2016 IL App (1st) 152986-U

SIXTH DIVISION
March 11, 2016

No. 1-15-2986

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Rondell C., a Minor,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellant	)	
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 15 JD 2004
	)	
Rondell C.,	)	Honorable
	)	Colleen F. Sheehan,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm respondent's adjudication of delinquency for aggravated unlawful use of a weapon and unlawful possession of a firearm. Under one-act, one-crime principles, however, only one of respondent's convictions can stand. We remand the case to the trial court to determine which one of respondent's adjudications is the most serious, vacate the other two convictions, and correct respondent's order of commitment accordingly. Affirmed in part; cause remanded.

¶ 2 Following a hearing, the trial court adjudicated minor-respondent, Rondell C., to be a ward of the court based upon two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(C), (3)(I) (West 2014)) and one count of unlawful possession of a firearm (UPF) (720 ILCS 5/24-3.1(a)(1) (West 2014)). The trial court then sentenced respondent to an indefinite term of incarceration in the Illinois Department of Juvenile Justice. On appeal, respondent contends that the evidence was insufficient to support his delinquency adjudications because the State failed to prove that respondent ever possessed a gun. In the alternative, respondent claims that the State failed to prove beyond reasonable doubt that the gun was a handgun or that it could be concealed on his person. Respondent also contends that one of his adjudications for AUUW and his adjudication for unlawful possession of a firearm must be vacated under one-act, one-crime principles. For the following reasons, we affirm in part and remand with directions.

¶ 3 BACKGROUND

¶ 4 The State alleged in a petition for adjudication of delinquency that, on June 17, 2015, the 16-year-old minor-respondent, Rondell C., committed two counts of the offense of AUUW and one count of UPF. With respect to the AUUW allegations, the State claimed that respondent knowingly carried a firearm when he was not on his own land, home, or place of business, that he did not have a valid Firearm Owner's Identification Card (FOID card) (count I); and was under 21 years of age while in possession of the handgun and was not engaged in lawful activities under the Wildlife Code (count II). As to the UPF count, the State alleged that respondent, being under the age of 18, knowingly possessed a firearm that could be concealed upon his person. The following evidence was adduced at respondent's adjudicatory hearing.

¶ 5 Chicago police officer Andrew McGlynn testified that he had been a police officer for about 16 years, and at around 3:49 p.m. on June 17, 2015, he was on patrol in an unmarked car assigned to the dismissal of classes at Fenger High School. McGlynn met with school officers who relayed information to him regarding possible violence in that area. Based upon the information McGlynn received, he proceeded to the area of South 111th Street and West Halsted Street. McGlynn saw respondent standing behind a clear bus stop shelter with two other individuals. McGlynn saw that respondent was holding a gun "in his hand," and described the firearm as a small .32-caliber with a chrome finish. McGlynn testified that it was "[b]road daylight," he was about ten feet away from respondent, and there was nothing obscuring his view of respondent. As he approached the three individuals, they began to run. Respondent ran eastbound across 111th Street, and the other two individuals ran north on Halsted. McGlynn's partner exited his vehicle and chased the other two on foot, while McGlynn followed respondent in the vehicle. McGlynn said that, when respondent ran across 111th Street, he was holding the firearm with two hands.

¶ 6 McGlynn said that he could not cross the intersection because of heavy traffic, but the foot chase lasted less than two minutes. McGlynn eventually followed respondent, but lost sight of him when respondent went behind a gas station on South Emerald Avenue. When McGlynn arrived at the gas station, he saw respondent trying to make his way to an alley behind the station, but respondent was unable to get over the ten-foot fence just before the alleyway. McGlynn then saw respondent place the weapon at the base of the fence. At that time, McGlynn and two other officers who had just arrived went to the rear of the station, where McGlynn saw respondent attempting to hide behind one of the garbage dumpsters next to rear of the gas station. Although McGlynn briefly lost sight of the weapon for a few seconds when he went

from the front of the station to the back to apprehend respondent, McGlynn said the weapon was in the same place, no other individuals were near the weapon, and McGlynn did not lose sight of it after that point. McGlynn said the weapon recovered was a .32-caliber chrome handgun, which appeared to be the same handgun he initially saw respondent holding.

¶ 7 McGlynn assisted the other officers in placing respondent into custody, and then he recovered the weapon, removed the six bullets from it, and placed it in his vest pocket. McGlynn later turned the gun over to his partner at the police station. McGlynn testified that he questioned respondent and determined that respondent was under 18 years of age, did not have a FOID card, and was not "engaged in any action under the Wildlife Code."

