

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (1st) 140783-U

FIRST DIVISION
September 22, 2014

Nos. 1-14-0783 & 1-14-1463

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> JASON B., a minor.)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	11 JD 4322
v.)	
)	
JASON B., a minor)	The Honorable
)	Terrence V. Sharkey,
Respondent-Appellant.)	Judge Presiding.
)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

Held: The trial court improperly denied minor-respondent's motion to quash arrest and suppress evidence when the arresting officer was not justified in his belief that respondent was armed, nor was he acting in his community caretaking role, and when he lacked probable cause to search an apparent curfew violator; reversed.

¶ 1 The minor-respondent, Jason B., was charged in a petition for adjudication of wardship with aggravated unlawful use of a weapon and unlawful possession of a firearm after an officer

stopped him and recovered a gun on his person. Prior to trial, respondent filed a motion to quash arrest and suppress evidence. The trial court denied the motion and, after a bench trial, respondent was convicted of aggravated unlawful use of a weapon and unlawful possession of a firearm. He appeals the denial of his motion to quash arrest and suppress evidence and requests that we reverse the adjudication of his delinquency.

¶ 2

I. BACKGROUND

¶ 3 The testimony of respondent and Officer Gaskin (officer) at the motion hearing reveal the events of October 8, 2011. Respondent testified that he was walking with one of his dad's friend's, Max, along Ashland Avenue around 1:30 a.m. when an officer stopped them and asked where they were going. While respondent testified at the hearing that he was walking from a friend's house to his mother's house, respondent did not testify that he told this information to the officer at the time of the stop in 2011. Respondent further testified that the officer did not ask him his age, if he had identification, or whether his companion had authorization from respondent's parents to be with him. Finally, respondent testified that the officer conducted a search of his person and recovered a weapon. After this testimony, the State requested a directed verdict, which the trial court denied.

¶ 4 Officer Gaskin also testified at the hearing on the motion. He testified that, at the time of the encounter, he had been a police officer for 12 years, approximately 5 of which were spent in the district where the encounter with respondent took place. The officer testified that on October 8, 2011, he saw respondent walking with an older companion along Ashland Avenue at 1:30 a.m. in an area that was "high in gang activity" and had a "bunch of rival gang members in certain areas around that location" which meant that there were "constant calls of shots fired or people shot." The officer testified that respondent's appearance made him believe that he was under the

age of 16 and therefore, a curfew violator. He stated that he and his partner conducted a street stop and field interview of both respondent and the companion, who looked older than 16. The officer stated that he planned to write respondent a curfew violation and take him to his parents. The officer testified that, as part of the field interview, he asked respondent and his companion where they were coming from and where they were going. In response to the latter question, the older companion told the officer that he was walking respondent to the bus stop. The officer also asked the companion whether he was related to respondent, to which the companion said no. The officer also discovered that respondent was not next to his residence nor was respondent running an errand. The officer testified that he did not ask respondent his age or whether the older person was authorized to be walking with him. On cross-examination, the officer was asked "you never did the field interview, did you?" and the officer responded "Yeah. The other person was—We ran his name and he went on his way." The testimony also revealed that the case report did not indicate that a field interview was conducted.

¶ 5 In addition to the previous summary, the record reveals the following responses during the officer's testimony. Responding to the question, "What did you do when you stopped them?" the officer replied, "At that point, [I] realized that he was a curfew violator, so I then patted him down and felt the barrel of the handgun in his pocket." Testimony revealed that the officer also asked respondent what was in his pocket to which respondent replied, "That's a gun, sir." Focusing on the pat-down, the officer was asked whether he feared that respondent had a gun and he stated "Yeah, he could have." After he was asked whether he feared for his safety with "regards to this specific individual" the officer testified, "Well, I wanted to make sure that I was safe before I put him in the back of my squad car." He added, "I wanted to make sure that I was safe before I put him in the back of my squad car" and that it is important to "make sure that

[individuals placed in the back of squad cars] don't have any weapons or [drugs]." Explaining why it was important to pat someone down who was going in the back of the squad car, the officer stated, "For my safety. It's 1:30 in the morning. It's a gang area. Thought that he could have either a weapon or drugs. Wanted to make sure I found something before I put him behind me in the squad car." The officer also noted that he had heard about incidents through his work in which people fired shots while in the back of a squad car and the officers were severely hurt. Finally, the officer stated, referring to an individual he would put in the back of a squad car, "If [the individual] has a gun that's unsafe for me to put him behind me. If he has drugs then, I need to inventory them."

