

Nos. 1-13-2305, 1-13-2306 (Consolidated)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re CODY L., a Minor (The People of the State of Illinois,) Appeal from the
Petitioner–Appellee, v. Cody L., a Minor,) Circuit Court of
Respondent–Appellant.) Cook County
)
)
) Nos. 13 JD 0385
) 13 JD 1354
)
) Honorable
) Lori M. Wolfson,
) Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* In case no. 13 JD 0385, we affirm respondent's adjudication based on aggravated unlawful use of a weapon (AUUW) and unlawful possession of firearms (UPF) where the State proved beyond a reasonable doubt that respondent constructively possessed the gun found under the passenger seat. We hold that neither section 24–1.6(a)(1), (a)(3)(C) (no currently valid FOID card) or section 24–1.6(a)(1), (a)(3)(I) (age under 21 and not engaged in lawful activities under the Wildlife Code) of the AUUW statute is facially unconstitutional. However, we reverse the finding of guilt that was based on 24–1.6(a)(1), (a)(3)(A) of the AUUW statute held facially unconstitutional in *People v. Aguilar*. In case no. 13 JD 1354, we reverse the adjudication where: (1) the trial court should have granted respondent's

1-13-2305
1-13-2306 (cons.)

motion to quash and suppress weapon found on search incident to arrest because police lacked probable cause to arrest respondent for reckless conduct or disorderly conduct; (2) the State did not request a remand in the event we reverse the denial of respondent's motion; and (3) without the weapon, the State cannot prevail on remand on AUUW or UPF. We remand for resentencing with directions.

¶ 2 On June 28, 2013, respondent, Cody L., was adjudicated delinquent, sentenced to the Department of Juvenile Justice for six months, and ordered to be brought back before the court on December 2, 2013, to be placed on probation. Respondent appeals, claiming: (1) the trial court erred in denying his motion to quash and suppress evidence in case no. 13 JD 1354 because the police violated his fourth amendment rights by arresting and searching him where they lacked probable cause to believe that he acted recklessly or endangered the safety of another person; (2) the State failed, in case no. 13 JD 0385, to prove beyond a reasonable doubt that respondent constructively possessed a gun, where the gun was underneath the seat of the car in which respondent was a passenger and was barely visible from the passenger seat; (3) the aggravated unlawful use of a weapon statute under which respondent was adjudicated unconstitutionally infringes on an individual's right to bear arms for his own defense; and (4) respondent should be given predisposition credit for the time he spent in custody. For the reasons that follow, we affirm in part, reverse in part, and remand.

¶ 3 **BACKGROUND**

¶ 4 **Petition Filed in Case No. 2013 JD 0385**

¶ 5 In January 2013, under case no. 13 JD 0385, the State filed a petition for adjudication of wardship of respondent, who was then 13 years old. On February 1, 2013, the State amended the

1-13-2305

1-13-2306 (cons.)

petition. The amended petition alleged that respondent was delinquent based upon facts contained in six counts. Count one alleged unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(2) (West 2010)); count two alleged aggravated unlawful use of a weapon (AUUW) in that respondent possessed a weapon that was uncased, loaded, and immediately accessible (720 ILCS 5/24-1.6(a)(1), (a)(3)(A)); count three alleged AUUW in that respondent possessed a weapon without a valid firearm owner's identification card (FOID card) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C)); count four alleged AUUW in that respondent possessed a weapon while under 21 years old and not engaged in lawful activities under the Wildlife Code (720 ILCS 5/24-1.6(a)(1), (a)(3)(I)); count five alleged unlawful possession of firearms in that respondent was under 18 and possessed a concealable firearm (720 ILCS 5/24-3.1(a)(1) (West 2010)); and count six alleged criminal trespass to motor vehicle. 720 ILCS 5/21-2 (West 2010).

¶ 6 On February 19, 2013, the court released respondent on electronic monitoring to the Saura Center, an agency that serves pre-dispositional youth awaiting placement in a treatment facility. On March 18, 2013, respondent was released on electronic monitoring to his mother.

¶ 7 On March 21, 2013, respondent filed a motion to dismiss the counts charging AUUW on the grounds that the statute was unconstitutional. On April 3, 2013, the State filed its response.

¶ 8 Petition Filed in Case No. 2013 JD 1354

¶ 9 On April 3, 2013, respondent was arrested and held in custody for events that took place on that day. On April 4, 2013, the State filed a petition for adjudication of wardship, under case no. 13 JD 1354, alleging one count of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(2) (West 2010)); three counts of AUUW for possessing a gun that was

1-13-2305

1-13-2306 (cons.)

uncased, loaded, and immediately accessible; without a valid FOID card; and while under 21 years old and not engaged in lawful activities under the Wildlife Code. 720 ILCS 5/24–1.6(a)(1), (a)(3)(A), (3)(C), (3)(I) (West 2010). The petition also alleged one count of unlawful possession of firearms (UPF) in that respondent was under 18 and possessed a concealable firearm. 720 ILCS 5/24-3.1(a)(1) (West 2010).

¶ 10 On April 8, 2013, respondent filed the same motion to dismiss the counts charging AUUW that he had filed in case no. 13 JD 0385. Respondent contended the statute was unconstitutional.

¶ 11 On April 26, 2013, the trial court ordered respondent released on electronic monitoring to the Saura Center. On May 13, 2013, the court heard from respondent, vacated the Saura Center condition on his request, and ordered that he remain in custody at the Juvenile Detention Center. Respondent remained there for the duration of the proceedings. On May 15, 2013, respondent filed a motion to quash the arrest and suppress evidence in case no. 13 JD 1354.

¶ 12 Motions to Dismiss (Case No. 13 JD 0385 and Case No. 13 JD 1354)

¶ 13 On May 17, 2013, a hearing was held on respondent's motions to dismiss the counts alleging AUUW. Given that the nature of the charges in both of respondent's cases was similar and the issues were the same, the court allowed the State to adopt the written response it had filed in case no. 13 JD 0385 as its response to the motion filed in case no 13 JD 1354. The court then denied respondent's motions to dismiss.

¶ 14 Motion to Quash the Arrest and Suppress Evidence (Case No. 13 JD 1354)

¶ 15 Also on May 17, 2013, the court addressed respondent's motion to quash the arrest and

1-13-2305

1-13-2306 (cons.)

suppress evidence in case no. 13 JD 1354. The court heard testimony from one of the arresting officers, Joseph Bataoel of the Chicago Police Department.

