

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 11, 2026

FILED

09/15/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. FRED WAYNE PUTT, JR.

Appeal from the Circuit Court for Moore County
No. 24-CR-1622 Forest A. Durard, Jr., Judge

No. M2025-01860-CCA-R3-CD

A Moore County jury found the defendant, Fred Wayne Putt, Jr., guilty of being a convicted violent felon in possession of a firearm, simple possession of methamphetamine, possession of a legend drug without a prescription, a muffler violation, and a financial responsibility violation, for which he received a total effective sentence of thirteen years in confinement and a \$325 fine. On appeal, the defendant contends that the evidence presented at trial was insufficient to support his conviction for possession of a firearm as a convicted violent felon and that the trial court erred in failing to issue a requested jury instruction. Upon our review of the record and the parties' briefs, we affirm the defendant's conviction.

Tenn. R. App. R.3 Appeal; Judgment of the Circuit Court is Affirmed

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J. and ROBERT H. MONTGOMERY, JR., J., joined.

Jefre S. Goldtrap, Fayetteville, Tennessee, for the appellant, Fred Wayne Putt, Jr..

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Joshua R. Gilbert, Legal Assistant, *pro hac vice*;¹ Robert J. Carter, District Attorney General; and Holly Hewgley, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

¹ Mr. Gilbert, a member of the California bar, was authorized to practice in Tennessee pursuant to Tennessee Supreme Court Rule 7, section 10.07, pending his admission to the Tennessee Bar.

Facts and Procedural History

In March 22, 2024, the defendant was indicted by a Moore County grand jury for one count each of possession of a firearm by a convicted violent felon, simple possession of methamphetamine, possession of a legend drug without a prescription, unlawful possession of drug paraphernalia, a muffler violation, and a financial responsibility violation. The charges arose from the February 5, 2023 traffic stop by Deputy Keith Cencelewski with the Moore County Sheriff's Office. The testimony presented at trial is summarized below.²

Deputy Cencelewski testified that on February 5, 2023, he was in his patrol car when he noticed loud sounds emanating from the defendant's vehicle, a GMC Yukon Denali, and executed a traffic stop. After the defendant was stopped, Deputy Cencelewski approached and asked for the defendant's license, registration, and proof of insurance. The defendant provided the deputy with his Tennessee driver's license but could not produce his registration or proof of insurance. Deputy Cencelewski explained to the defendant that he stopped him because of the noise from his vehicle's muffler. In response, the defendant claimed that the vehicle had recently been "worked on" and that he was test driving it. After requesting identification from the two passengers in the vehicle, Deputy Cencelewski contacted dispatch to run a license check on the defendant and the passengers.

Deputy Cencelewski testified that, as the traffic stop continued, he became suspicious of the defendant and the passengers because they did not maintain eye contact with him. Consequently, Deputy Cencelewski asked the defendant to exit the vehicle and proceeded to question him concerning his whereabouts that day and if there were any weapons or other contraband in the vehicle. Throughout the traffic stop, the defendant repeatedly denied the presence of any weapons in the vehicle. Though, the defendant clarified that he had not been in the vehicle in three years, and during that time other people had access to the vehicle and its keys.

The defendant admitted to Deputy Cencelewski that he had prior felony convictions but continued to claim there were no weapons in the vehicle, even telling the deputy, "[y]ou can look all through there." Ultimately, the defendant acknowledged that a firearm belonging to his mother was "possibly" in the vehicle. In response, Deputy Cencelewski asked the passengers to exit the vehicle in order to conduct a search.

During the search, Deputy Cencelewski discovered a Ruger .22 caliber handgun located in the gap between the driver's seat and the center console. The defendant denied owning the handgun and claimed he did not know it was in the vehicle. The search of the

² We limit our recitation of the facts to those relevant to the defendant's issues on appeal.

vehicle also yielded 1.33g of methamphetamines, a Ziploc baggy with Meloxicam pills, rolling papers, and 2 prescription bottles of Clonidine bearing the name of the defendant's stepfather. Deputy Cencelewski testified that the vehicle was registered and titled to the defendant.

In addition to Deputy Cencelewski's testimony, the State introduced a certified copy of the defendant's 2005 conviction for aggravated assault, a Class C felony, as well as a certified copy of the defendant's 2001 conviction for wanton endangerment in the first degree from Kentucky.

At the close of the State's proof, the defendant requested the trial court issue a jury instruction for attempted possession of a firearm by a convicted felon. The trial court stated, "I don't know how one attempts to possess something It is either actually or constructively possessed or was not possessed at all. That is the way I look at it." Ultimately, the trial court denied the request and said, "I don't think it is an appropriate charge here because number one, even if it were an appropriate charge, the evidence does not lend itself to such a charge because as it says here an attempt necessarily means the offense was not completed."

The defendant presented the testimony of Johnny Victory, the defendant's employer specializing in vehicle transmissions. Mr. Victory testified that the defendant's vehicle had been broken down for several years and that the defendant had only recently repaired it before his arrest. Mr. Victory described that "a lot of people" drove the defendant's vehicle, because the defendant "could not barely get in and out himself." In his thirteen years of knowing the defendant, Mr. Victory had not seen him with a firearm, except for a BB gun the defendant had used to shoot mice.