¶ 6 At the conclusion of testimony, the trial court denied the motion to quash arrest and suppress evidence finding that the officer had reasonable, articulable suspicion to stop the respondent for a possible curfew violation and that, because the officer was in fear for his safety, the pat-down was justified. The court later revised its reasoning, finding probable cause to arrest the minor for a curfew violation, but the court still denied respondent's motion to suppress.

¶ 7 II. ANALYSIS

¶ 8 On appeal, respondent argues that the officer lacked reasonable suspicion to believe that he was violating the ordinance and, even if the stop were valid, respondent argues that the search was illegal because the officer did not fear for his safety. Responding directly to the revised ruling of the trial court, respondent also contends that the officer lacked probable cause to arrest him for violating his curfew and that, because the arrest was illegal, so too was the search incident to arrest during which the officer uncovered respondent's weapon.

¶ 9 In response, the State proffers three grounds on which to find that the trial court properly denied the motion to quash. First, pursuant to the *Terry* exception to the fourth amendment's

prohibition on unreasonable searches and seizures, the officer reasonably suspected respondent to be a curfew violator and, because the curfew ordinance requires that the officer take respondent home, the officer was justified in conducting a pat-down before placing him in the back of the squad car. Second, because the officer was acting in his "community caretaker function" when he approached respondent, the subsequent stop and search were valid. Third, the State argues that the officer had probable cause to arrest respondent and that the officer properly conducted a valid search incident to arrest before placing respondent in the squad car.

¶ 10 In reviewing a ruling on a motion to quash arrest and suppress evidence, we apply a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). A trial court's findings of historical fact are reviewed only for clear error, and we give great deference to the trial court's factual findings. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). We will reverse those factual findings only if they are against the manifest weight of the evidence. *Id.* However, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.* For the following reasons, we reverse.

¶ 11 The curfew ordinance¹ defines "curfew hours" for minors, defined as people under 17 years of age, as:

- (A) For minors 12 through 16 years of age, 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and

- (B) For minors 12 through 16 years of age, 11:00 p.m. on any Friday or Saturday and until 6:00 a.m. of the following day;

Chicago Municipal Code, § 8-16-020(a)(1) (2013) (Code). Under this section of the Code, the ordinance provides the following relevant offense: "A minor commits an offense if he remains in

¹ The transcript reveals uncertainty about which version of the ordinance was in effect at the time of the offense. However, because both parties agree that the time of the encounter, 1:30 a.m., fell within the prohibited times under all versions of the ordinance and that all versions of the ordinance contained relevant defenses, we rely on the language of the most recent version of the ordinance attached to Appellant's brief.

any public place or on the premises of any establishment within the city during curfew hours."

Id. § 8-16-020(b)(1) (2013). The statute also lists nine "defenses" to prosecution under this ordinance. Three relevant examples of those defenses are: (1) the minor was accompanied by the minor's parent or guardian, where "parent" can mean any person who is at least 18 years of age and authorized by a parent to have the care and custody of a minor; (2) the minor was on an errand at the direction of the minor's parent; and (3) the minor was engaged in an employment activity. *Id.* § 8-16-020(c) (2013). Under "Enforcement", the ordinance states:

Before taking any enforcement action under this section, a police officer shall ask the apparent violator's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (c) is present.

Id. § 8-16-020(d) (2013). Finally, the section entitled "Custody procedure" allows an officer who finds a minor in violation of curfew to:

take such minor into custody until such time as the minor's parent, legal guardian, or other adult having legal care or custody of the minor is located and notified of the violation, and takes custody of the minor from the police. If no such person can be located within a reasonable period of time, the minor shall be referred to the appropriate juvenile authorities."

Id. § 8-16-022 (2013).

¶ 13 We turn first to the validity of the stop and search using the framework of *Terry v. Ohio*, 392 U.S. 1 (1968). See *People v. Leach*, 2011 IL App (4th) 100542 (applying the Terry analysis to a curfew violation and subsequent stop).

