

**NOTICE**

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2015 IL App (4th) 140921-U

NOS. 4-14-0921, 4-14-0922

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 16, 2015

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: DAVIS H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	Nos. 13JD169
DAVIS H.,	)	14JD22
Respondent-Appellant.	)	
	)	Honorable
	)	Elizabeth A. Robb,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Knecht and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed respondent's delinquency adjudications.

¶ 2 In October 2013, the State filed a petition for adjudication of wardship alleging that respondent, Davis H., committed the offense of theft (720 ILCS 5/16-1(a)(4)(A) (West 2012)). Following a March 2014 bench trial, the trial court adjudicated respondent delinquent, finding the evidence supported a conviction for theft beyond a reasonable doubt.

¶ 3 In January 2014, the State filed a petition for adjudication of wardship alleging that respondent committed the offenses of battery (720 ILCS 5/12-3(a)(1) (West 2012)), illegal consumption of alcohol by a minor (235 ILCS 5/6-20(e) (West 2012)), and possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)). Following a May 2014 bench trial, the trial

court adjudicated respondent delinquent for the offenses of battery and illegal consumption of alcohol by a minor. Prior to trial, the State dismissed the drug-paraphernalia charge.

¶ 4 At a consolidated sentencing hearing in September 2014, the trial court sentenced respondent to 10 days' incarceration for theft and 15 days' incarceration for battery and illegal consumption of alcohol by a minor.

¶ 5 This court allowed respondent's late notices of appeal and, on respondent's motion, we consolidated the appeals.

¶ 6 The only argument respondent raises on appeal is that the State failed to prove him guilty of theft beyond a reasonable doubt. We affirm.

¶ 7 I. BACKGROUND

¶ 8 In October 2013, the State filed a petition for adjudication of wardship alleging that respondent, born in 1997, committed the offense of theft (720 ILCS 5/16-1(a)(4)(A) (West 2012)) in McLean County case No. 13-JD-169. In January 2014, the State filed a petition for adjudication of wardship alleging that respondent committed the offenses of battery (720 ILCS 5/12-3(a)(1) (West 2012)), illegal consumption of alcohol by a minor (235 ILCS 5/6-20(e) (West 2012)), and possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)) in McLean County case No. 14-JD-22.

¶ 9 On March 3, 2014, respondent's bench trial for theft commenced. J.C., Principal Jim Allen, Deputy Ryan Homan, and Skylar Meredith testified for the State. Respondent and his mother, Christy H., testified for the defense.

¶ 10 J.C. testified that she was 16 years old and a junior at Lexington high school. She attended school with respondent, whom she identified in open court. J.C. stated that she was at C.B.'s house on August 1, 2013. Other people present at C.B.'s house on that date included C.B.,

respondent, Skylar Meredith (J.C.'s boyfriend), Jonja N., and Jonja's two small children, T.N and B.N. J.C. had her iPod with her at C.B.'s house. She gave the iPod to T.N. to play with. Before leaving C.B.'s house, J.C. looked for her iPod for a few minutes. However, because her ride was leaving, she left the house without it. J.C. testified that Skylar left with her, while respondent remained at C.B.'s house. According to J.C., everyone at the house knew she was looking for her iPod. J.C. did not return to C.B.'s house, but she stated that Skylar—who was living at C.B.'s—continued searching for her iPod.

¶ 11 J.C. testified that "a couple of weeks" later, she was sitting in class when she noticed respondent using an iPod that "looked exactly like the one [she] had" but had not seen since it had gone missing. J.C. stated that she retrieved the box in which her missing iPod had been packaged from her house. The iPod box contained the serial number of her missing iPod. J.C. then went to the principal at her school and told him she thought respondent had stolen her iPod. J.C. asked the principal if he would check the serial number on the iPod in respondent's possession to see if it matched the serial number on the box.