¶ 16 Officer Bataoel testified that, on April 3, 2013, at approximately 9:15 p.m., he was driving northbound on the 4600 block of Clark Street in an unmarked police car with his partners, Officers Fieldman and Pappas. He saw respondent walking southbound with another person. Officer Bataoel testified that he saw them flashing gang signs and yelling at a passing car. The passing car did not stop. Officer Bataoel also testified that, as respondent was flashing the gang signs and yelling, a female walking her bicycle on the same sidewalk as respondent and his companion “stepped into the street to avoid” them. Officer Bataoel stated “[s]he went around them.” There was no indication that any car had to swerve out of the way to avoid hitting her. The officers made a U-turn in their vehicle and left their car. Officer Bataoel testified that they stopped respondent for a field interview and placed him under arrest for reckless conduct. Officer Bataoel performed a search incident to arrest, and recovered a .380 Davis Industries handgun inside respondent's right front pants pocket. The gun was loaded with five live rounds of ammunition.

¶ 17 After hearing argument of the parties, the trial court denied respondent's motion to quash the stop and arrest and suppress evidence. The parties proceeded immediately to a bench trial in case no. 13 JD 1354.

¶ 18 Bench Trial (Case No. 13 JD 1354)

¶ 19 At trial, Officer Bataoel testified similarly to his testimony at the suppression hearing. The trial court granted respondent's motion for a directed finding on the count alleging unlawful

1-13-2305

1-13-2306 (cons.)

of the barrel, but neither the handle nor the trigger of the gun was visible. He described the weapon as a “two tone Kel-Tec 9mm semiautomatic pistol, fixed [*sic*] [with] a laser sight and loaded with one-live round in the chamber and one live round in the magazine.”

¶ 24 Officer Unizycki testified that he did not know how long respondent had been in the car before it was pulled over. He also testified that the car had been stolen sometime on January 27, 2013, and he did not know who had possession of the car from the 27th to the 28th. The adult who was driving the car at the time had possession of the keys. Officer Unizycki testified that respondent did not make any movements towards the passenger seat at any time, was outside of the car when the gun was recovered, and did not run from the car.

¶ 25 Respondent was arrested and transported to the 20th District station for processing. Officer Unizycki testified that respondent's mother came to the station. When the officers brought her to meet with respondent, he said to his mother, “Shut up, mom, don't be trying to put the gun [on] anybody else.” Respondent made this statement in response to his mother telling the officer that the gun did not belong to her son. On cross examination, Officer Unizycki agreed that respondent never said the gun belonged to him.

¶ 26 Officer Jackowski testified that he participated in the arrest. His partner, Officer Unizycki, gave him a “Kel-Tec 9mm two-tone pistol, one magazine and two live 9 mm, rounds of ammunition” to inventory. Following all proper police procedures, he inventoried the gun and ammunition under unique inventory number 12819505.

¶ 27 After the State rested, the trial court granted respondent's motion for a directed finding on the unlawful possession of a firearm by a street gang member count and the criminal trespass to

1-13-2305

1-13-2306 (cons.)

motor vehicle count and, and denied respondent's motion for a directed finding as to all remaining counts.

¶ 28 Respondent then testified on his own behalf. He stated that, after the police asked him questions at the station, he saw his mother. Respondent testified that she was telling the police that the situation was not respondent's fault and she was trying to blame it on his friends. He told his mother “don't put it on nobody else because *** they ain't [*sic*] have nothing to do with this. They were not with me at this time or anything.” Respondent testified that he was with an adult on the night he was arrested. Respondent also stated that the gun did not belong to him.

¶ 29 The trial court found respondent guilty of all three AUUW counts and the UPF count. Respondent was adjudicated delinquent in case no. 13 JD 0385. As in respondent's other case, the counts were merged for purposes of sentencing. The court continued both cases to June 28, 2013 for sentencing.

¶ 30 Sentencing

¶ 31 On June 28, 2013, in case no. 13 JD 0385, the trial court first made “a finding of best interest and wardship.” The trial court then sentenced respondent to the Department of Juvenile Justice for six months, and ordered that he be brought back before the court on December 2, 2013. The court stated that it would then place respondent on one year of probation. The court then directed that the sentence would be put on case no. 13 JD 1354, the finding and judgment of guilty in case no. 13 JD 0385 would stand and the court would “close that case out.” The court then advised respondent of his right to an appeal in both cases.

¶ 32 ANALYSIS

1-13-2305
1-13-2306 (cons.)

¶ 33 Probable Cause for Arrest in Case No. 13 JD 1354

¶ 34 Respondent first argues that the trial court erred in denying his motion to quash arrest and suppress evidence in case no. 13 JD 1354. He argues that the police lacked probable cause to arrest him for reckless conduct and, therefore, their search incident to arrest was unwarranted.

¶ 35 The burden of establishing the unlawfulness of a search and seizure rests with the defendant who moves to suppress the evidence. *People v. Dillon*, 102 Ill. 2d 522, 526 (1984); *People v. Clark*, 394 Ill. App. 3d 344, 347 (2009). Our review of the circuit court's ruling on a motion to suppress presents mixed questions of law and fact. *People v. Lee*, 214 Ill. 2d 476, 483-85 (2005). We apply the two-part standard of review adopted by the United Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). See, e.g., *People v. Hunt*, 2012 IL 111089, ¶ 22; *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). In applying this standard, we review the circuit court's findings of historical fact only for clear error, and give due weight to any inferences drawn from those facts by the fact finder. *Id.*; see also *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001) (we give great deference to the trial court's factual findings, and reject those findings only if they are against the manifest weight of the evidence). “This deferential standard of review is grounded in the reality that the trial court is in a superior position to determine and weigh the credibility of witnesses, observe the witnesses' demeanor, and resolve conflicts in the witnesses' testimony.” *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the court's ultimate ruling on a motion to suppress involving probable cause. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001).

¶ 36 “An arrest executed without a warrant is valid only if supported by probable cause.”

1-13-2305

1-13-2306 (cons.)

People v. Grant, 2013 IL 112734, ¶ 11. “The existence of probable cause depends upon the totality of the circumstances at the time of the arrest.” *Id.* As the *Grant* court explained:

“Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime.” *Id.* The probable cause test is equally applicable to cases where a juvenile is taken into custody. *In re J.C.*, 163 Ill. App. 3d 877, 884 (1987). In determining whether the officer had probable cause, the officer's factual knowledge, based on law enforcement experience, is relevant. *Id.* That is, “a law enforcement officer may rely on training and experience to draw inferences and make deductions that might well elude an untrained person.” *People v. Jones*, 215 Ill. 2d 261, 274 (2005).

¶ 37 “Whether probable cause exists 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; see also *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009) (“focus is upon the practical, commonsense considerations that animate the actions of reasonable and prudent people rather than legal technicians”). “Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false. [Citations.]” (Internal quotation marks omitted.) *Hopkins*, 235 Ill. 2d at 472; accord *People v. Brown*, 2013 IL App (1st) 083158, ¶ 23. “The difficulty of establishing probable cause is reduced when the police know that a crime has been committed.” *Id.*; see also *People v. Grant*, 2013 IL 112734, ¶ 17 (noting strength of facts constituting probable cause where the police actually observed defendant committing the offense of solicitation of unlawful business).

