the forfeiture rule is an admonition to the parties, and not a jurisdictional limitation on a reviewing court, we decline to apply forfeiture and, instead, will address the merits of the issue raised by defendant. *People v. Chapman*, 379 Ill. App. 3d 317, 326 (2007). Based on a thorough review of the record, we find that no error occurred during the pronouncement of the trial court’s ruling when the trial court’s statements are considered in context with the entirety of the ruling.

¶ 45 Defendant argues the error occurred when the trial court misstated two facts during the pronouncement of its ruling. The first alleged misstated fact was when the trial court stated that there was no evidence indicating that “anybody else” had touched the gun. The second assertion

concerned the trial court's statement that all of the documents in the safe belonged to defendant. For the following reasons, we find that neither statement constituted an error.

¶ 46 The assertion by the trial court that there was no evidence indicating that anyone else touched the weapon could arguably be construed as a misstatement when read in isolation from the remainder of the recitation. However, this comment, when analyzed in the context of the trial court's entire recitation, was neither a misstatement nor a failure to recall facts. First, this assertion was made by the trial court within the context of the trial court discussing defendant informing Detective Griffet that he might have touched the weapon. In that regard, the trial court stated:

“And the fact is that he did say to officers: I might have touched it. He refused to give DNA samples. He changed his story about whether or not the safe was his.

When I look at the totality of the evidence here, not just individual pieces, but all of it together, the court has to determine whether that's proof beyond a reasonable doubt. There's no evidence that anybody else touched the gun.”

The trial court did not misstate the evidence. Rather, it made a statement within the context of discussing defendant's admission to Detective Griffet that he may have touched the gun. No further evidence was introduced indicating that anyone else had admitted to having contact with the gun, and the trial court was acknowledging this fact.

¶ 47 Second, during its earlier narration, the trial court conducted a comprehensive analysis of the DNA evidence associated with the firearm and even speculated that the female donor might have been Richardson.

“And then there's the gun. This is not a situation where the DNA was assessed and found at all 23 loci, a match. So it would be 1 in, you know, quintillion match. It was much

lower than that, only findings at 3 or 4 loci. So the numbers are generally low in comparison to the over [sic] types of cases.

And there was a mixed sample at three different locations. One unsure if it was two males or a male and a female. Two others it was a male and a female. And it could very well have been Ms.—it could have been Lakeshia’s DNA. We don’t know. But there was a males [sic] as well. It’s circumstantial evidence even though it’s not high probabilities that the defendant at least touched the gun at some point.”

¶ 48 Notwithstanding defendant’s assertion now on appeal, the trial court was evidently cognizant of the presence of additional DNA on the firearm. In fact, the trial court did not place much weight on the DNA evidence, as it stated “If it was just the DNA on the gun, it wouldn’t be enough for guilt.” The single statement made by the trial court, which defendant scrutinized, does not sufficiently encapsulate the trial court’s overall recollection of the DNA evidence found on the weapon. In a bench trial, the trial court is not required to mention everything that contributed to its findings. *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (1998).

¶ 49 Third, the assertion that there was no evidence indicating that anyone other than defendant touched the firearm is indeed true. Defendant informed Detective Griffet, as evidenced by body camera footage presented to the trial court, that he may have touched the weapon. As previously noted, no evidence was presented that any individual other than defendant admitted to touching the firearm. Furthermore, as defendant highlighted during the trial proceedings and in his closing arguments, the DNA evidence could have been transferred through means other than direct contact. In essence, the DNA obtained from unidentified sources could have been transferred to the firearm without direct handling. “In a bench trial, it is the trial court’s responsibility ‘to weigh evidence

and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.’ ” *Moon*, 2019 IL App (1st) 161573, ¶ 36 (quoting *People v. Kiertowicz*, 2013 IL App (1st) 123271, ¶ 19).

¶ 50 Finally, and most importantly, it is not significant to the outcome whether any other individual handled the firearm. The central issue at trial was whether defendant possessed the firearm. The involvement of others in touching the gun is not dispositive.