¶ 12 Jim Allen testified that he was the principal at Lexington junior-senior high school. According to Allen, on September 27, 2013, J.C. reported to him that respondent may have stolen her iPod. J.C. gave Allen the box her iPod had been packaged in and which contained its serial number. Allen then spoke with respondent in his office and asked him if he had an iPod. Respondent produced an iPod from his pocket and handed it to Allen. The following colloquy occurred:

"Q. What did you ask [respondent] about that i-Pod touch that he had given you?"

A. I asked him if it was his. He told me that it was. I asked him where he got it. He told me that his parents gave it to him for his birthday.

Q. Then did you do anything with the i-Pod touch and the [box] you had been given?

A. Yes. At that point, I told [respondent] that it was reported to me by a student that, that he was in possession of their i-Pod touch, which was stolen, and—

Q. Did he have any response when he had heard that a student had told you that?

A. He asked me if the student was [J.C.], and I told him that that was not important at that point. I was just trying to find out who it belonged to, so I also told him that I had a serial number off the box that the i-Pod of the i-Pod that was purported to be stolen, and that I needed to check the numbers on those. I did, and the numbers that were on the i-Pod touch were identical to the numbers that were on the box that was given to me earlier by [J.C.]

Q. Did—other than saying that he had gotten it for his birthday as a gift from his parents, did he tell you after you had checked the numbers anything different?

A. Well, the first thing he did was ask if he could have it back so he could erase all of his stuff off of it, and I said, no, I'm not giving it back to you. I said, you told me you got it as a birthday

present from your parents, and then he told me, no, he didn't get it as a birthday [gift] from his parents, that they had given him money to buy it, and that he had bought it from, bought it from [J.C.'s] boyfriend."

Allen testified that he contacted the McLean County sheriff's office to report the theft.

¶ 13 Ryan Homan, a deputy for the McLean County sheriff's office, testified that he was contacted by Allen on September 27, 2013, regarding a possible theft. Homan met with Allen at the school, where he was given a black iPod touch and a box that iPod touches are packaged in. The serial number from the iPod touch matched the serial number on the box. While at the school, Homan spoke with respondent, who was present with his mother. The following colloquy occurred:

"Q. And what did you ask [respondent]?"

A. I asked [him] about the i-Pod touch. I was there to answer a call that it had been stolen, and it was in his possession, and so I asked him how he obtained it.

Q. And what did [respondent] tell you?

A. [He] told me he received the i-Pod touch through the victim's boyfriend at that time. His name is Skylar, and he had paid him 50 dollars in return for an i-Pod touch that he assumed was brand new.

Q. Well, did [respondent] tell you anything specific about why Skylar would have been selling this i-Pod touch?

A. Yes. He said Skylar wanted money for a tattoo and was willing to sell him the i-Pod touch for 50 dollars."

¶ 14 Skylar testified that he was dating J.C. and C.B. was a friend. On August 1, 2013, Skylar was staying at C.B.'s house. Skylar recalled several people were at C.B.'s house on that date, including J.C., C.B., respondent, Jonja, Jonja's two children, T.N. and B.N., R.R., and "this guy named Louie." Skylar stated that J.C. gave T.N. her iPod to play with and T.N. left the room with it. According to Skylar, respondent was sitting at the table with everyone else when T.N. left the room with J.C.'s iPod.

¶ 15 Skylar testified that J.C. was unable to find her iPod prior to leaving C.B.'s house. Skylar stated they "looked all over the house to find it, and we still couldn't find it, and then I kept searching for it and searching for it throughout the house because she kept texting me, asking me if I could find it for her, so I was trying to find it for her, and I still couldn't find it." Skylar stated that he did not have possession of the iPod at any time after J.C. gave it to T.N., until she retrieved it from the police. On cross-examination, Skylar testified that he got a tattoo for free from a friend between August 1, 2013, and September 27, 2013. J.C. also testified that she was with Skylar when he got the tattoo and that "the kid gave it to him for free."

¶ 16 Respondent testified on his own behalf. He stated that on August 1, 2013, he was at C.B.'s house with Skylar, J.C., Jonja, C.B., and "a couple other people." Respondent testified that he left the house for approximately 30 to 45 minutes. When he returned to the house, J.C. and Skylar were gone. According to respondent, he did not see an iPod at all that day.