¶ 14 The United States and the Illinois Constitutions protect individuals from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Generally, reasonableness requires a warrant supported by probable cause before a search is initiated. *Katz v. United States*, 389 U.S. 347, 357 (1967); *People v. Flowers*, 179 Ill. 2d 257, 262 (1997). But, when a police officer reasonably suspects that an individual committed, is committing, or is about to commit a crime, the warrant requirement does not preclude officers from briefly stopping and questioning the individual. *Terry v. Ohio*, 392 U.S. 1 (1968). However, not every valid stop automatically justifies a search for weapons. *People v. Pence*, 225 Ill. App. 3d 1061, 1063 (1992). The validity of the frisk, or a limited search for weapons, will be assessed by an objective standard, asking whether a reasonably prudent person, in the circumstances, would be warranted in the belief that his or her safety or the safety of others was in danger. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 14 (citations omitted). In other words, when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others, the officer may conduct a pat-down search to determine whether the person is in fact carrying a weapon. *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993); *Terry*, 392 U.S. at 24. It is clear that an objective standard must be used when deciding the validity of a frisk. *Terry*, 392 U.S. at 21. Finally, the overarching criterion for searches and seizures is reasonableness. *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973).

¶ 15 The officer in this case was justified in conducting a *Terry* stop. In *Leach*, the court addressed the initial stop of a respondent who was walking in a residential area. *People v. Leach*, 2011 IL App (4th) 100542 at ¶ 2. The court stated that the officer suspected defendant of "violating curfew by being out after 11 p.m. and under age 17" and found he was justified in conducting the stop and was authorized to request defendant's identification and run a warrant check. *Id.* at ¶¶ 10, 23. Here, the officer reasonably suspected an ordinance violation based on the late hour of the night and respondent's young appearance.

¶ 16 Despite the valid *Terry* stop, we reject the State's position that the search was valid. The officer was not justified in believing that respondent was armed and presently dangerous because the officer did not have reason to believe respondent was involved in illegal activity, respondent did not exhibit any unusual or suspicious behavior, and at the time of the search, respondent was alone with two officers.

¶ 17 In *People v. Sorenson*, 196 Ill. 2d 425, 437 (2001), the supreme court upheld the frisk of an individual on a dark road in an area known for drug sales involving armed individuals. *Sorenson*, 196 Ill. 2d at 433 (citing *Terry*, 392 U.S. at 27). However, the court reasoned that the factual findings and inferences drawn by the trial court were supported by the record including that the defendant had left a known drug house and his behavior and the length of time spent at the house was consistent with a drug purchase. The court implicitly concluded that the officer had good reason to suspect that the defendant had been involved in purchasing illegal drugs. *Id.* at 434. See also *In re S.V.*, 326 Ill. App. 3d 678, 687 (2001) (finding that a *Terry* search was reasonable because the officer observed the respondent flashing gang signs typical of the gang believed to be involved in a shooting and the officer also observed the defendant walking away from the area of the shooting).

¶ 18 Unlike *Sorenson*, in which there was a fairly detailed picture of the defendant's activities, the circumstances in this case do not reveal similar indications of illegal activity to indicate that the officer was warranted in the belief that respondent was armed and presently dangerous. Here, the officer testified that he was in an area "high in gang activity" where rival gang members cause "constant calls of shots fired or people shot." These facts do not compare in specificity to the observations of the defendant in *Sorenson*. Moreover, an individual's presence in a high crime area, standing alone, is not sufficient support for a *Terry* stop or *Terry* search. *People v. Moorman*, 369 Ill. App. 187, 193 (2006). See also *In re Mario T.*, 376 Ill. App. 3d 468, 475 (2007) (rejecting the validity of a frisk even though an officer had made many narcotics arrests in the same building and many of those arrests involved persons with weapons). Furthermore, the officer was not justified in his belief that respondent was armed because neither the officer nor respondent's testimony revealed any unusual or suspicious behavior at the time of the encounter. *In re M.N.*, 268 Ill. App. 3d 893, 895-96 (1994). If anything, respondent's behavior was polite, at one point calling the officer, "sir." The officer also testified that he had sent the older companion on his way when he conducted the pat-down, leaving the minor-respondent with two officers, at least one of whom was a veteran officer.