Following the conclusion of proof, the jury convicted the defendant of possession of a firearm by a convicted violent felon, simple possession of methamphetamine, possession of a legend drug without a prescription, a muffler violation, and a financial responsibility violation. The jury found the defendant not guilty of possession of drug paraphernalia. After a sentencing hearing, the trial court imposed an effective thirteen-year sentence to be served in the Tennessee Department of Correction and a \$325 fine. The defendant filed a motion for a new trial, which was denied by the trial court. This timely appeal followed.

Analysis

On appeal, the defendant argues that the evidence presented at trial was insufficient to support his conviction for possession of a firearm by a convicted violent felon and that the trial court erred in failing to issue the requested jury instruction on attempted possession

of a firearm by a convicted felon. The State contends the evidence at trial was sufficient for the jury to find the defendant constructively possessed the firearm. Concerning the proposed jury instruction, the State argues that the defendant has waived this argument because its request for the jury instruction was not made in writing. Upon reviewing the record and applicable law, we agree with the State and affirm the defendant's conviction.

I. Sufficiency of the Evidence

The defendant challenges the sufficiency of the evidence supporting his conviction for possession of a firearm by a convicted violent felon.³ The State asserts that sufficient evidence exists to support the conviction, and we agree.

When the sufficiency of the evidence is challenged, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190–92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Our Supreme Court has stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus, the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (1963)). “A jury conviction removes the presumption of innocence with which a defendant

³ The defendant does not specifically challenge his remaining convictions, and, as a result, we will not address the sufficiency of the evidence supporting the same.

is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

Tennessee Code Annotated §39-17-1307(b)(1) makes it a Class B felony for any person who has previously been convicted of a felony involving the use of or attempted use of force, violence, or a deadly weapon to unlawfully possess a firearm. *Id.* §39-17-1307(b)(1)(A) and (b)(2).⁴ “Possession may be actual or constructive.” *State v. Robinson*, 400 S.W.3d 529, 534 (Tenn. 2013) (citing *State v. Shaw*, 37 S.W.3d 900, 903 (Tenn. 2001)). Actual possession “refers to physical control over an item.” *State v. Fayne*, 451 S.W.3d 362, 370 (Tenn. 2014). On the other hand, constructive possession is established when a person has “the power and intention at a given time to exercise dominion and control over [an object] either directly or indirectly or through others.” *Shaw*, 37 S.W.3d at 903 (quoting *State v. Patterson*, 966 S.W.2d 435, 445 (Tenn. Crim. App. 1997)). “Constructive possession is the ability to reduce an object to actual possession.” *State v. Ross*, 49 S.W.3d 833, 845-46 (Tenn. 2001) (quoting *State v. Transou*, 928 S.W.2d 949, 955-56 (Tenn. Crim. App. 1996)). Constructive possession depends on the totality of the circumstances in each case and may be established through circumstantial evidence. *Robinson*, 400 S.W.3d at 534. “Knowledge may be inferred from control over the vehicle in which the contraband is secreted.” *State v. Jones*, No. W02C01-9801-CC-11126, 1998 WL 886567, *2 (Tenn. Crim. App. Dec. 21, 1998). With respect to a firearm, “constructive or joint possession may suffice only where the personally unarmed participant has the power and ability to exercise control over the firearm.” *Key v. State*, 563 S.W.2d 184, 188 (Tenn. 1978).

Here, the State introduced a certified copy of the defendant’s prior felony conviction for aggravated assault. Additionally, the defendant was the registered owner and driver of the vehicle wherein Deputy Cencelewski found a Ruger .22 caliber handgun in the gap between the driver’s seat and center console. The location of the firearm was well within the defendant’s reach. A rational juror could have inferred the defendant had the ability to reduce the weapon to his physical possession. Considering this proof in the light most favorable to the State, there was ample evidence presented at trial to show the defendant constructively possessed the firearm found within his vehicle. The defendant is not entitled to relief on this issue. *See State v. Chism*, No. E2023-00620-CCA-R3-CD, 2024 WL 4824881 (Tenn. Crim. App. Nov. 19, 2024) (holding that the evidence was sufficient to support a conviction for possession of a handgun where the defendant owned and operated the vehicle in which the handgun was located); *State v. Triplett*, No. W2015-00163-CCA-

⁴ The defendant’s conviction for being a felon in possession of a firearm is based on a prior felony conviction for aggravated assault. Aggravated assault is a “crime of violence.” Tenn. Code Ann. § 39-17-1301(3).

R3-CD, 2015 WL 9489506 (Tenn. Crim. App. Dec. 29, 2015) (holding that the proof at trial was sufficient to support a conviction for unlawful possession of weapon by a convicted felon when the handgun was found in the glovebox of a car the defendant was driving); *State v. Davis*, No. W2008-00226-CCA-R3-CD, 2009 WL 160927, at *6 (Tenn. Crim. App. Jan. 23, 2009) (holding that the evidence was sufficient to support a conviction for possession of contraband where the defendant owned and operated the vehicle and the contraband was within his reach). Therefore, the evidence is sufficient to sustain the jury's verdict, and the defendant is not entitled to relief.

