

2013 IL App (2d) 100249-U  
No. 2-10-0249  
Order filed June 28, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> M.B., a minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 09-JD-0059
	)	
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-	)	Patrick K. Yarbrough,
Appellee, v. M.B., Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State failed to prove that respondent was in constructive possession of the firearm found in the vehicle. Further, because the State failed to prove that respondent was in constructive possession, we reversed his conviction under the FOID Act. Finally, the State failed to prove that respondent engaged in reckless conduct. Thus, we reversed the trial court's judgment.

¶ 2 Following a bench trial, the trial court found respondent, M.B., committed aggravated unlawful use of a weapon in violation of section 24-1.6(a) of the Criminal Code of 1961 (the Criminal Code) (720 ILCS 5/24-1.6(a) (West 2008)), failed to have a valid firearm owner's identification card in violation of section 2(a)(1) of the Firearm Owners Identification Card Act

(FOID Act) (430 ILCS 65/2(a)(1) (West 2008)), and committed reckless conduct in violation of section 12-5(a) of the Criminal Code (720 ILCS 5/12-5(a) (West 2008)). Respondent appeals, contending (1) that the State failed to prove that he possessed the firearm, did not have a FOID card, and engaged in reckless conduct; (2) that the trial court violated his right to due process when it failed to ascertain whether respondent understood that he had a right to choose whether to testify on his own behalf; and (3) the aggravated unlawful use of a weapon statute is unconstitutional. Because we find that the State failed to produce sufficient evidence of respondent's guilt of possessing the handgun, not having a FOID card, and reckless conduct, we reverse the trial court's judgment and vacate its extension of respondent's probation period.

¶ 3

#### I. Background

¶ 4 On October 18, 2009, respondent borrowed a vehicle from Laprishia Forrest, which he subsequently crashed into a telephone pole in Rockford. When police officers arrived on the scene, they discovered a handgun underneath a sweatshirt on the front passenger seat of the vehicle. Thereafter, the State filed a supplemental delinquency petition charging respondent with aggravated unlawful use of a weapon, failure to have a FOID card, mob action, and reckless conduct. Respondent had previously been adjudicated delinquent and, at the time, was serving 18 months of probation.

¶ 5 A bench trial commenced on January 7, 2010. The State first called Officer Daniel Watton, a police officer with the Rockford City police department. Watton testified that, on October 18, 2009, he responded to a traffic accident. When he arrived, a green Dodge Neon had crashed into a telephone pole and respondent was standing by the vehicle. Watton testified that he did not observe anyone else near the scene of the accident. Watton testified that respondent informed him that he

was driving the vehicle, that he was a minor, he did not have a driver's license, and that he borrowed the vehicle from a female friend. Watton testified that respondent was trembling, so he asked respondent if he wanted to sit in the back of Watton's squad car, which respondent agreed to do. Watton testified that respondent gave him permission to look in the vehicle to see if the car was insured. Watton testified that he opened the vehicle's passenger side door and, because he had "a blown out disk recently," he placed his left hand on the passenger seat. Watton testified that he felt a L-shaped object underneath a gray sweatshirt and that he immediately recognized the object as a gun.

¶ 6 Watton testified that, when he first spoke to respondent, respondent did not advise him that another person was in the vehicle or mention the firearm. Watton testified that respondent provided two different stories on how the accident occurred. Watton testified that respondent first said that the power steering on the vehicle went out, he lost control of the vehicle, and that caused him to go up over the curb and crash into the telephone pole. However, when Watton asked respondent about orange paint transfer on the rear passenger side of the vehicle, respondent told Watton that an orange colored vehicle was driving in his lane of traffic, which caused him to go completely into the other person's lane of traffic, he was sideswiped, and ended up running into the telephone pole.

¶ 7 Watton testified that, later on, respondent told him that he was not the only person in the vehicle. Watton testified that, once he found the gun and read respondent his *Miranda* rights, respondent told him that one of his friends was also in the vehicle. Respondent told Watton that the friend's name was Javari, but respondent did not know Javari's last name. Watton testified that respondent told him that, when respondent left the Auburn Manor Apartments on the 4000 block of Auburn Street, he drove north down North Johnston, and when between Auburn Manor and West

Jefferson, he saw his friend on the side of the road and stopped to pick him up. Watton testified that respondent later told him that respondent picked up his friend in the Auburn Manor parking lot and both individuals left from that location until the crash occurred.

¶ 8 On cross-examination, Watton testified that he first received a call regarding the crash at 9:57 a.m. Watton admitted that respondent appeared “very” shaken before respondent started telling him about the passenger in the car.