1-13-2305

1-13-2306 (cons.)

¶ 38 Officer Bataoel testified that on April 3, 2013, at approximately 9:15 p.m., he was driving northbound on the 4600 block of Clark Street in an unmarked police car with his partners when he saw respondent walking southbound with another person. Officer Bataoel observed respondent flashing gang signs and yelling at a passing car. He also saw a female walking her bicycle on the same sidewalk as respondent and his companion. Officer Bataoel testified that the pedestrian “stepped into the street to avoid them.” He stated: “She went around them.”

¶ 39 Here, respondent notes he has been unable to identify any Illinois case addressing the precise issue of when the police have probable cause to make an arrest for reckless conduct. The State has also not cited, and our independent research has not found, any Illinois state case addressing the issue.

¶ 40 “A person commits reckless conduct when he or she, by any means lawful or unlawful, recklessly performs an act or acts that *** cause[s] bodily harm to or endanger[s] the safety of another person.” 720 ILCS 5/12-5(a)(1) (West 2010). A person acts recklessly when he “consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.” 720 ILCS 5/4-6 (West 2010).

¶ 41 The State seems to suggest dual theories of reckless conduct: (1) that the mere act of being one of two people walking on a sidewalk forces a person walking a bicycle to step into the street, and that this act constitutes reckless conduct, and/or (2) that flashing a gang sign and yelling at a passing car constitutes reckless conduct under these facts even without evidence that

1-13-2305

1-13-2306 (cons.)

the woman with the bicycle saw the gang signs being flashed or heard the yelling, and without evidence that anyone in the car saw the gang signs being flashed or heard respondent yelling.

¶ 42 Respondent argues that the police lacked probable cause to arrest him because they did not have reasonable grounds to believe that he acted recklessly or endangered the safety of another person by flashing gang signs and yelling at the passing car. He notes that the car did not stop and it is unclear whether the driver of the car heard respondent yelling or saw the gang signs. He also notes that there was no proof that rival gang members were in the car. He asserts the possibility that he “could have been friends with the passing car's occupants and simply saying hello.” As to the pedestrian whom the State contends stepped into the street to avoid the pair, respondent notes that there was no evidence that any cars had to swerve to get out of her way to avoid hitting her. He notes that the “pedestrian could very well have stepped into the street by her own volition in order to get on her bicycle and use the bike lane on Clark Ave.” We decline respondent's request that we take judicial notice of the City of Chicago's bike lane map to support this contention. However, respondent also notes that there was “no evidence that she could not have gone around him on the sidewalk” or that she *actually had to* step into the street to avoid respondent. The police never spoke to the woman. Also, respondent argues that, since there was no evidence that respondent saw this woman before she stepped around him, there was no probable cause to believe that he consciously disregarded a risk of endangering this woman's safety. Thus, respondent argues that there was no probable cause for the police to arrest him because there was no evidence that the woman was “forced” into the street as the State contends, or that the police or occupants of the passing car were ever endangered.

1-13-2305

1-13-2306 (cons.)

¶ 43 The State asserts that the “purpose” of flashing gang signs is to incite a reaction. Thus, the State contends that the fact that the driver was not distracted, did not respond to respondent, and that no cars swerved as the woman stepped into the street with her bicycle, are all irrelevant facts because “the dangers” were present.

¶ 44 Although actions of yelling and flashing gang signs could potentially initiate an altercation under a different set of facts, in this case, respondent's actions did not. The driver of the car that respondent yelled at and flashed gang signs to did not react, and the car did not stop. The pedestrian walked around respondent without incident. Taking into account “the practical, commonsense considerations that animate the actions of reasonable and prudent people,” we conclude that the police lacked probable cause, under the facts of this case, to arrest respondent for reckless conduct.

¶ 45 Alternatively, however, the State has argued that the evidence in this case also established that respondent was committing the offense of disorderly conduct. “Probable cause is an objective standard, and an officer's subjective belief as to the existence of probable cause is not determinative.’ [Citation].” *People v. Chapman*, 194 Ill. 2d 186, 218-19 (2000). The State now argues that, under the applicable objective standard, the police also had probable cause to arrest respondent for disorderly conduct. We may consider this argument, although it is first raised on appeal because: (1) “the search incident to arrest theory was the basis for the trial court's ruling admitting the evidence at trial,” and (2) “when the State has prevailed at the motion to suppress, on appeal the State, as appellee, may defend the judgment below on any grounds sustained in the record regardless of the reasoning used by the trial court.” *People v. Kolichman*, 218 Ill. App. 3d

1-13-2305
1-13-2306 (cons.)

132, 138 (1991).

¶ 46 The applicable section of the statute provides:

“A person commits disorderly conduct when he or she knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.” 720 ILCS 5/26-1(a)(1) (West 2010).

¶ 47 Disorderly conduct is “loosely defined” and “a highly fact-specific inquiry.” *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 30. “The activity that can constitute disorderly conduct:

'is so varied and contingent upon surrounding circumstances as to almost defy definition. Some of the general classes of conduct which have traditionally been regarded as disorderly are here listed as examples: the creation or maintenance of loud and raucous noises of all sorts; unseemly, boisterous, or foolish behavior induced by drunkenness ***. In addition, the task of defining disorderly conduct is further complicated by the fact that the type of conduct alone is not determinative, but rather culpability is equally dependent upon the surrounding circumstances. *** [S]houtings, waving and drinking beer may be permissible at the ball park, but not at a funeral.’” *Id.* (quoting 720 ILCS Ann. 5/26–1, Committee Comments–1961, at 200 (Smith–Hurd 2010)).

Accord *People v. Davis*, 82 Ill. 2d 534, 537 (1980) (citing committee comments to section 26-1).

“Disorderly conduct is conduct that at least has the potential to disturb public order.” *People v. Tingle*, 279 Ill. App. 3d 706, 713 (1996). An arrest for disorderly conduct is justified where “the

1-13-2305

1-13-2306 (cons.)

defendant directly bothers or harasses other people.” *Id.*

¶ 48 In *People v. Davis*, 82 Ill. 2d 534 (1980), the court noted that the “offense [of disorderly conduct] is intended to guard against 'an invasion of the right of others not to be molested or harassed, either mentally or physically, without justification.' [Citation.]” *Id.* There, the defendant entered the home of the complaining witness, an 81-year-old wheelchair-bound, ill woman and approached her waving sheets of paper. “He pointed his finger at her and said that his brother was not going to jail or to court. Then he said, ‘If he do, Miss Pearl, you know me.’ ” *Id.* at 536. “[T]he defendant's defense was that he did not threaten Mrs. [Pearl] Robinson at all, but merely conversed with her.” *Id.* at 539. The appellate court had held that the defendant's acts did not constitute disorderly conduct as a matter of law. *Id.* at 536. The Illinois Supreme Court reversed the appellate court and affirmed the defendant's conviction. The court noted that the defendant had “in effect told her that the charge against his brother should not be prosecuted or some undefined threat would be carried out.” *Id.* at 537-38. Such conduct, said the court, “falls squarely within the type of conduct intended to be proscribed by section 26-1(a)(1).” *Id.*