¶ 8 Counsel for respondent did not cross-examine McGlynn, and the State then rested. The trial court denied respondent's motion for a directed verdict, and respondent then testified on his own behalf. Respondent denied ever having a gun. He said that he went to the gas station with two friends, and he went inside just as a police car had driven by. When he walked out of the gas station, the three individuals crossed 111th Street to go back to the bus stop. When they got there, respondent said that a black truck "rode up on us," and the people in the truck got out and pointed their guns at them. Respondent said he then ran back to the gas station and hid behind the dumpster in back of it. Respondent reiterated that he did not have a gun at any time and that none of his friends had a gun, either.

¶ 9 After about two or three minutes of hiding, respondent said a female officer came around with a gun and told him to "get on the floor." Respondent said that he never saw McGlynn. Respondent, however, said that the officers put him in a police car for about 30 minutes and then told him that they had recovered a gun "somewhere around there."

¶ 10 The State did not cross-examine respondent, and the defense rested. The parties then presented their closing arguments. At the conclusion of the hearing, the trial court found respondent guilty of all counts but did not indicate that any of the charged offenses would merge. Following a dispositional hearing, the trial court committed respondent to the Illinois Department of Juvenile Justice. Respondent's order of commitment indicates that the "Committing charge(s)" is AUUW, with a statutory citation of "720 ILCS [5/]24-1.6(a)." There is no indication whether the committing charge relates to count I (no FOID card), count II (under age 21), or both. This appeal followed.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent contends that the evidence was insufficient to support his delinquency adjudications for AUUW because the State failed to prove that respondent possessed a gun. Respondent notes that the "alleged" gun was not introduced at respondent's hearing, nor was any evidence presented that the gun was properly inventoried and assigned an inventory number, nor was there any description to establish that it met the statutory definition of a handgun. Alternatively, respondent argues that the State failed to prove that the gun respondent had could be concealed about his person or that the gun met the statutory definition of "handgun" because McGlynn testified that respondent held the weapon in both hands while crossing the street.

¶ 13 When presented with a challenge to the sufficiency of the evidence, we must consider 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 added.) *In re W.C.*, 167 Ill. 2d 307, 336 (1995). Reasonable inferences drawn from the evidence are the responsibility of the trier of fact, and where, as here, a criminal conviction is

based solely on circumstantial evidence, we may not set it aside unless the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the respondent's guilt. *Id.* This court may not retry the accused. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is for the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *Id.* at 211. Moreover, a finder of fact is not required to accept any possible explanation compatible with an accused's innocence and elevate it to the status of reasonable doubt. *People v. Herrett*, 137 Ill. 2d 195, 206 (1990). Finally, the testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Smith,* 185 Ill. 2d 532, 541 (1999).

¶ 14 Under section 24-1.6(a)(1), (3)(C) of the Criminal Code of 2012 (Code), a person commits the offense of AUUW by knowingly possessing "a pistol, revolver, *** or other firearm" without having been issued a currently valid FOID card. 720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2014). With certain exceptions not relevant here, section 24-1.6(a)(1), (3)(I) prohibits a person under the age of 21 from possessing a "handgun," which is defined (with reference to section 5 of the Firearm Concealed Carry Act) in part as "any device which is designed to expel a projectile *** that is designed to be held and fired by the use of a single hand." 720 ILCS 5/24-1.6(a)(1), (3)(I) (West 2014); 430 ILCS 66/5 (West 2014). Section 24-3.1(a)(1) of the Code states that a person commits the offense of UPF when he is "under 18 years of age and has in his possession any firearm of a size which may be concealed upon the person." 720 ILCS 5/24-3.1(a) (West 2014).