¶ 9 The State next called Jeffrey Houde, a detective with the Rockford police department. Houde testified that, when he arrived at the scene, a Dodge Neon was in the street and had damage to its front end. Houde identified the 9-millimeter handgun found in the vehicle, which the trial court admitted into evidence. Houde testified that he took a buccal swab sample from respondent for the purpose of comparing respondent’s DNA to any DNA found on the gun. Houde testified that eight live bullets were found in the firearm’s magazine.

¶ 10 The State next called Eric Rohde, a patrol officer with the Rockford police department. Rohde testified that, when he arrived at the accident scene, he witnessed the Dodge Neon being pushed away from the pole. At that point, the vehicle was blocking the driveway of a house on the south side of the street. Rohde testified that he spoke with the person who helped push the vehicle away from a telephone pole. Rohde testified that his investigation did not reveal that another person was in the vehicle with the minor.

¶ 11 The State next called Patrick Thomas. Thomas testified that he was a landscaper and that, on the morning of October 18, 2009, he was cutting grass at a church on the 2400 block of Jefferson Street. Thomas testified:

“I seen a car made [sic] a left turn in front of that church, and I heard a noise, and then I seen [sic] the telephone line shake, it said ‘boom,’ and the telephone line was shaking, the church was shaking. \*\*\* I proceeded to walk up the street. \*\*\* I seen [sic] a car against a telephone post, and I seen [sic] a gentlemen walking I would say on the north side of the sidewalk.”

Thomas testified that he said “[h]ey” and the person walked back to the vehicle. Thomas testified that he tried to help the person push the vehicle away from the telephone post and the police arrived. Thomas testified “I don’t know if there was [sic] two, three, four people in the car. I don’t know.” Thomas testified that he felt a vibration from the vehicle hitting the telephone post and “[t]he church actually shook because the wires [were] connected to the church \*\*\* .” Thomas testified that he was unable to identify the person who assisted him in attempting to push the vehicle away from the telephone pole. Thomas testified that the person who helped him push the vehicle was the same person the police put handcuffs on. During cross-examination, Thomas clarified that he was approximately 150 to 200 feet away from the accident and that he was “around the corner” when he “heard the noise.” Thomas clarified that he helped push the vehicle away from a woman’s driveway and that the woman was standing in the doorway.

¶ 12 The State next called Officer Berry James Dock, an investigator with the traffic department. Dock testified that when he arrived at the scene, he observed damage to the vehicle’s right front wheel and orange paint transfer on the right side of the rear door. Dock testified that, based on his nine years of experience investigating traffic accidents, he believed that the paint transfer came from hitting a pole as opposed to coming from another vehicle. Dock explained that he did not believe

that the paint transfer came from another vehicle because “[y]ou don’t see many vehicles around Rockford that color, and the poles are painted that shade of orange.”

¶ 13 The State rested after Dock’s testimony. Thereafter, the trial court denied respondent’s motion for a directed verdict with respect to the aggravated-unlawful-use-of-a-weapon charge, failure to have a FOID card, and the reckless-conduct charge. The trial court granted respondent’s motion for a directed verdict with respect to the mob-action charge.

¶ 14 Respondent called Forrest. Forrest testified that she was the vehicle’s owner. Forrest testified that respondent spent the night at her apartment and, on the morning of the accident, asked to borrow the vehicle at approximately 9 a.m. Forrest testified that she did not see respondent possessing a firearm that day. Forrest testified that, on the day prior to the accident, she had a birthday party at Chuck E Cheese for her son. Forrest testified that “everyone was getting back and forth to the party. So a lot of people used my car.” Forrest testified that, on the day of the party, her sister and her sister’s boyfriend used the vehicle, along with other family members to “go back and forth” from the party. Forrest testified that at least five or six people used her car that day.

¶ 15 On cross-examination, Forrest testified that she did not own any firearms, nor did she store anyone else’s firearms in the vehicle. Forrest testified that she arrived back at her apartment from the party at approximately 12 a.m. on the morning of the accident and no one else had used the vehicle from the time she arrived home until she let respondent borrow the vehicle. Forrest testified that she would not have known if there were any firearms in the vehicle and admitted that she could not remember a sweatshirt on the vehicle’s front passenger seat. On re-direct examination, Forrest testified that, when she arrived back at her apartment after her son’s birthday party, she did not check

the vehicle. Instead, she parked her car in the back of the parking lot and went to her apartment. Thereafter, respondent rested.