¶ 19 While Illinois courts have said that an officer need not be certain that a respondent was armed before conducting a frisk (*People v. Kantowski*, 98 Ill. 2d 75, 81 (1983)), the officer's suspicion in this case that respondent "could have" a gun was not sufficient to justify the search. In *Kantowski*, the court cautioned against placing an onerous burden on the sufficiency of the officer's suspicion that the respondent is armed and dangerous when the officer's safety is at stake. *Kantowski*, 98 Ill. 2d at 81. In that case, the officer became afraid for his safety upon seeing a knife in defendant's belt. *Id.* at 80. Similarly, in *People v. Coylar*, 2013 IL 111835, the

officer saw a bullet in plain-view which prompted a search. *Coylar*, 2013 IL 111835 at ¶¶ 42-45. Here, the officer's testimony was only that respondent "could have" a gun without any other factors to support the conclusion that respondent was in fact armed. Finally, an officer's inclination to search an individual as a "common thing" in his job misapprehends the *Terry* exception to the fourth amendment. *People v. Flowers*, 179 Ill. 2d 257, 266 (1997).

¶ 20 In sum, the circumstances do not indicate that a reasonably prudent person in that situation would have been warranted in his belief that a young individual walking on a street late at night in a high-crime neighborhood, without more, was armed and presently dangerous.

¶ 21 **B. Community Caretaking Function**

¶ 22 The officer's actions were also not a proper exercise of the officer's community caretaking function, as the State suggests. The community caretaking exception applies to uphold searches or seizures as reasonable under the fourth amendment. *People v. McDonough*, 239 Ill. 2d 260, 269 (2010). "[C]ommunity caretaking refers to a capacity in which the police act when they are performing some task unrelated to the investigation of crime, such as helping children find their parents, mediating noise disputes, responding to calls about missing persons or sick neighbors, or helping inebriates find their way home." *McDonough*, 239 Ill. 2d at 269. This function is totally divorced from the detection, investigation, or acquisition of evidence of a violation of a criminal statute. *City of Highland Park v. Lee*, 291 Ill. App. 3d 48, 52 (1997)(Citations omitted). In other words, "community caretaking" describes a stop initiated to check on a person's well-being without any initial thought of criminal activity. *People v. Simac*, 321 Ill. App. 3d 1001, 1004 (2001). We have previously identified two general criteria for a valid search under the community caretaking function of police: (1) the law enforcement officer must be performing some function other than investigating a crime and (2) the scope of

the search must be reasonable because it was done to protect the safety of the public.

McDonough, 239 Ill. 2d at 272 (citing *Luedemann*, 222 Ill. 2d at 545-46). Both criteria require that we view the officer's actions objectively. *McDonough*, 239 Ill. 2d at 272.

¶ 23 Ordinances are generally treated as "quasi-criminal in character but civil in form." *City of Danville v. Hartshorn*, 53 Ill. 2d 399, 401 (1973). The criminal character of an ordinance may itself preclude the application of the community caretaking exception. *City of Chicago v. Morales*, 177 Ill. 2d 440 (1997) (finding the anti-loitering ordinance criminal in nature).

Regardless, we address the officer's reason for initiating the stop at issue and find that this encounter was not a proper exercise of the officer's community caretaking function.

¶ 24 In the case at bar, the officer's initial reason for the stop was not "totally divorced" from the detection or investigation of a partly-criminal ordinance (*City of Highland Park v. Lee*, 291 Ill. App. 3d 48, 52 (1997)) and unlike valid community caretaking cases, he did not initiate the stop of respondent out of concern for respondent's well-being. See *Simac*, 321 Ill. App. 3d at 1004 (describing the community caretaking encounter between police and private citizens when an "officer stops an individual to check on his well-being, without any initial thought of criminal activity"). Several recent cases provide valid examples of caretaking activities that are initiated out of concern for an individual, an activity totally divorced from an officer's tasks of investigation and detection. For example, in *People v. Robinson*, 368 Ill. App. 3d 963, 965 (2006), an officer "responded to a call to check on the well-being of a citizen" who was slumped over the wheel of a parked car and seemingly unconscious. We found that the officer's actions, including tapping on the car window and attempting to engage the defendant in conversation were totally divorced from the detection, investigation, or acquisition of evidence and therefore a proper exercise of the officer's community caretaking function. *Id.* at 972-73. In *People v.*