¶ 51 Defendant cites *People v. Williams*, 2013 IL App (1st) 111116, to support his argument that the trial court’s comments were not harmless error. As discussed above, we are not reviewing this issue for harmless error. Moreover, *Williams* is factually distinguishable from this case.

¶ 52 First, *Williams* involved a pretrial suppression hearing, whereas the present case involved a bench trial. *Id.* ¶ 82. Second, in *Williams*, the trial court “mistakenly recalled the defense expert as agreeing with the State expert on the ultimate issue.” *Id.* ¶ 78. In the present case, the trial court did not erroneously recall any testimony. As discussed above, there was no evidence indicating that anyone other than defendant admitted to touching the firearm, and, as discussed below, as between Richardson and defendant, documents found in the safe belonged to defendant. The contested statements must be analyzed within the context in which they were made, and upon such analysis, it is evident that these were not misstatements of the evidence.

¶ 53 Finally, the *Williams* court noted that “due to the trial court’s mistaken recollection, there was hardly any credibility determination for it to resolve between the two testifying experts.” *Id.* ¶ 78. This was not the situation in this case. The trial court considered the credibility of the various witnesses when issuing its ruling. In that regard, the trial court stated:

“I am allowed when judging his credibility, as well as the credibility of all the witnesses, and I find the officers were credible. I have to look at motive, bias, and interest. And the defendant certainly has those against him.

His demeanor on the stand—although he was soft spoken—was a bit argumentative. And as Mr. Umlah indicated, was evasive to some of the answers. But he was also inconsistent with the testimony of other witnesses. And frankly, he was inconsistent with himself.

The court has serious concerns about Mr. Jackson’s credibility. He said—and he’s the only one who says—that he was living there with a great number of other people. Said the safe was there when he moved in, which may very well could be true. But he said he never put anything in there and he doesn’t know how his stuff got in there. Which the court finds not credible in the light of especially a state ID being there.”

¶ 54 The misstatement in *Williams* led the trial court to refrain from scrutinizing the credibility of the two experts. Conversely, the trial court’s comments in the current case did not affect its credibility assessment. Instead, these “misstatements” were a consequence of the trial court’s comprehensive analysis of credibility. In other words, they represented the trial court’s conclusions derived from an evaluation of the totality of the evidence, including the witnesses’ credibility.

¶ 55 The second statement with which defendant has taken issue is when the trial court stated all of the belongings in the safe belonged to defendant. However, once again, defendant takes this comment out of context. The trial court stated “There’s no evidence that the safe belonged to Lakeshia. None of her belongings were in there. It’s all from the defendant.” The trial court was considering the belongings in relation to Richardson and defendant, and the statement must be interpreted within the context in which it was made. Furthermore, this single statement by the trial court was not the sole reference it made regarding the safe. Earlier in its remarks, the trial court stated:

“Having said that though, the police were sent to this apartment because of a domestic issue. The defendant was staying there. There was a safe there. There’s some contradicting evidence of what he said. But the evidence from—through the State’s witnesses were that the defendant said it wasn’t his. And then he said it was his. And the police said well, if you want to open it up and we see there’s nothing illegal in there, you can certainly have it. And he did not do that and he left. That’s circumstantial evidence that perhaps he—it was his, but he didn’t want to open it up in front of the police officers suggesting perhaps that there was something in there he didn’t want police to see.

There was a search warrant to go into the safe. They find his state ID and other papers, items which to a great extent would be things that he would want to have on his own possession such as an ID card to use at a bank or if he’s driving a car or anything else. But it’s not.

* * *

The most compelling inconsistency by Mr. Jackson, however, is about the ownership of the safe. On the stand he said it wasn’t his. And after a few follow-up questions he finally said well, I might have said that it was mine, but I was entrapped. Then he went on to say no, it wasn’t his. And then eventually I believe he said it might have been his, or he kept changing his story.

If it was just the DNA on the gun, it wouldn’t be enough for guilt. But if that’s in conjunction with the fact that his ID and other papers are in the safe.”