¶ 17 Respondent further testified that sometime in the middle of August, he was at C.B.'s house when Skylar asked him for a ride to a pawnshop in Pontiac. Respondent told him that he did not have enough gas to give him a ride but that he might buy the iPod that Skylar

wanted to sell. According to respondent, Skylar—who had just turned 18 years old—wanted \$100 for the iPod so that he could get a tattoo. Respondent called the pawnshop to see what they would pay for the iPod and they told him \$90. Respondent offered to buy the iPod from Skylar for \$50 and Skylar agreed. Respondent testified the iPod was not in a box and did not have a charger. According to respondent, Skylar told him that his parents had given him the iPod. Respondent did not start using the iPod until "later on into September" because he did not have money to buy a charger for it.

¶ 18 Respondent testified he was at school on September 27, 2013, when Principal Allen asked to speak with him. Once in Allen's office, respondent gave Allen his iPod. Allen asked respondent if he knew the iPod was stolen. Respondent said it was not stolen because he purchased it. Allen told respondent the serial numbers on the iPod matched the serial numbers on the iPod box J.C. had given him. Allen then informed respondent he was going to have to call the police. Respondent testified he asked if he could have the iPod back so he could delete information from it since Allen was turning it over to the police. According to respondent, he told Allen the iPod "was a present because my parents had gave me the money to buy [it]."

¶ 19 On cross-examination, respondent agreed that a new iPod touch cost "in the hundreds" of dollars and that \$50 for an iPod touch was "one heck of a deal." Respondent denied telling Deputy Homan that the iPod was brand new. Respondent testified that while he initially told Principal Allen his parents gave him the iPod as a birthday present, he later "broke down the story a little bit more" and told him that his parents gave him the money to buy the iPod from Skylar.

¶ 20 Respondent's mother, Christy H., testified that she was in the room with respondent when Deputy Homan was talking to him about the iPod. According to Christy, respondent told Deputy Homan that he got the money from her to purchase the iPod from Skylar.

¶ 21 Deputy Homan testified in rebuttal that he never discussed with Christy how respondent obtained the iPod. According to Deputy Homan, his only conversation with her concerned respondent giving a statement.

¶ 22 The trial court adjudicated respondent delinquent, finding the evidence proved beyond a reasonable doubt that respondent committed a theft.

¶ 23 Following a May 2014 bench trial for the offenses of battery and illegal consumption of alcohol by a minor, respondent was adjudicated delinquent on both counts.

¶ 24 At a consolidated sentencing hearing in September 2014, the trial court sentenced respondent to 10 days' incarceration for theft and 15 days' incarceration for battery and illegal consumption of alcohol by a minor.

¶ 25 This court allowed respondent's late notices of appeal and docketed case No. 13-JD-169 as No. 4-14-0921 and case No. 14-JD-22 as No. 4-14-0922. In December 2014, we granted respondent's motion to consolidate the two appeals.

¶ 26 **II. ANALYSIS**

¶ 27 The only argument respondent raises on appeal is that the State failed to prove him guilty of theft beyond a reasonable doubt in case No. 4-14-0921. Specifically, he asserts the evidence was insufficient to show that he knew the iPod was stolen. According to respondent, his testimony that he purchased the iPod from Skylar with birthday money was "far more reasonable an explanation" than the "self-serving testimony of Skylar."

¶ 28 "Due process requires proof beyond a reasonable doubt in order to convict a criminal defendant." *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008). This standard also applies in delinquency proceedings. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47, 958 N.E.2d 227. "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we must determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *People v. Burney*, 2011 IL App (4th) 100343, ¶ 25, 963 N.E.2d 430. "[We] will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1262, 1266 (1992).