¶ 16 The trial court adjudicated respondent delinquent for aggravated unlawful use of a weapon. The trial court noted that the weapon had been described as “heavy,” it was on the vehicle’s front passenger seat, and if an accident occurred, that “most likely this weapon would not remain on the seat.” The trial court concluded that “[the weapon] would be exposed somewhere in the vehicle on the floor or something of that nature due to the crashing into a telephone pole.” The trial court noted that there was no testimony regarding the condition of the seat and “whether it was capable of allowing that weapon to slide off the seat, even though it was involved in a major accident”; that the vehicle belonged to Forrest, who gave respondent permission to borrow her car; and that Forrest last used the car at approximately 12 a.m. and did not see any articles of clothing on the passenger seat when she exited. The trial court further noted that respondent had borrowed the vehicle for a short period of time before the crash occurred.

¶ 17 The trial court concluded:

“It would seem from the circumstantial evidence that’s been presented \*\*\* that if this weapon were on the seat of this vehicle covered by a sweatshirt or a sweater and that this vehicle left the driving surface and crashed into a telephone pole at the described rate of speed which caused the amount of sound and shaking of the telephone wires, as well as the church that [was] nearby, and that [Thomas] described a young man who he saw walking away from this vehicle.

That he yelled at this young man and went back and helped the young man push this

vehicle away from the pole and that he did not see anyone else who was there immediately after the accident took place, and he did not see anyone exit this car; that based upon the evidence and \*\*\* looking at the weapon, that it appears to be unlikely that this weapon[,] which when it was found[,] was not secured in any manner on that seat. That this weapon was in this vehicle on the seat covered up by a sweatshirt, and it did not move in such a way that it could be seen by [respondent].”

The trial court concluded that, if the weapon had ended up on the seat and was covered by a sweatshirt after such a crash, “it would tend to show that [respondent] knew the weapon was present in vehicle” and that respondent “took the weapon, placed it back on the seat and covered it up with the sweatshirt prior to him leaving that vehicle.” The trial court further opined, based on Thomas’s testimony and examining the gun, the weapon would not have remained on the seat during the accident unless it was secured, and there was no testimony that the gun was secured. As a result, the trial court concluded that respondent was in constructive possession of the weapon. After the accident, respondent placed the weapon back on the seat, and “neatly covered it up” so as to conceal it. The trial court also found respondent guilty of not having a FOID card and reckless conduct. With respect to reckless conduct, the trial court concluded that the “vehicle was traveling at a rate in excess of the speed limit and was being operated in a reckless manner and certainly endangered the bodily safety of others by the way this vehicle was driven.” The trial court sentenced respondent to 30 days in jail, with credit for time served, and extended his probation term until February 4, 2013.

¶ 18 Respondent timely appealed.

¶ 19

## II. Analysis

¶ 20 Respondent's first contention on appeal is that the State failed to prove, either by a preponderance of the evidence or beyond a reasonable doubt, that he possessed the gun found in the vehicle, violated the FOID Act, or engaged in criminally reckless conduct. Respondent concedes that, as the driver of the vehicle, he had immediate control of the contents on the front passenger seat. However, he maintains that the State failed to prove that he knew that the gun was under the sweatshirt on the front passenger seat. Regarding the reckless-conduct conviction, respondent argues that the only indication that his driving was deficient was an inference drawn from him hitting a telephone pole.

¶ 21 After filing a delinquency petition, the State must prove the elements of the substantive offense charged beyond a reasonable doubt. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). Thus, "[a] reviewing court will not overturn a trial court's delinquency finding 'unless, after viewing the evidence in a light most favorable to the State, no rational fact finder could have found the offenses proved beyond a reasonable doubt.'" *In re T.W.*, 381 Ill. App. 3d 603, 608 (2008) (quoting *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005)). The trier of fact has the responsibility to assess the credibility of witnesses, resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *T.W.*, 381 Ill. App. 3d at 608.

¶ 22 Petitions to revoke probation, however, differ from petitions alleging delinquency because the former presume that the minor has already been found delinquent or guilty and has had a dispositional order entered against him. *In re Justin M.B.*, 204 Ill. 2d 120, 125 (2003). Accordingly, the State must prove a violation of probation by a preponderance of the evidence and a reviewing court will not disturb a trial court's ruling unless the ruling was against the manifest weight of the evidence. *In re Seth S.*, 396 Ill. App. 3d 260, 272 (2009).