¶ 49 In *People v. Tingle*, 279 Ill. App. 3d 706 (1996), when police officers arrived on the scene, the defendant shouted “5-0,” an indication that police officers were approaching. The defendant was arrested. We held that the police lacked probable cause to arrest the defendant for disorderly conduct. We noted that there had been no testimony that the defendant “did anything to threaten public order or a breach of the peace.” *Id.* As we also stated: “In fact, when he shouted '5-0', the crowd dispersed.” *Id.*

¶ 50 In the instant case, the evidence was undisputed that when respondent yelled and flashed

1-13-2305

1-13-2306 (cons.)

gang signs at a car, the car did not stop. Although the State has contended that “the act of flashing a gang sign on a public street is an act likely to produce violence in a rival gang member,” there was no evidence that the car contained a “rival gang member.” Respondent asserts that “the driver of the car could have been a friend, to whom [respondent] was simply saying hello.” In fact, there was no evidence that the occupants of the passing car even noticed respondent. Also, the police did not talk to the female pedestrian on the sidewalk and there was no evidence that respondent saw her or that she saw the gang signs being flashed. The police testimony established that this female pedestrian could freely walk around respondent, which she did. Although she stepped onto the street with her bicycle, there was no evidence that any car had to swerve to avoid hitting her. There was also no evidence that respondent intentionally blocked her path or that her path was actually blocked. Thus, we find inapposite the cases cited by the State that stand for the proposition that “[t]he act of blocking the free flow of pedestrian or vehicle traffic on a public way” can constitute disorderly conduct. While we are not suggesting that yelling at an automobile and flashing gang signs can never constitute disorderly conduct, under the facts of the instant case, there was no probable cause to arrest respondent for disorderly conduct. See, e.g., *People v. Justus*, 57 Ill. App. 3d 164, 166 (1978) (noting that loud, offensive argument with police officers, is “not of itself” disorderly conduct in Illinois); compare *People v. Bradshaw*, 116 Ill. App. 3d 421 (1983) (holding that where defendant used vulgar language toward the manager of a bar, it did not amount to disorderly conduct) with *People v. Davis*, 82 Ill. 2d 534 (1980) (discussed earlier). We conclude that the trial court erred in denying respondent's motion to quash and suppress evidence in case no. 13 JD 1354 because the police

1-13-2305

1-13-2306 (cons.)

lacked probable cause to arrest respondent for either reckless conduct or disorderly conduct.

¶ 51 Having concluded that the gun should have been suppressed, we must determine the appropriate remedy. Generally, when an issue “concerns the sufficiency of the evidence, we are required to reverse outright, whereas the erroneous admission of evidence is a procedural error which allows us to remand for a new trial. [Citations.]” (Internal quotation marks omitted.) *People v. Cowans*, 336 Ill. App. 3d 173, 181 (2002). However, in *People v. Harper*, 237 Ill. App. 3d 202 (1992), after determining that the defendant's motion to suppress narcotics should have been granted, we reversed a conviction outright. We noted that the defendant demanded an outright reversal without remand, the State did not interpose a request for remand in the event of a reversal, and it was apparent that the State would be unable to prove its charges unless the narcotics found on respondent were properly admitted into evidence. *Id.* at 207. With the required suppression of that evidence, the State would have no opportunity to prevail on a new trial. *Id.*; accord *People v. Lesure*, 271 Ill. App. 3d 679, 684 (1995) (reversing outright defendant's conviction for unlawful use of a firearm by a felon since gun had been suppressed and defendant's conviction could not be sustained on the sole basis of defendant's confession); *People v. Blair*, 321 Ill. App. 3d 373, 381 (2001) (“As the prosecution will be unable to proceed against defendant, defendant's cause will not be remanded.”); *People v. Fulton*, 289 Ill. App. 3d 970, 976 (1997) (“Because the State cannot prevail on remand without the evidence that we have held should have been suppressed, we also reverse his conviction and sentence outright.”); *People v. Evans*, 259 Ill. App. 3d 650, 659 (1994) (same); *People v. Woods*, 241 Ill. App. 3d 285, 290 (1993) (same); see also *In the Interest of F.R.*, 209 Ill. App. 3d 274, 283 (reversing outright

1-13-2305

1-13-2306 (cons.)

the finding of delinquency for same reasons). Here, there is no dispute that, without the gun, the State would not have been able to prove that respondent committed AUUW and UPF, and the State has not requested remand in the event that we reverse the denial of respondent's motion. Therefore, we reverse outright the adjudication in case no. 13 JD 1354.

¶ 52 Sufficiency of the Evidence in Case No. 13 JD 0385

¶ 53 Respondent next argues that the State failed to prove beyond a reasonable doubt that he committed the offenses of aggravated unlawful use of a weapon and unlawful possession of a firearm in case no. 13 JD 0385. Specifically, he contends that the State's evidence was insufficient to prove that he constructively possessed the gun because the State failed to prove that he knew the gun was in the car where the car did not belong to him, the gun was underneath the seat of a car in which he was a passenger, and the gun was barely visible from the passenger seat.

¶ 54 A reviewing court will not reverse a conviction based on insufficient evidence “unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt.” (Internal quotation marks omitted.) *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The reasonable doubt standard applies in delinquency proceedings. *People v. Austin M.*, 2012 IL 111194, ¶ 107; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47. In reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). “[T]his inquiry does not require a court to ask itself whether *it* believes that the evidence at the trial

1-13-2305

1-13-2306 (cons.)

established guilt beyond a reasonable doubt.” (Internal quotation marks omitted and emphasis in original.) *People ex rel. City of Chicago v. Le Mirage, Inc.*, 2013 IL 113482, ¶ 64 (quoting (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). “[T]he trier of fact is entitled to draw reasonable inferences that flow from the evidence.” *People v. Kirkpatrick*, 365 Ill. App. 3d 927, 929-30 (2006). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272. The State contends that the trier of fact could have reasonable inferred from the evidence that respondent had knowledge of the gun. The State argues that, when the evidence is viewed in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that respondent committed the offenses.

¶ 55 To establish guilt based on constructive possession of a weapon, the State must prove that the defendant (1) had knowledge of the presence of the weapon and (2) exercised immediate and exclusive control over the area where the weapon was found. *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25; *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011); *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). Circumstantial evidence may and must often be used to prove knowledge of the existence of a firearm. *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25; *People v. Bailey*, 333 Ill. App. 3d at 891; *People v. Davis*, 50 Ill. App. 3d 163, 167 (1977). “The State, however, still must present such evidence. [Citation.]” *Wright*, 2013 IL App (1st) 111803, ¶ 25.

