

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, SIXTH DIVISION

People v. Edwards

2020 IL App (1st) 170843 · No. 1-17-0843 · Decided February 3, 2021

SUMMARY

The Illinois Appellate Court affirmed Kellen Edwards’s conviction for unlawful use or possession of a weapon by a felon. The court held that instructing the jury on constructive possession after deliberations introduced a new theory, but the error was harmless beyond a reasonable doubt because the evidence and defense argument established actual possession. The court remanded for proceedings concerning the defendant’s claimed presentence custody credit.

CASE DETAILS

COURT	Appellate Court of Illinois, First District, Sixth Division
WRITING FOR THE COURT	Justice Cunningham; Presiding Justice Mikva; Justice Connors
JURISDICTION	Illinois
DECIDED	February 3, 2021
DOCKET	1-17-0843
DISPOSITION	affirmed_and_remanded
PROCEDURAL POSTURE	Defendant appealed his conviction and sentence following a jury trial, challenging the trial court’s response to a jury question concerning possession and seeking additional presentence custody credit.
STANDARD OF REVIEW	The court reviewed the trial court’s response to the jury’s question for abuse of discretion and reviewed the constitutional instructional error for harmless error beyond a reasonable doubt. The court treated the unpreserved presentence-credit issue as jurisdictionally unavailable on direct appeal absent a prior motion in the trial court.
PRECEDENTIAL VALUE	published precedential opinion of the Illinois Appellate Court
PARTIES	Kellen Edwards v. The People of the State of Illinois

TOPICS

- jury instructions
- appellate procedure
- preservation of error
- harmless error
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court erred by answering the jury's question about possession with an instruction defining both actual and constructive possession when the parties had argued only actual possession.
2. Whether the instructional error violated Edwards's constitutional right to make a closing argument and, if so, whether the error was harmless beyond a reasonable doubt.
3. Whether the appellate court could directly consider Edwards's claim for 80 additional days of presentence custody credit without a prior motion in the circuit court.

HOLDINGS

1. When the parties have limited their arguments to actual possession, giving a constructive-possession instruction after deliberations have begun introduces a new theory of guilt and is an abuse of discretion.
2. The instructional error was harmless beyond a reasonable doubt because the undisputed evidence and defense counsel's concessions established that Edwards actually possessed the gun.
3. The appellate court lacked jurisdiction to consider the presentence-credit calculation because Edwards had not first filed a motion in the circuit court as required by Illinois Supreme Court Rule 472.

KEY QUOTATIONS

“By instructing the jury on constructive possession, the court introduced a new theory to the jury.” (§ 24)

“Handling a gun to throw it out a window unquestionably amounts to actual possession, or “exercising dominion” over an object.” (§ 26)

“The defendant’s conviction for unlawful use of a weapon by a felon is affirmed, and we remand this case to the circuit court of Cook County pursuant to Rule 472(e) for the court to consider the defendant’s challenge to his presentence custody credit.” (§ 29)

FACTUAL BACKGROUND

After a shooting in Chicago, police pursued a vehicle identified by a witness. During the chase, Edwards threw a dark object from the vehicle; police later recovered a .40-caliber Glock handgun along the route, and a spent cartridge in the vehicle was linked to that gun. Edwards was convicted of unlawful use or possession of a weapon by a felon after the jury acquitted him of aggravated discharge of a firearm.

PROCEDURAL HISTORY

Following a jury trial in the Circuit Court of Cook County, Edwards was acquitted of aggravated discharge of a firearm but convicted of unlawful use or possession of a weapon by a felon. The circuit court sentenced him to 14 years' imprisonment. The Illinois Appellate Court held that the trial court erred by instructing the jury on constructive possession after deliberations had begun, but found the constitutional error harmless beyond a reasonable doubt. Because Edwards had not first sought correction of his presentence-credit calculation in the

circuit court, the appellate court remanded under Illinois Supreme Court Rule 472(e) for that court to consider the issue.

DISPOSITION

affirmed_and_remanded

REMAND INSTRUCTIONS

Remand to the Circuit Court of Cook County under Illinois Supreme Court Rule 472(e) to allow Edwards to move to correct the mittimus and for the circuit court to consider his claim for additional presentence custody credit.

CASES CITED

- People v. Sebby, 2017 IL 119445, ¶ 48
- People v. Cregan, 2014 IL 113600, ¶¶ 18, 20
- People v. Enoch, 122 Ill. 2d 176 (1988)
- Herring v. New York, 422 U.S. 853, 857-59 (1975)
- People v. Mendez, 221 Ill. App. 3d 868, 876 (1991)
- People v. Leach, 2011 IL App (1st) 090339, ¶ 15
- People v. Childs, 159 Ill. 2d 217, 228 (1994)
- People v. Millsap, 189 Ill. 2d 155, 161, 164-66 (2000)
- People v. Alexander, 2019 IL App (3d) 160709, ¶¶ 3-18
- People v. Shaw, 186 Ill. 2d 301, 344 (1998)
- People v. Sandifer, 2017 IL App (1st) 142740, ¶ 73
- People v. Whittenberg, 2019 IL App (1st) 163267, ¶ 4
- People v. Scott, 2019 IL App (1st) 163022, ¶ 26