¶ 23 Guided by these principles, we will address respondent's challenge to the sufficiency of the evidence with respect to each conviction.

¶ 24 A. Aggravated Unlawful Use of a Weapon

¶ 25 At issue is whether the State proved that respondent possessed the firearm. Because this is a constructive possession case, the State had to establish that respondent (1) had knowledge of the presence of the weapon, and (2) had immediate and exclusive control over the area where the weapon was found. *People v. McIntyre*, 2011 IL App (2d) 100889, ¶ 16 (citing *People v. Hampton*, 358 Ill. App. 3d 1029, 1031 (2005)). Circumstantial evidence may be used to prove knowledge and a trier of fact can rely on reasonable inferences. *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25. Nonetheless, a defendant's mere presence in a car, without more, is not sufficient evidence that he knows a weapon is in the car. *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). Factors to infer knowledge include (1) the visibility of the weapon from a 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. *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009). Courts should also consider any other relevant circumstantial evidence of knowledge, including whether the defendant had a possessory or ownership interest in the weapon or in the automobile when the weapon was found. *Bailey*, 333 Ill. App. 3d at 892.

¶ 26 In support of his contention, respondent cites *Bailey*. In *Bailey*, the defendant was riding in the front passenger seat of a car that was stopped by police officers. *Bailey*, 333 Ill. App. 3d at 889. The officers planned to have the vehicle towed due to the presence of open alcohol, and therefore, conducted an inventory search of the vehicle. *Id.* at 889-90. The officers found a 9-millimeter Ruger

handgun under the front passenger seat. *Id.* at 890. During an interview at the police station, the defendant said that the driver had shown him the gun while they were at the defendant's home, but the defendant claimed that he placed the gun on his kitchen table. *Id.* Upon further questioning, the defendant said that the driver showed him the gun while inside the vehicle, and after looking at it, the defendant gave it back to the driver and exited the vehicle. *Id.* The defendant consistently denied knowing that the gun was inside the vehicle. At trial, one of the arresting officers testified that he believed the gun was within the defendant's arm reach; however, the gun was not visible until he looked under the seat. *Id.* The jury found the defendant guilty of aggravated unlawful use of a weapon. *Id.*

¶ 27 On appeal, the reviewing court concluded that the State failed to produce any affirmative evidence, either circumstantial or direct, that the defendant had knowledge of the presence of the weapon under his seat. *Id.* at 892. The reviewing court emphasized that the officer who discovered the gun testified that the gun was not visible until he looked under the seat, and therefore, the gun would not have been visible to the defendant, who was sitting in the passenger's seat. *Id.* The reviewing court further noted that no fingerprints were taken from the gun and there was no evidence that the defendant made any gestures indicating that he was trying to retrieve or hide a weapon. *Id.* The reviewing court concluded that, although the defendant's credibility "was called into question" because he gave two different accounts of the driver showing him the gun, "a lack of credibility is not enough to establish that [the defendant] had knowledge of the presence of the weapon in the vehicle." *Id.*

¶ 28 The State, conversely, cites *Ingram*. In that case, the reviewing court upheld the defendant's unlawful possession of a weapon conviction because the handgun was in plain view on the floor of

the car. *Ingram*, 389 Ill. App. 3d at 900. The defendant had been sitting in the front passenger seat. *Id.* at 898. That seat was broken and was fully reclined and lying on the back seat. *Id.* The court in *Ingram* emphasized that, although the gun was underneath the driver's seat, testimony and a photograph made "clear that the whole gun was in fact in plain view right behind the driver's seat." *Id.* Specifically, the photograph depicted the black gun on a red-carpeted floor with nothing else in the immediate vicinity. Further, the front passenger seat was broken and was resting on the backseat, right next to where the gun was found. *Id.* Finally, the size of the gun made it easily identifiable as a gun. *Id.*

¶ 29 In this case, we conclude that the State failed to prove, either beyond a reasonable doubt or by a preponderance of the evidence, that respondent had knowledge that the firearm was in the vehicle. Similar to *Bailey*, the gun here was not in plain view; rather, Watton testified that he discovered the gun only after he placed his hand on the sweatshirt that was on the front passenger seat. See *Bailey*, 333 Ill. App. 3d at 892. Further, like *Bailey*, no finger prints or other physical evidence linked respondent to the gun and there was no testimony that respondent made any gestures that indicated he was trying to hide or retrieve the weapon. See *id.* We are cognizant that respondent's credibility was called into question because he gave varying accounts of how the accident transpired and who was in the vehicle with him. However, we agree with the court in *Bailey* that a lack of credibility is not enough to establish knowledge of the presence of the weapon. See *id.* That respondent was acquainted with Forrest, along with the questions regarding his credibility, is not enough to overcome the lack of any other affirmative evidence, either direct or circumstantial, to establish that respondent was aware of the presence of the weapon.