¶ 56 In support of his argument that the State failed to prove he had constructive possession of

1-13-2305

1-13-2306 (cons.)

the gun, respondent cites several cases, all of which are distinguishable. For example, respondent cites *People v. Bailey*, 333 Ill. App. 3d 888 (2002), in which the defendant, similar to respondent here, was a passenger in a car that the police stopped. Due to the presence of open alcohol, the police planned to have the car towed. *Id.* at 890. While conducting an inventory search, the police found a gun hidden under the passenger's seat. *Id.* At trial, one of the arresting officers testified that he believed that the gun was within the defendant's arm reach. The jury found the defendant guilty of aggravated unlawful use of a weapon. *Id.*

¶ 57 On appeal, the court concluded that the State failed to prove that the defendant had knowledge of the presence of a weapon under his seat. *Id.* at 892. The court emphasized the testimony that the gun was not visible until the officer looked under the seat and it would therefore not have been visible to the defendant sitting in the seat. *Id.* The court also noted that the State produced no evidence that the defendant made any gestures indicating that he was trying to retrieve or hide the weapon. *Id.*

¶ 58 As respondent notes, the *Bailey* court stated that a defendant's mere presence in a car, without more, is not evidence that he knows a weapon is in the car. *Id.* at 891. However, the *Bailey* court also explained that knowledge could be inferred from other factors including: “(1) the visibility of the weapon from [the] defendant's position in the car, (2) the period of time in which the defendant had an opportunity to observe the weapon, (3) any gestures by the defendant indicating an effort to retrieve or hide the weapon, and (4) the size of the weapon.” *Id.* at 892. Notably, the instant case is distinguishable from *Bailey* with respect to the first factor. In *Bailey*, “the weapon was not visible until [the officer] looked underneath the passenger seat.” *Id.* at 892.

1-13-2305

1-13-2306 (cons.)

Here, Officer Unizycki saw “the barrel of a handgun affixed with a laser sight *protruding from* underneath the [passenger] seat.” (Emphasis added.) Also, the defendant in *Bailey* did not make any statement as respondent did here when he told his mother to not try and put the gun on anybody else. A trier of fact could reasonably infer from this evidence that respondent was, in fact, in possession of the gun.

¶ 59 Respondent also relies on *People v. Crowder*, 4 Ill. App. 3d 1079 (1982). In *Crowder*, five individuals were in a vehicle that the police stopped because the front headlight was out of order. These individuals included: Richard Childress, the driver; Jerome Crowder, the front seat passenger; Frank Trammell, the back seat passenger seated immediately behind the driver; Edward Smith, the backseat passenger next to Trammell; and Lewis Hoover, seated next to Smith. The evidence showed that, after stopping the vehicle, all of the occupants exited the vehicle except Crowder, who was “confined to a wheelchair due to an earlier injury.” *Id.* at 1080. “[O]ne of the officers peering from the sidewalk into the rear seat of the auto saw on the floor of the left (or driver's) side of the car what he thought to be the forward portion of a rifle or shotgun.” *Id.* at 1081. A search disclosed that it was indeed a shotgun, and further disclosed that a loaded pistol was hidden under the driver's seat. *Id.* A search of the occupants revealed that Trammell, who was seated directly over where the shotgun was seen to protrude, had shotgun shells on his person. *Id.* Neither Childress or Trammell were parties to the case. The *Crowder* court reversed the convictions of Crowder, Smith, and Hoover. As the court noted: none of the weapons was found under the seats of any of the defendants. *Id.* at 1081 (“The testimony indicates that the pistol was located under Childress's seat and the shotgun under Trammell's seat,

1-13-2305

1-13-2306 (cons.)

neither of whom are defendants in this case.”). *Id.* at 1081-82. Notably, the *Crowder* court concluded that “portion of the shotgun viewable in the back seat of the automobile was positioned so as to be in the area where Trammell's feet were resting, and thus not obvious to the other passengers in the back seat, especially in the dark of night.” *Id.* at 1082. The *Crowder* court also noted that “[t]he pistol under Childress's seat was certainly far removed from an area where the defendants could be assumed to know of it.” *Id.*

¶ 60 *Crowder* is distinguishable. In the instant case, the gun was found under respondent's seat. Although it was also dark in the instant case, the portion of the gun that was visible was in the area where respondent's feet were resting.

¶ 61 Respondent has cited the additional cases of *People v. Huth*, 45 Ill. App. 3d 910 (1977), *People v. Boswell*, 19 Ill. App. 3d 619 (1974) and *People v. Millis*, 116 Ill. App. 3d 283 (1969). However, we agree with the State's arguments that these cases are distinguishable.

¶ 62 The State asserts that the facts of the instant case are analogous to those in *People v. Ingram*, 389 Ill. App. 3d 897 (2009). There, the police officers noticed a vehicle in a store parking lot that quickly pulled out of a parking stall, turned abruptly, and then parked at the other end of the parking lot. *Id.* at 898. The police ran the car's license plate, discovered that its registration had expired, stopped the car, and activated their emergency lights. *Id.* The defendant, who was seated in the front passenger seat, immediately exited the car and started to walk away, ignoring an officer's command to stop. *Id.* The defendant walked approximately 20 feet away, until the officer caught up to him and grabbed his arm. *Id.* The defendant, who appeared intoxicated or under the influence of drugs, initially gave a false name and then

1-13-2305

1-13-2306 (cons.)

correctly identified himself. The officer subsequently saw a black handgun “in plain view” on the floor directly behind the driver's seat. *Id.* The court noted that “[t]he front passenger seat where defendant had been sitting was broken, such that the seat was fully reclined and lying on the backseat.” *Id.* “The gun was easily accessible from the reclined position of the front passenger seat. *Id.*

¶ 63 We believe *Ingram* is distinguishable. In *Ingram*, the entire gun was in plain view. As the court explained: “Although [the police officer] described the gun as underneath the seat, the remainder of his testimony and a photograph [which depicted a black gun on a red-carpeted floor, with nothing else in the immediate vicinity] make clear that the whole gun was in fact in plain view right behind the driver's seat.” *Id.* at 900. The *Ingram* court further noted that the “defendant had not just entered the car but had been in the car for a sufficient period of time to imply knowledge.” *Id.* In the instant case, Officer Unizycki testified that he did not know how long respondent was in the car before it was pulled over and only knew that he was in the car from the time he first observed it. See *People v. Hampton*, 358 Ill. App. 3d 1029, 1033 (2005) (where court found evidence insufficient to imply possession where defendant had been driving someone else's car for only a few minutes before he was arrested, and the gun was not in plain view).