¶ 56 The trial court conducted an in-depth analysis of the safe issue. The trial court’s statement that all of the documents belong to defendant does not imply that it was the trial court’s sole consideration regarding the safe. “In a bench trial it is presumed that the trial judge has considered

only competent evidence in reaching his verdict.” *People v. Gilbert*, 68 Ill. 2d 252, 258-59 (1977). The record clearly demonstrates that the trial court thoroughly examined and considered the evidence pertaining to the safe.

¶ 57 “[A] fair trial is different from a perfect trial.” *People v. Allen*, 222 Ill. 2d 340, 353 (2006). Defendant did not object to the statements during the trial, nor did he raise them as an issue in his posttrial motion. In his brief, he extracts the two comments from their original context and analyzes them in a manner that benefits his position. The trial court’s comprehensive analysis of the evidence presented spanned eight pages of transcript, demonstrating thoroughness and consideration of all evidence. The two statements highlighted by defendant, taken from the entire eight-page oral judgment, were extracted out of context and fail to accurately represent the trial court’s overall analysis. “ ‘[T]he initial analytical step under either prong of the plain error doctrine is [to] determin[e] whether there was a clear or obvious error at trial.’ ” *People v. Anaya*, 2017 IL App (1st) 150074, ¶ 58 (quoting *People v. Sebby*, 2017 IL 119445, ¶ 49). The statements made by the trial court in its oral recitation do not amount to clear or obvious error. Accordingly, we do not find that plain error occurred, and thus we find that defendant’s due process rights were not violated.

¶ 58 B. Constructive Possession

¶ 59 Defendant next argues that the trial court erred in denying his motion for a directed verdict because the evidence was insufficient to prove beyond a reasonable doubt that he constructively possessed the Glock 44. “ ‘A motion for a directed verdict asserts only that as a matter of law the evidence is insufficient to support a finding or verdict of guilty.’ ” *People v. Carter*, 2022 IL App (1st) 210261, ¶ 121 (quoting *People v. Withers*, 87 Ill. 2d 224, 230 (1981)). “[W]e review the trial court’s denial of the motion for a directed verdict *de novo*.” *Id.* Defendant moved for a directed

verdict at the conclusion of the State's evidence and at the conclusion of the case, and both were denied. As explained below, we affirm the denial of the requests for directed verdicts.

¶ 60 Part of the trial court's reasoning for a guilty verdict was based on its determination that defendant had constructive possession of the Glock 44. "When a defendant is not found in actual possession, the State must prove constructive possession." *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. "To establish constructive possession, the prosecution must prove that the defendant (1) had knowledge of the presence of the firearm and ammunition and (2) exercised immediate and exclusive control over the area where the firearm and ammunition were found." *Id.* In this case, defendant had both knowledge of and control over the Glock 44, and therefore constructively possessed the firearm.

¶ 61 "Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found." *Id.* In this case, all three denote defendant's knowledge. Officer Hagemann testified that on August 3, 2020, at the scene, defendant inquired about the safe, and Officer Hagemann offered to allow defendant to access it, contingent upon defendant opening it to demonstrate there was no firearm inside. Defendant responded by speeding away. The safe was later opened revealing the presence of the Glock 44. "[E]vidence of flight is admissible as a circumstance tending to show a consciousness of guilt." *People v. Pursley*, 284 Ill. App. 3d 597, 606 (1996). On November 11, 2020, while in the squad car, defendant admitted to Detective Griffet that he might have touched the gun. Furthermore, on December 22, 2020, when Detective Miller attempted to obtain a DNA sample from defendant, he refused. This particular fact drew the trial court's attention, causing it to remark "[w]hy would you refuse it if you know you never touched it?" Finally, DNA analysis conducted on the Glock 44 revealed that defendant's genetic profile could not be excluded from

profiles generated from the three different sites tested, one of which had a probability of one in 1,900 individuals. The fact that defendant's profile could not be excluded from all three sites was not coincidental. "It was the trial court's prerogative, as the trier of fact, to make credibility determinations and resolve any alleged inconsistencies in the evidence." *People v. Oleszak*, 2018 IL App (1st) 153642-U, ¶ 18. The totality of the evidence presented supports that defendant had knowledge of the Glock 44.