¶ 30 Moreover, the State's reliance on *Ingram* is unconvincing. There, the gun was in plain view and the size of the weapon made it easily identifiable as a gun. *Ingram*, 389 Ill. App. 3d at 900. Conversely, in this case, the gun was not in plain view and Watton testified that he only became aware of the gun's presence after he placed his hand on the sweatshirt on the front passenger seat.

¶ 31 Finally, we find the trial court's conclusion that, due to the "described rate of speed" the vehicle was traveling when it hit the pole, respondent therefore had knowledge of the gun's presence to be an unreasonable inference. The crux of the trial court's conclusion was that, due to the size of the gun and Thomas's testimony that telephone wires and a nearby church were shaking immediately after the accident, the gun would not have remained on the seat unless it was secured. Because there was no testimony that the gun was secured, the trial court concluded that respondent placed the gun back on the seat after the accident and covered it with the sweatshirt.

¶ 32 The trial court's inference was not reasonable in light of the evidence presented. The only evidence regarding how fast the vehicle was traveling when it crashed into the pole was Thomas's testimony that the telephone wires and the nearby church were shaking. However, Thomas admitted that he was around the corner and 150 to 200 feet away when he "heard the noise." The record is devoid of any other evidence regarding how fast the vehicle was traveling when it hit the pole. While Thomas's testimony regarding the shaking telephone wires and church created a suspicion that the gun would have moved during the crash, that evidence "is not sufficiently conclusive and does not produce a reasonable and moral certainty" that respondent placed the gun back on the seat after the accident. See *In re Gregory G.*, 396 Ill. App. 3d 923, 929 (2009).

¶ 33 Reduced to its essentials, the only evidence the State presented to establish that respondent had knowledge of the gun's presence was his differing accounts on how the accident occurred and

who was in the car with him, along with Thomas’s testimony that the accident caused telephone wires and a nearby church to shake. We do not find this evidence to be sufficient to establish respondent’s knowledge of the gun’s presence in the vehicle. See *Bailey*, 333 Ill. App. 3d at 892.

¶ 34

B. FOID Act

¶ 35 Having concluded that the State failed to establish respondent’s guilt of aggravated unlawful use of a weapon, we next consider whether respondent’s conviction for possessing a weapon without a valid FOID card can stand. We conclude that, because the State failed to establish that respondent was in constructive possession of the firearm, his conviction under the FOID Act cannot stand. See *McIntyre*, 2011 IL App (2d) 100889, ¶ 19.

¶ 36

C. Reckless Conduct

¶ 37 Respondent next argues that the State failed to prove him guilty of reckless conduct. In support of this contention, respondent argues that the “only arguable indication that the minor’s driving was deficient was an inference drawn from the fact that the car hit a telephone pole.” The State asserts that respondent’s age and his decision to drive at an excessive speed—as evidenced by Thomas’s testimony that the accident caused telephone wires and a nearby church to shake—supports a conviction of reckless conduct. The State further argues that recklessly driving in a residential neighborhood creates an inherent risk to the bodily safety of others.

¶ 38 We are not persuaded by the State’s argument. At the time of trial, the reckless conduct statute provided:

“A person who causes bodily harm to or endangers the bodily safety of *an individual* by any means, commits reckless conduct if he performs recklessly the acts which cause the harm or

endanger safety, whether they otherwise are lawful or unlawful.” (Emphasis Added.) 720 ILCS 5/12-5(a) (West 2008)).

Pursuant to the statute’s plain language, in order to be guilty of reckless conduct, the State must have proved that respondent endangered the bodily safety of another individual. *People v. Peters*, 180 Ill. App. 3d 850, 853 (1989); see also *People v. Moreland*, 2011 IL App (2d) 100699, ¶ 7 (noting that the best indication of the legislature’s intent is the statute’s language, which must be given its plain and ordinary meaning; and when statutory language is unambiguous, courts must construe the statute as written, without resorting to other aids construction).