¶ 64 In sum, the instant case is distinguishable from both the cases cited by respondent and the cases cited by the State. Nonetheless, in reviewing a challenge to the sufficiency of the evidence, this court must “determine whether the record evidence could *reasonably* support a finding of guilt beyond a reasonable doubt.” (Emphasis in original.) *People v. Cunningham*, 212 Ill. 2d

1-13-2305

1-13-2306 (cons.)

274, 279 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). The relevant inquiry is whether a reasonable trier of fact could find that respondent knew the gun was in the car, and therefore constructively possessed it under the evidence presented. We “must allow all reasonable inferences from the record in favor of the prosecution.” *Cunningham*, 212 Ill. 2d at 280.

¶ 65 There is nothing that would warrant this court substituting its judgment for that of the trier of fact in finding a reasonable inference that respondent constructively possessed the gun at the time it was recovered. Respondent's knowledge of the presence of a gun may be inferred from the evidence that was presented at trial which included (1) the barrel of the gun (as well as the laser sight affixed to the bottom of the barrel) was protruding from under the passenger seat in which respondent was seated, and (2) respondent told his mother to not “be trying to put the gun [on] anybody else” when she tried to convince the police that the gun was not her son's gun. This statement, combined with the presence of the gun protruding from under the seat in which respondent was sitting, created a reasonable inference that respondent was, in fact, in possession of the gun such that a “rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. Ross*, 229 Ill. 2d at 272 (2008). Viewing the evidence in the light most favorable to the State, we conclude that the evidence in this case was sufficient to support the trial court's finding that respondent was guilty of AUUW and UPF. Thus, we shall address respondent's next argument regarding the constitutionality of the AUUW statute. As a general principle, “courts will address constitutional issues only as a last resort, relying whenever possible on nonconstitutional grounds to decide cases.” *People v. Jackson*, 2013 IL 113986, ¶

1-13-2305
1-13-2306 (cons.)

14; see, e.g., *People v. Wright*, 2013 IL App (1st) 111803, ¶ 27 (reversing conviction where State failed to provide sufficient evidence of defendant's guilt because it did not prove defendant constructively possessed the gun attributed to him and further noting that it need therefore not address defendant's challenge to the constitutionality of the AUUW statute).

¶ 66 Constitutionalality of AUUW Statute

¶ 67 Respondent next argues that his adjudications for AUUW must be vacated because the statute under which he was adjudicated delinquent unconstitutionally infringes on an individual's second amendment right to bear arms in his own defense. U.S. Const., amend. II.

¶ 68 The relevant portion of the AUUW statute provides:

“(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm;” [and]

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense;

* * *

(C) the person possessing the firearm has not been issued a currently valid

1-13-2305
1-13-2306 (cons.)

Firearm Owner's Identification Card;

* * *

(I) the person possessing the weapon was under 21 years of age and in possession of a handgun, unless the person under 21 is engaged in lawful activities under the Wildlife Code [520 ILCS 5/1.1] or described in subsection 24-2(b)(1), (b)(3), or 24-2(f).” 720 ILCS 5/24-1.6(a)(1), (a)(3)(A),(3)(C),(3)(I) (West 2010).

¶ 69 The State acknowledges that in *People v. Aguilar*, 2013 IL 112116, the Illinois Supreme Court found section 24–1.6(a)(1), (a)(3)(A) of the AUUW statute to be a facially unconstitutional wholesale statutory ban that violates the second amendment. The State contends, however, that *Aguilar* does not require the reversal of respondent's findings of guilt for AUUW under the other counts that were based on different sections of the AUUW statute: section 24-1.6(a)(1),(a)(3)(C) (no currently valid FOID card) and section 24-1.6(a)(1),(a)(3)(I) (age under 21 and not engaged in lawful activities under the Wildlife Code).

¶ 70 “The constitutionality of a statute is a question of law that we review *de novo*.” *People v. Hollins*, 2012 IL 112754, ¶ 13. Statutes are presumed constitutional. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20; *In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008). The party challenging a statute's validity has the burden of establishing a clear constitutional violation.” *Id.* If reasonably possible, this court will construe a statute so as to affirm its constitutionality. *Id.* Accordingly, we will resolve any doubt as to the construction of a statute in favor of its validity. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20. “Moreover, a challenge to the facial validity of a statute is the most difficult challenge to mount successfully because an enactment is invalid on

1-13-2305

1-13-2306 (cons.)

its face only if no set of circumstances exists under which it would be valid.” *Id.* “The invalidity of the statute in one particular set of circumstances is insufficient to prove its facial invalidity.” *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006). “Thus, so long as there exists a situation in which a statute could be validly applied, a facial challenge must fail. [Citation.]” (Internal quotation marks omitted.) *People v. Kitch*, 239 Ill. 2d 452, 466 (2011); accord *In re M.T.*, 221 Ill. 2d at 537.

¶ 71 The second amendment provides that “A well regulated Militia, being necessary to secure a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const., amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment confers an individual right to keep and bear arms. In *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), the Court held that Second Amendment rights are fully applicable to the states. In *Moore v. Madigan*, 702 F. 3d 933 (7th Cir. 2012), the Seventh Circuit held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW violated the second amendment right to keep and bear arms, as construed in *Heller* and *McDonald*. *Id.* at 942. The *Moore v. Madigan* court noted that this provision of the statute was effectively “a flat ban on carrying ready-to-use guns outside the home.” *Id.* at 940. Recently, in *People v. Aguilar*, 2013 IL 112116, our supreme court adopted the reasoning in *Moore v. Madigan* and held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW was facially unconstitutional. *Id.*, ¶¶ 20-22. As the *Aguilar* court explained: “[S]ection 24-1.6(a)(1), (a)(3)(A) amounts to a *wholesale statutory ban* on the exercise of a personal right that is specifically named in and guaranteed by the United States Constitution, as construed by the United States Supreme Court.” (Emphasis added.) *Id.*, ¶

1-13-2305
1-13-2306 (cons.)

21.

¶ 72 At the outset, we note that there is no dispute that pursuant to *People v. Aguilar*, section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional. Therefore, we reverse the finding of guilt on the AUUW count that was based on section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute.

¶ 73 Respondent further contends, however, that all of his adjudications for AUUW must be reversed pursuant to the decision in *People v. Aguilar*. He argues that, not only is section 24-1.6(a)(1), (a)(3)(A) unconstitutional, but also sections 24-1.6(a)(1), (a)(3)(C) and 24-1.6(a)(1), (a)(3)(I). The State argues that *Aguilar* does not require the reversal of respondent's findings of guilt for AUUW under the other counts that were based on different sections of the AUUW statute: section 24-1.6(a)(1),(a)(3)(C) (no currently valid FOID card) and section 24-1.6(a)(1),(a)(3)(I) (age under 21 and not engaged in lawful activities under the Wildlife Code). We agree with the State.