Dittmar, 2011 IL App (2d) 091112 ¶¶ 27-29, the court found that an officer's observations of a vehicle "could prompt *** a genuine concern for the welfare of the [vehicle's] occupants" when the vehicle had been proceeding slowly, stopped, and the passenger and driver then switched positions. The court concluded that the officer validly exercised his community caretaking function in checking on the occupants even though the officer had activated his emergency lights and informed a dispatcher of the vehicles' specs. *Id.* Again, in *People v. Hand*, 408 Ill. App. 3d 695, 703 (2011), we found that the officer's stop was motivated by a reasonable concern "for the welfare of the children" before finding that a warrantless search of a defendant's apartment was valid under the community caretaking exception. Finally, in *McDonough*, the supreme court noted that the officer initiated a stop "to offer any aid required under the circumstances" when the officer observed a car's position on the shoulder of a busy highway without external lights and inquired as to whether the occupants needed assistance. *McDonough*, 239 Ill. 2d at 273. The court found this to be a valid exercise of the officer's community caretaking function. *Id.* *Cf. People v. Bauman*, 204 Ill. App. 3d 813, 815 (1990) (finding a valid community caretaking activity in an officer's patrol of a high school parking lot during the lunch hour to monitor students and non-students and to determine whether students were involved in illegal activities.)

¶ 25 Unlike the cases cited above, such as *Robinson* and *Hand*, the facts of this case lack any indication that the officer initiated the stop out of concern for respondent's well-being.

Moreover, nothing in the officer's testimony indicates that he observed the defendant or his companion in a situation that required his assistance as was the case in *McDonough*. In fact, the officer testified that he initiated the stop because of respondent's apparent young age and his suspicion of an ordinance violation. The officer's initial actions were more closely aligned with

the "detection" or "investigation" of a criminal-in-character ordinance violation than they were "totally divorced" from those activities. See *City of Highland Park*, 291 Ill. App. 3d at 52.

¶ 26 Even though there was not a valid community caretaking activity, we address the propriety of the subsequent search. The State argues that the officer did not need any particularized suspicion that respondent was armed before patting him down prior to placing him in the squad car because the "need to transport a person in a police vehicle is an exigency that justifies a pat-down search for weapons." *People v. Queen*, 369 Ill. App. 3d 211, 218 (2006). We disagree that this proposition applies to the facts of this case because the defendant in *Queen* was unable, without the officer's help, to remain safe whereas the respondent here did not require assistance.

¶ 27 In *People v. Queen*, 369 Ill. App. 3d 211, 214 (2006), the court applied the community caretaking function to the officer's detention and search of an intoxicated individual who fell from a tree in front of the officer's car. The court noted that the fact that the officer did not offer any option other than to ride in his squad car was not reason enough to invalidate the officer's caretaking function. *Id.* at 219. The court further clarified that an officer was not required to "conceive and explore all means short of a seizure for bringing the individual to safety" when an officer encounters an individual in an exigent situation, but admitted that "the existence [of means short of a seizure] is an important consideration in determining whether there is an exigency that would justify police action in the first instance." *Id.* The court went on to conclude that if the intoxicated defendant had suggested an alternative for proceeding safely, "perhaps [the officer] would have some duty to pursue it." *Id.* at 220. Unlike the encounter in *Queen*, the encounter in our case was not initiated to assist respondent nor did the facts indicate

that respondent required assistance. Furthermore, it is not at all clear that an exigent situation existed in the first place.

¶ 28 Finally, we do not endorse a rule allowing a search-incident-to-squad car-ride without an accompanying community caretaking function. A rule allowing an officer to search an individual because the officer planned to transport him or her, without a valid community caretaking activity, would jeopardize the fourth amendment's prohibition against unreasonable searches. *People v. Croft*, 346 Ill. App. 3d 669, 674 (2004) (declining to extend the community caretaking label to an officer's encounter with an individual pushing a bicycle when there had been incidents of theft and vandalism in the area and cautioning against the dangers of "blurring the distinction between community caretaking and an investigative detention").