¶ 39 In this case, the State has not directed us to, nor could we find, any evidence in the record that respondent’s conduct of crashing the vehicle into a telephone pole endangered the bodily safety of an individual. Thomas was the only witness to testify that he was in the vicinity of the scene when the accident occurred. However, he was 150 to 200 feet away and around a corner. Thomas testified that, when he was helping respondent push the car away from the telephone pole and a driveway, he saw a woman standing in the doorway. However, the record is devoid of any indication that woman was near the scene when the accident occurred or that the telephone pole was in close proximity to the woman’s home. Further, while a church was nearby, the record does not reflect how close that church was to the accident site.

¶ 40 We find support for our determination in *People v. Collins*, 214 Ill. 2d 206 (2005). In *Collins*, our supreme court addressed whether the State’s evidence demonstrated that the defendant endangered the bodily safety of an individual when he discharged a firearm numerous times in the air in violation of section 24-1.5 of the Criminal Code (720 ILCS 5/24-1.5 (West 2002)). *Collins*,

214 Ill. 2d at 210. Similar to the reckless conduct statute at issue here, the statute at issue in *Collins* provided:

“A person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety *of an individual*.” (Emphasis added.) *Id.* at 212 (quoting 720 5/24-1.5 (West 2002)).

Our supreme court found that the statute revealed a two-prong test to find a defendant guilty of recklessly discharging a firearm: (1) reckless discharging a firearm, and (2) endangering the bodily safety of an individual. *Collins*, 214 Ill. 2d at 212. To satisfy the second prong, the *Collins* court concluded that the plain statutory language referred to conduct that could or might result in harm, and therefore, the State did not need to prove that the defendant’s conduct “actually endangered” another individual. *Id.* at 214-216.

¶ 41 Nonetheless, the supreme court examined whether the record demonstrated “that an individual was in the vicinity of the discharge.” *Id.* at 218-19. The *Collins* court noted that a State’s witness testified that she heard at least 15 shots when she approached the defendant’s backyard. Further, there were two women inside the defendant’s house and two police officers were standing 25 to 30 away when the defendant fired his weapon. *Id.* Finally, the record contained evidence of at least four homes in proximity to the location of the shooting, and therefore, the shooting occurred in a residential area. *Id.* Thus, the supreme court concluded that a rationale trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* at 219.

¶ 42 Although *Collins* involved a different statutory provision and the court concluded that the State presented sufficient evidence that an individual was in the vicinity of the discharge, we find its reasoning instructive. Initially, we note the similar language used in section 24-1.5 of the

Criminal Code and the reckless conduct statute at issue here. Both provisions provided that the conduct must endanger the bodily safety “of an individual.”

¶ 43 However, unlike *Collins*, the record before us contains very little evidence from which to conclude that an individual was in the vicinity of the accident. As noted above, the record reflects that Thomas was 150 to 200 feet away when the accident occurred, whereas in *Collins*, individuals were as close as 25 to 30 feet away when the defendant fired his weapon. *See id.* at 218. We recognize that Thomas referenced being near a church when hearing the accident, and also testified that he helped push the vehicle away from a driveway while a woman watched from inside a doorway. However, we are unable determine the proximity of the church or the woman’s house to the accident. Conversely, the *Collins* court noted that at least four other homes were in proximity to the shooting. *See id.* Further, even if we construed the woman’s house and the church as being in proximity to the accident, that would not, in our opinion, establish that the accident occurred in a residential area. *See id.* (noting that there were “at least four homes in proximity to the location of the shooting”).

¶ 44 In sum, we find that a witness hearing the accident from, at minium, 150 feet away combined with references to a church and a house, without being able to ascertain the approximate proximity of either the church or the house to the accident scene, insufficient to establish that respondent endangered the life of an individual. Therefore, we conclude that a rationale trier of fact could not have found beyond a reasonable doubt that respondent recklessly endangered an individual when he crashed the vehicle into the telephone pole. *Cf. id.* at 219.

¶ 45 Finally, we note that respondent also contended on appeal that the trial court violated his right to due process by failing to ascertain whether he understood that he had the right to choose whether

to testify, and further challenged the constitutionality of the unlawful use of a weapon statute. However, due to our conclusion in this case, we need not consider respondent's remaining arguments. *Wright*, 2013 IL App (1st) 111803, ¶ 27. With respect to respondent's constitutional challenge, our decision not to address the issue is consistent with the principle that courts of review should first attempt to resolve disputes on nonconstitutional grounds, if possible. See *id.* (citing *People v. Jackson*, 2013 IL 113986, ¶ 14).

¶ 46

### III. Conclusion

¶ 47 For the foregoing reasons, the judgment of the circuit court of Winnebago County is reversed and we vacate the extension of respondent's term of probation.

¶ 48 Reversed.