¶ 74 Nothing in *People v. Aguilar* supports respondent's contention that the court's holding applies to the other two sections of the AUUW. Indeed, as the *Aguilar* court explained:

“[I]n concluding that the second amendment protects the right to possess and use a firearm for self-defense outside the home, *we are in no way saying that such a right is unlimited or is not subject to meaningful regulation.* [Citation.]”

(Emphasis added.) *Id.*

We reject respondent's arguments regarding sections 24-1.6(a)(1),(a)(3)(C) and 24-1.6(a)(1), (a)(3)(I) because, as we explain below, neither section constitutes a “flat ban” or “wholesale

1-13-2305

1-13-2306 (cons.)

statutory ban” on the exercise of the second amendment right, but is instead a “meaningful regulation.”

¶ 75 Section 24-1.6(a)(1), (a)(3)(C) of the AUUW Is Not Facially Unconstitutional

¶ 76 Section 24-1.6(a)(1), (a)(3)(C) of the AUUW requires that the person possessing the firearm has been issued a currently valid Firearm Owner's Identification Card (FOID Card). We hold that this is a meaningful regulation that does not unconstitutionally infringe on an individual's right to keep and to bear arms.

¶ 77 We note that other jurisdictions that have considered the issue have come to the same conclusion. See, e.g., *Commonwealth v. McGowan*, 464 Mass. 232, 240-41 (2013) (“We have consistently held, without applying any level of heightened scrutiny, that the decisions in *Heller* and *McDonald* did not invalidate laws that require a person to have a firearm identification card to possess a firearm in one's home or place of business, and to have a license to carry in order to possess a firearm elsewhere.”); *Heller v. D.C.*, 670 F.3d 1244, 1254 (D.C. Cir. 2011) (applying heightened scrutiny and concluding that requirement to register a handgun does not impinge upon the right protected by the second amendment); *People v. Perkins*, 880 N.Y.S.2d 209 (2009) (New York firearm licensing regulations do not violate Second Amendment).

¶ 78 Respondent has “acknowledged that registration requirements may not generally affront the Second Amendment.” He contends, however, that Illinois' registration requirement offends the second amendment based on “the unique burdens it places on persons under 21 years of age.” We reject this argument because, as explained more fully below, “the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection.” *Aguilar*,

1-13-2305
1-13-2306 (cons.)

2013 IL 112116, ¶ 27. We affirm respondent's adjudication that was based on the finding of guilt under section 24-1.6(a)(1), (a)(3)(C) of the AUUW.

¶ 79 Section 24-1.6(a)(1), (a)(3)(I) of the AUUW Is Not Facially Unconstitutional

¶ 80 Section 24-1.6(a)(1), (a)(3)(I) of the AUUW requires that the person possessing a handgun cannot be under 21 years of age, unless that person is engaged in lawful activities under the Wildlife Code. Respondent contends that “the age limit affronts the Second Amendment.” Respondent argues that “constitutional rights do not attach only when a person reaches a state-defined age of maturity.” In support of his argument, respondent cites several United States Supreme Court cases recognizing a constitutional right of a juvenile. See, e.g., *Breed v. Jones*, 421 U.S. 519, 541 (1975) (juveniles cannot be deprived of the fifth amendment protection against double jeopardy); *In re Winship*, 397 U.S. 358, 367-68 (1970) (juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with a violation of a criminal law); *In re Gault*, 387 U.S. 1, 13 (1967) (“neither the Fourteenth Amendment nor the Bill of Rights is for adults alone” and a state cannot deprive a 15-year-old of the constitutional rights to counsel, confrontation, self-incrimination, or cross-examination). Nonetheless, the Court later clarified its statement in *In re Gault* that neither the fourteenth amendment nor the Bill of Rights was for adults alone, noting:

“This observation, of course, is but the beginning of the analysis. The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: '[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily

1-13-2305

1-13-2306 (cons.)

lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children.' [Citation.] The unique role in our society of the family, the institution by which 'inculcate and pass down many of our most cherished values, moral and cultural,' [citation], requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that *the constitutional rights of children cannot be equated with those of adults*: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.”

(Emphasis added.) *Bellotti v. Baird*, 443 U.S. 622, 633-34, 99 S. Ct. 3035, 3043, 61 L. Ed. 2d 797 (1979).

The *Bellotti* Court noted its prior decisions that had concluded that the child's right was virtually coextensive with that of an adult yet further explained that the rulings “have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults.” *Id.* at 635. As the *Bellotti* Court stated: “Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults.” *Id.*

¶ 81 Moreover, there is clear precedent in Illinois that “the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection.” *Aguilar*, 2013 IL 112116, ¶ 27. In *Aguilar*, the defendant was 17 years old at the time of the offenses charged in his case. Similar to respondent in the instant case, the defendant there was charged with, and

1-13-2305
1-13-2306 (cons.)

convicted of, UPF where he was “under 18 years of age and ha[d] in his possession any firearm of a size which may be concealed upon the person[.]” 720 ILCS 5/24-3.1(a)(1) (West 2008).

The defendant argued that the “court should reverse his UPF conviction because, like section 24-1.6(a)(1), (a)(3)(A), the statute upon which his UPF conviction [was] based also violates the second amendment.” *Id.*, ¶ 24. Specifically, the defendant claimed as follows:

“'[B]ecause Illinois' ban on handgun possession by 17-year-olds regulates conduct that traditionally falls within the protection of the second amendment, the validity of the law depends upon the government's ability to satisfy heightened constitutional scrutiny.'” Defendant then insist[ed] that the State [could not] meet this burden because 'Illinois' unconditional abrogation of a 17-year-old's constitutional right to defend himself with a handgun' is in no way tailored to meet any identifiable state interest. In other words, defendant [was] arguing that, as far as the second amendment is concerned, a 17-year-old minor is on exactly the same constitutional footing as a full-fledged adult.” *Id.*, ¶ 25.

The court rejected this argument. Although respondent in the instant case does not challenge his UPF conviction, we believe that the same reasoning that the *Aguilar* court applied to the defendant's challenge of his UPF conviction applies here to respondent's challenge to section 24-1.6(a)(1), (a)(3)(I) of the AUUW.