¶ 62 In addition to knowledge, circumstantial evidence supports the finding that defendant had control over the Glock 44. "Control is established when a person has the 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it." *Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). Defendant testified that he resided with Richardson from September 2019 to August 2020, thus indicating that he lived in the premises that contained the weapon. "Habitation in the premises where contraband is discovered is sufficient evidence of control to constitute constructive possession." *Id.* Furthermore, the weapon was discovered on the top tray inside the safe, alongside defendant's Illinois identification card, labor documents, substance abuse documents, and retirement documents. These documents were addressed to defendant at Richardson's residence. "Evidence that a defendant resides in a location where contraband is discovered establishes the requisite level of control to prove constructive possession." *People v. President*, 2021 IL App (1st) 192222-U, ¶ 19. Additionally, the proximity of Richardson sleeping near the safe that contained the firearm does not diminish defendant's control over it. "The fact that others also have access to the location does not diminish the defendant's constructive possession." *People v. King*, 2019 IL App (1st) 170768-U, ¶ 24. The evidence presented establishes defendant's control over the safe.

¶ 63 An additional noteworthy point is that defendant vacillated regarding the ownership of the safe which contained the firearm. He informed Officer Hagemann that he was unaware of the safe containing the weapon on August 3, 2020. Subsequently, he requested possession of the safe, asserting that it was his. During testimony, defendant admitted that he knew the safe existed and did not directly answer the question of who owned the safe when questioned by his attorney.

“[DEFENDANT:] Yes, I’ve seen the safe. I was staying in the same house the safe was in too as well.

[DEFENSE COUNSEL:] And who did that safe belong to? Who’s the owner of that safe?

[DEFENDANT:] I mean, it was in her room, I mean—

[DEFENSE COUNSEL:] Okay. In whose room?

[DEFENDANT:] Lakeshia Richardson.

[DEFENSE COUNSEL:] So as far as you know, did that safe belong to her?

[DEFENDANT:] I mean, it was there when I moved in. The safe was there.”

Furthermore, the trial court commented on defendant’s credibility, noting a significant lack thereof. “It is the trier of fact’s responsibility to determine the witnesses’ credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence.” *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Defendant’s credibility concerning the ownership of the safe containing the weapon was markedly deficient, and when combined with the additional evidence presented at trial, further support his knowledge and control of the Glock 44. “In deciding whether constructive possession has been shown, 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.” *Spencer*, 2012 IL App (1st) 102094,

¶ 17.

¶ 64 Defendant contends that Harris could have equally been the possessor of the weapon, as his documents were also located within the safe. This contention is unpersuasive. First, more than one person can possess a weapon. “ ‘The rule that possession must be exclusive does not mean

that the possession may not be joint ***.’ ” *People v. Williams*, 2020 IL App (1st) 163417, ¶ 76 (quoting *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000)). Second, Harris’s DNA was not analyzed in comparison to the DNA on the weapon, despite Acosta-Talbots’s testimony that her laboratory accepts samples for testing from defendants. Finally, Harris is not the individual charged in this case; defendant is. Despite the inferences suggested by defendant that the weapon may have belonged to Harris, sufficient evidence was introduced to support the conclusion that defendant constructively possessed the Glock 44.

¶ 65 “Constructive possession is often proven entirely by circumstantial evidence.” *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. Such was the case here. The totality of the evidence, all circumstantial, concludes that defendant knew about the weapon and had control over it. Richardson told the police when they responded to the domestic violence call on August 3, 2020, that defendant had a gun in the safe, which led the responding officers to take the safe. Defendant then requested to take the safe with him on August 3, 2020, until he was told he had to open it first, which prompted him to speed away. It was discovered later that defendant’s important documents, addressed to him at the residence where the safe was located, were next to the Glock 44 on the same shelf. Defendant admitted to Detective Griffet that he may have touched the gun, and defendant initially refused to provide a DNA sample. Three separate parts of the weapon contained DNA that could have been contributed by defendant. All of these facts combined sustain the State’s burden of proof beyond a reasonable doubt that defendant constructively possessed the Glock 44.

¶ 66

III. CONCLUSION

¶ 67 For the foregoing reasons, we affirm the conviction of the circuit court of Champaign County.

¶ 68 Affirmed.