¶ 29 C. Probable Cause

¶ 30 Probable cause to arrest an individual 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. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). The probable cause test is a compromise for accommodating the "often opposing interests" of privacy and law enforcement, and there is good reason for striking the compromise on the side of privacy where it is uncertain whether any crime has occurred. *In re J.C.*, 163 Ill. App. 3d 877, 884 (1987) (citing *People v. Reynolds*, 94 Ill. 2d 160, 166 (1983) and *People v. Lippert*, 89 Ill. 2d 171, 179–80, (1982)). 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." *Hopkins*, 235 Ill. 2d at 475. In determining whether a police officer had probable cause to arrest, his factual knowledge based on his years of experience is relevant. *People v. Smith*, 95 Ill. 2d 412, 419-20 (1983).

¶ 31 The respondent argues that, because the officer did not inquire about his age, reason for being in a public place, or any of the ordinance defenses, the officer lacked probable cause to take respondent into custody. The State contends that the officer had probable cause to detain respondent based on his youthful appearance and being out past curfew, and that the officer's failure to ascertain every statutory defense within the ordinance does not amount to a constitutional violation.

¶ 32 We reject the trial court's rationale for finding probable cause noting that the record did not reveal the "discrepancy" relied upon for that ruling. In its revised ruling, the trial court found that there was probable cause to arrest the minor for a curfew violation and that the subsequent search was a valid search incident to arrest, relying on a discrepancy in the testimony. That "discrepancy"—that the minor stated that he was going to his mom's house whereas the companion stated he was walking respondent to the bus stop—is without effect. According to the record, respondent never told the officer where he was heading at the time of the encounter. It was only during the hearing on his motion when respondent testified that he was heading to his mom's house. Only the older companion's answer—that he was walking respondent to the bus stop—was uttered at the time the individuals were stopped. Because there was only one answer at the time of the stop, and another answer at the motion hearing, there was not a "discrepancy" which created probable cause for arrest.

¶ 33 We find the most reasonable interpretation of the ordinance to require that the officer ascertain the apparent violator's age prior to arrest and we therefore, conclude that the officer lacked probable cause to take the respondent into custody for a curfew violation because he did not ascertain respondent's age. The ordinance clearly states,

Before taking any enforcement action under this section, a *police officer shall ask the apparent violator's age and reason for being in the public place*. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (c) is present.

Chicago Municipal Code, § 8-16-020(d) (2010) (emphasis added).

¶ 34 Furthermore, we are not persuaded by the State's reliance on *People v. Coleman*, 50 Ill. App. 3d 1053 (1977) and in fact, that case supports our conclusion here. In *Coleman*, the court found that the officer had probable cause to arrest an adult defendant for contributing to the delinquency of a minor without ascertaining whether the adult defendant had the consent of the minor's parents. *Id.* at 1058. Importantly, the court noted that the officer asked for identification from the adult defendant and the alleged minor and then stated that the officer "discovered" that there was a minor in the adult defendant's presence. The court concluded that the officer, after obtaining this information, "was justified in assuming that there was a violation of the curfew act." *Coleman*, 50 Ill. App. 3d at 1058. The quoted language reveals that the officer had more information about both the adult defendant as well as the minor than the officer had in the case at bar. The officer in the instant case did not "discover" the respondent's age prior to the arrest and search, but made a quick conclusion based on respondent's appearance. An out-of-state case offered by the state is equally unpersuasive because the officers there deduced that the respondents in that case were under the age of 18, the officers spoke to respondents for 20 minutes and made numerous attempts to notify the respondents' parents, all before conducting a weapons search. *In re Charles C.*, 76 Cal. App. 4th 420, 422-424 (1999). The court concluded that the officer had probable cause to arrest the respondents for a curfew violation. *Id.* at 424.

¶ 35 Our conclusion that the officer should have ascertained the minor's age is further supported by the fact that the officer did not testify to having any experience with assessing the age of minors between the ages of 12 and 16 or curfew violators in general. We cannot endorse—however clear it might have been to the officer in this case—an officer's subjective gauge of a minor's age. That is, without discovering or confirming the age of an apparent violator, the officer lacked probable cause to arrest respondent and therefore, the gun was recovered after an improper search incident to arrest.

¶ 36 Because the State cannot prevail on remand without the suppressed evidence, we reverse defendant's convictions and vacate his sentence. See *People v. Smith*, 331 Ill. App. 3d 1049, 1056 (2002).

¶ 37 Reversed.