II. Proposed Jury Instruction

On appeal, the defendant also challenges the trial court's denial of his request for a jury instruction on attempted possession of a firearm by a convicted felon. The State responds that the defendant did not request the proposed jury instruction in writing and, thus, waived the issue for consideration. We agree with the State.

"It is well-settled in Tennessee that a defendant has a right to a correct and complete charge of the law so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions." *State v. Farner*, 66 S.W.3d 188, 204 (Tenn. 2001) (first citing *State v. Garrison*, 40 S.W.3d 426, 432 (Tenn. 2000); and then citing *State v. Teel*, 793 S.W.2d 236, 249 (Tenn. 1990)). Accordingly, trial courts have a duty to give "a complete charge of the law applicable to the facts of the case." *State v. Davenport*, 973 S.W.2d 283, 287 (Tenn. Crim. App. 1998) (citing *State v. Harbison*, 704 S.W.2d 314, 319 (Tenn. 1986)). "In criminal cases, a trial court's duty to accurately instruct the jury on relevant legal principles exists without request." *State v. Benson*, 600 S.W.3d 896, 902 (Tenn. 2020) (citing *State v. Hawkins*, 406 S.W.3d 121, 129 (Tenn. 2013)).

Initially, we must determine whether the defendant waived his right to raise this issue on appeal. The Tennessee Code Annotated section 40-18-110(c) provides in relevant part that "[a]bsent written request, the failure of a trial judge to instruct the jury on a lesser-included offense may not be presented as a ground for relief either in a motion for new trial or on appeal." Tenn. Code Ann. § 40-18-110(c); *State v. Terry*, 118 S.W.3d 355, 359 (Tenn. 2003). Here, the defendant made an oral request to the trial court for a jury instruction on the lesser-included offense of attempted possession of a firearm as a convicted felon. At the time, the trial court took the request under advisement, later denying the request and stated that it was not applicable where the offense had been completed. While the record before us is absent any written requests for jury instructions filed by either the defendant or the State, the failure of the defendant to file a written request is uncontested. Therefore, the defendant has waived this issue on appeal.

Regardless of whether the defendant filed a written request for the instruction, a defendant maintains their constitutional right to a correct and complete charge of the law applicable to their case to ensure a fair trial. *State v. Page*, 184 S.W.3d 223, 229 (Tenn. 2006). “This right encompasses the right to have the jury instructed on all lesser-included offenses supported by the evidence.” *Id.* Therefore, even if the issue has been waived, it must still be determined whether the trial court’s failure to instruct on the lesser included offense amounts to plain error. *See id.* at 231; *see also State v. Fayne*, 451 S.W.3d 362, 371 (Tenn. 2014).

Before an error may be recognized, it “must be ‘plain’ and it must affect a ‘substantial right’ of the accused.” *State v. Adkisson*, 899 S.W.2d 626, 639 (Tenn. Crim. App. 1994). “An error would have to [be] especially egregious in nature, striking at the very heart of the fairness of the judicial proceeding, to rise to the level of plain error.” *Page*, 184 S.W.3d at 231. In *State v. Smith*, our supreme court adopted *Adkisson*’s five-factor test for determining whether an error should be recognized as plain:

- (a) The record must clearly establish what occurred in the trial court;
- (b) A clear and unequivocal rule of law must have been breached;
- (c) A substantial right of the accused must have been adversely affected;
- (d) The accused did not waive the issue for tactical reasons; and
- (e) Consideration of the error is “necessary to do substantial justice.”

24 S.W.3d 274, 282-83 (Tenn. 2000) (quoting *Adkisson*, 899 S.W.2d at 641-42). “[A]ll five factors must be established by the record before this Court will recognize the existence of plain error, and complete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established.” *Id.* at 283. Moreover, the “plain error must be of such a great magnitude that it probably changed the outcome of the trial.” *Adkisson*, 899 S.W.2d at 642. The defendant bears the burden of establishing each of the elements. *State v. Haymer*, 671 S.W.3d 568, 579 (Tenn. Crim. App. Apr. 28, 2023) (citing *State v. Linville*, 647 S.W.3d 644, 654 (Tenn. 2022)).

Here, the trial court’s determination to not instruct the jury on attempted possession of a firearm by a convicted felon does not constitute plain error. It is apparent from the record that the defendant was the owner and driver of the vehicle in which the firearm was discovered, and the firearm was discovered within the defendant’s reach. The only issue for the jury to determine at trial concerning the firearm was whether the defendant had the ability to exercise dominion over it. Based on the proof at trial, no reasonable juror could have concluded that the defendant “attempted” to exercise control over a firearm, since a firearm was undisputedly already present in the vehicle. Therefore, the defendant has not shown that a clear and unequivocal rule of law has been breached by the trial court’s failure

to give the requested instruction or that consideration of the error is necessary to do substantial justice. As such, the defendant is not entitled to plain error relief.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the judgements of the trial court.

s/ J. ROSS DYER

J. ROSS DYER, JUDGE