¶ 82 The *Aguilar* court noted that the *Heller* Court, in explaining that the right secured by the second amendment was not unlimited, had identified a list of “ 'presumptively lawful regulatory measures.' ” *Id.*, ¶ 26 (quoting *Heller*, 554 U.S. at 626-27). The list included “ 'longstanding

1-13-2305

1-13-2306 (cons.)

prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.' ” *Id.* The *Aguilar* court also noted that the *Heller* Court had immediately added, by way of a footnote, that the list did “not purport to be exhaustive.’ ” *Id.* (quoting *Heller*, 554 U.S. at 627, n.26). The *Aguilar* court then acknowledged that “the list enumerated in *Heller* does not specifically include laws prohibiting the possession of firearms by minors.” *Id.*, ¶ 27. However, as the *Aguilar* court then stated: “Nevertheless, several courts have since undertaken a thorough historical examination of such laws, and all of them have concluded that, contrary to defendant's contention, the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection. [Citations.]” *Id.*, ¶ 27. As the *Aguilar* court further explained:

“[L]aws banning the juvenile possession of firearms have been commonplace for almost 150 years and both reflect and comport with a 'longstanding practice of prohibiting certain classes of individuals from possessing firearms—those whose possession poses a particular danger to the public.' [Citations.] We will not repeat or rehash the historical evidence set forth in these decisions. Rather, for present purposes, we need only express our agreement with the obvious and undeniable conclusion that *the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection.*” (Emphasis added.) *Id.*, ¶ 27.

We therefore reject respondent's second amendment challenge to section 24-1.6(a)(1),(a)(3)(I) of the AUUW.

1-13-2305

1-13-2306 (cons.)

¶ 83 We also note that this court has previously held that section 24-1.6(a)(1),(a)(3)(I) of the AUUW statute does not violate the constitutional protection of the right to bear arms. See *People v. Alvarado*, 2011 IL App (1st) 08295. Although decided prior to *Aguilar*, we believe that *Alvarado* remains good law. As the *Alvarado* court stated: “the challenged provision is not a total ban on conduct that is at the core of the second amendment right, such as the total ban in *Heller* on having an operable handgun in one's home for the lawful purpose of self-defense.” *Id.*, ¶ 66.

¶ 84 In conclusion, we decline to extend *People v. Aguilar*. We hold that neither section 24-1.6(a)(1), (a)(3)(C) (no currently valid FOID card) or section 24-1.6(a)(1), (a)(3)(I) (age under 21 and not engaged in lawful activities under the Wildlife Code) is facially unconstitutional. We therefore affirm respondent's adjudication that was based on the findings of guilt under those sections of the AUUW statute.

¶ 85 Respondent's Sentence

¶ 86 The State contends that resentencing is not necessary. The State notes that count two (based on the facially unconstitutional section 24-1.6(a)(1), (a)(3)(A)) is the same level of offense as count three (not possessing a valid FOID card pursuant to section 24-1.6(a)(1), (a)(3)(C)). Thus, the State argues that we should remand this matter only to correct the trial order to reflect that respondent was adjudicated delinquent on count three, with counts four (age under 21 and not engaged in lawful activities under the Wildlife Code) and five (UPF) merging into count three. We must first address respondent's argument that he should be given predisposition credit for the time he spent in custody.

1-13-2305

1-13-2306 (cons.)

¶ 87 On January 28, 2013, respondent was arrested and taken into custody in case no. 13 JD 0385. On February 19, 2013, he was released on electronic monitoring to the Saura Center. On March 18, 2013, he was released on electronic monitoring to his mother. On April 3, he was arrested and taken into custody in case no. 13 JD 1354. On April 26, 2013, he was again released on electronic monitoring to the Saura Center. On May 13, 2013, respondent was taken back into custody and remained in custody until he was committed to the Department of Juvenile Justice on June 28, 2013. Respondent did not receive any credit for the days he spent in presentence custody. Respondent concedes that he is not entitled to a sentence credit for the time he spent at home on electronic monitoring but contends that the court should have awarded him 136 days in predisposition credit for the time he was in custody: (1) from January 28, 2013 until March 18, 2103; and (2) from April 3, 2013 until June 28, 2013.

¶ 88 “ ‘A trial court is statutorily mandated to give a minor credit for his predisposition detention.’ [Citation.]” *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 23. “The trial court's application of a statute is subject to *de novo* review.” *Id.* “A juvenile who is committed to the Department [of Juvenile Justice] for an indeterminate term is entitled to predisposition sentencing credit ‘for any part of a day for which he spent some time in custody.’ [Citations.]” *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 39. As the State notes, however, the trial court closed case no. 13 JD 0385 on June 28, 2013, and sentenced respondent on case no. 13 JD 1354 to the Department of Juvenile Justice until December 2, 2013, at which time he is to be placed on one year probation. The State argues that respondent is therefore not entitled to any credit from January 28, 2013, through March 18, 2013, as that time frame predates the April 3, 2013, gun

1-13-2305

1-13-2306 (cons.)

offense in case no. JD 1354, which was the offense on which the trial court imposed sentencing. As this court has explained: “[A] respondent should be credited for time spent in detention as a result of the offense for which the sentencing order was imposed.” See *In re Rakim V.*, 398 Ill. App. 3d 1057, 1061 (2010) (citing 705 ILCS 405/5–710(1)(a)(v) (West 2008)). Respondent argues that his sentence was “technically imposed only on case no. 13 JD 1354” but “for all intents and purposes, he was sentenced on both cases.” Whereas we have now reversed the adjudication in case no 13 JD 1354, we need not resolve this dispute. We remand this case for resentencing, during which, the trial court may consider whether respondent is entitled to predisposition credit. In view of our decision reversing the finding of guilt (on count two) that was based on the facially unconstitutional section 24-1.6(a)(1), (a)(3)(A) of AUUW statute, we also direct the court to correct the trial order regarding case no. 13 JD 0385 to reflect that respondent was adjudicated delinquent on count three (not possessing a valid FOID card), with counts four (age under 21 and not engaged in lawful activities under the Wildlife Code) and five (UPF) merging into count three.

¶ 89

CONCLUSION

¶ 90 We reverse the adjudication in case no. 13 JD 1354 where: (1) the trial court should have granted respondent's motion to quash arrest and suppress weapon found on search incident to arrest because police lacked probable cause to arrest respondent for reckless conduct or disorderly conduct; (2) the State did not request a remand in the event of a reversal of decision on respondent's motion; and (3) without the weapon, the State cannot prevail on remand on AUUW or UPF. We affirm the adjudication in case no. 13 JD 0385 on the findings of guilt as to two of

1-13-2305

1-13-2306 (cons.)

the three AUUW counts where the evidence was sufficient to show respondent committed the offenses of AUUW and UPF because the State proved beyond a reasonable doubt that respondent constructively possessed the gun found under the passenger seat. However, pursuant to *People v. Aguilar*, we reverse the finding of guilt on the count based on section 24-1.6(a)(1), (a)(3)(A) of AUUW statute, but hold that neither section 24-1.6(a)(1), (a)(3)(C) (no currently valid FOID card) or section 24-1.6(a)(1), (a)(3)(I) (age under 21 and not engaged in lawful activities under the Wildlife Code) is facially unconstitutional. We remand for resentencing consistent with this judgment.

¶ 91 Case No. 13 JD 0385: Affirmed in part, reversed in part, and remanded with directions.

¶ 92 Case No. 13 JD 1354: Reversed.