¶ 29 To support an adjudication for theft in this case, the State was required to prove that respondent knowingly obtained control over the iPod under such circumstances as would reasonably induce him to believe the iPod was stolen and with the intent to permanently deprive the owner of its use or benefit. 720 ILCS 5/16-1(a)(4)(A) (West 2012).

¶ 30 Respondent cites *People v. Munoz*, 101 Ill. App. 3d 447, 450, 428 N.E.2d 624, 626 (1981), to support his contention that mere possession of the iPod does not prove beyond a reasonable doubt that he is guilty of theft. In *Munoz*, our supreme court held that a defendant cannot be convicted of theft based solely on the possession of a complainant's property absent

corroborating evidence. *Id.* Respondent then distinguishes the facts of this case from those of *People v. Nelson*, 336 Ill. App. 3d 517, 784 N.E.2d 379 (2003). In *Nelson*, the defendant was convicted of theft after he purchased a laptop computer valued at between \$900 and \$1,100, and a digital camera valued at between \$400 and \$499, for a total of \$380, from an individual at 4 a.m. who refused to give defendant a receipt because "he did not want to put his name on anything." *Id.* at 519-20, 784 N.E.2d at 381. The *Nelson* court held that "a person of ordinary intelligence presented with the computer and camera under these circumstances would reasonably be induced to believe that the merchandise had been stolen." *Id.* at 521, 784 N.E.2d at 382. Respondent argues that in contrast to the defendant in *Nelson*, he purchased the iPod from someone he knew "at slightly below pawnshop prices" so that that person could get a tattoo.

¶ 31 Here, the evidence established that prior to leaving C.B.'s house on August 1, 2013, J.C. searched for her iPod but was unable to locate it. Others at the house, including respondent, knew that J.C. was looking for her iPod. Although J.C. left the house without her iPod, Skylar—who was residing there at that time—continued to look for it but never found it. Skylar testified he did not see J.C.'s iPod again until J.C. retrieved it from the police department.

¶ 32 Sometime between August 1, 2013, and September 27, 2013, a friend gave Skylar a tattoo. Both Skylar and J.C.—who was with Skylar at the time he received the tattoo—testified that the tattoo was free.

¶ 33 After her iPod went missing, J.C. observed respondent in class holding what she believed was her iPod. When confronted by Principal Allen about the iPod, respondent initially told him that the iPod had been a birthday gift from his parents. When told by Allen that a student reported the iPod stolen, respondent asked if that student was J.C. After Allen verified

the serial numbers on the iPod respondent possessed and the iPod box were the same, respondent "broke down [his] story a little more"—this time stating that his parents gave him the money to purchase the iPod from Skylar.

¶ 34 When questioned by Deputy Homan, respondent told him he bought the iPod—which he assumed was brand new—from Skylar for \$50. Respondent agreed \$50 was "one heck of a deal" as an iPod touch costs "in the hundreds of dollars." Respondent further admitted that the iPod was not in a box and did not come with a charger.

¶ 35 Assuming that respondent purchased the iPod from Skylar for \$50—rather than having stolen it from C.B.'s house on August 1, 2013—the circumstances were such as would have reasonably induced respondent to believe the iPod was stolen. According to the evidence presented, respondent knew J.C.'s iPod went missing that day at C.B.'s house. Respondent also knew that an iPod like J.C.'s cost "in the hundreds of dollars" new. Respondent knew the iPod he was purchasing from Skylar—shortly after J.C.'s iPod went missing—did not come in a box or with a charger. As previously stated, it is not this court's function to retry respondent or to determine whether his explanation was more reasonable than that of another witness. The trial court—as the trier of fact—was in the best position to determine the credibility of the witnesses and to resolve conflicts in the evidence. Our review is limited to determining whether *any* rational trier of fact could have found respondent guilty of theft beyond a reasonable doubt based on the evidence presented. Construing the above evidence in the light most favorable to the State—as we must—we find that any rational trier of fact could have found respondent committed a theft beyond a reasonable doubt.

¶ 36

### III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment in case Nos. 4-14-0921 and 4-14-0922.

¶ 38 Affirmed.