¶ 15 In this case, Officer McGlynn testified that he saw respondent holding a gun while standing behind a bus stop shelter. McGlynn described the gun as a small .32-caliber with a chrome finish, and noted that he was within ten feet and had an unobscured view of respondent

in "[b]road daylight." When respondent fled at the sight of McGlynn, McGlynn followed in his patrol car and McGlynn again saw respondent carrying the gun when he ran across a busy street. McGlynn admitted that he lost sight of respondent for a few seconds when respondent ran behind a gas station, but when McGlynn caught up to respondent, McGlynn saw respondent place the same gun at the foot of a fence that respondent had unsuccessfully tried to climb. McGlynn then arrested respondent, who had hidden behind some garbage dumpsters. McGlynn noted that the gun that was at the foot of the fence was the same weapon he had seen respondent carrying, no one else was near the gun, and McGlynn had not lost sight of it. McGlynn further confirmed that the recovered gun looked like the same gun he had seen respondent holding earlier: a small .32-caliber chrome handgun. This testimony was unchallenged on cross-examination, and is sufficient to establish beyond a reasonable doubt that respondent possessed a gun. Although respondent argues that the State failed to produce the gun, a photograph of it, or even corroborating testimony that a gun was recovered, it is well established that the testimony of only one witness is sufficient to convict. See *Smith,* 185 Ill. 2d at 541. Here, McGlynn, a 16-year police veteran, provided sufficient testimony that respondent was in possession of a gun. Respondent's contention is therefore without merit.

¶ 16 Moreover, our decision is unaffected by respondent's reliance upon *In re Nasie M.*, 2015 IL App (1st) 151678. There, the respondent was convicted of, among other things, AUUW and UPF. *Id.* ¶ 15. There was, however, no eyewitness testimony that the respondent had possession of a gun. *Id.* ¶ 27. Instead, the evidence in that case rested primarily upon a police detective's testimony that the respondent first claimed (while at the hospital) that he was shot while running away but changed his story and admitted to accidentally shooting himself. *Id.* ¶ 26. The respondent, however, denied this and claimed that he was shot in the bottom of his foot while

being chased. *Id.* He also said that he was under the influence of pain medication. *Id.* Here, by contrast, there was eyewitness testimony from Detective McGlynn that provided sufficient evidence in support of respondent's delinquency adjudication. Therefore, respondent's reliance upon *Nasie M.* is misplaced.

¶ 17 Respondent's challenge in the alternative is also unavailing. Respondent correctly recounts McGlynn's testimony that he saw respondent carry the gun with two hands while crossing a busy street. There was additional evidence, however, that the gun was capable of being concealed and that it met the definition of a handgun (*i.e.*, capable of being held with only one hand). Specifically, McGlynn testified that he initially observed respondent holding the gun in his "hand." In addition, McGlynn said that, when he recovered the gun from the base of the fence and unloaded it, he put the weapon in his vest pocket. From this testimony, the trial court could reasonably have inferred that the weapon could be held with only one hand and, since it fit in a vest pocket, could also be concealed on the person. McGlynn also repeatedly described the weapon respondent was holding as "small" and a "handgun." Viewing the evidence in the light most favorable to the State, as we must (*W.C.*, 167 Ill. 2d at 336), we cannot hold that no rational trier of fact would have found the essential elements of the crime beyond a reasonable doubt. Respondent's claim in the alternative thus fails.

¶ 18 Finally, respondent contends, and the State agrees, we must vacate one of his adjudications for AUUW and the adjudication for UPF under the one-act, one-crime doctrine because the adjudications were carved from the same physical act: namely, his possession of a firearm.

¶ 19 Under one-act, one-crime principles, a defendant cannot be convicted of multiple offenses "carved from the same physical act," where "act" is defined as "any overt or outward

manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977). When multiple convictions are obtained for offenses arising from a single act, the trial court should impose sentence on the more serious offense and vacate the conviction on the less serious offense. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). To determine which offense is the more serious, a reviewing court ordinarily compares the relative punishments imposed for each offense, but if the degree of the offenses and their sentencing classifications are identical, we may also consider which conviction has the more culpable mental state. *Id.* at 170-71. If, however, we cannot determine which offense is the more serious of the two or more convictions based on a single physical act, we must remand the cause to the trial court for that determination. *Id.* at 177. We review one-act, one-crime challenges *de novo*. *Id.* at 161.

¶ 20 In this case, the State charged respondent with AUUW for possessing a firearm either without a valid FOID card (count I) or for being under 21 and not engaged in activities under the Wildlife Code (count II). As to the UPF count, the State alleged that respondent, being under the age of 18, knowingly possessed a firearm that could be concealed upon his person. The State, however, did not apportion the charges to different discrete acts: The AUUW counts merely alleged that respondent possessed a gun without a FOID card and for being under 21, and the UPF count merely alleged that respondent possessed a gun that could be concealed. Thus, the AUUW counts and the UPF count were carved from precisely the same physical act—possessing a firearm—and two of those counts cannot stand. Consequently, we must determine which conviction is the most serious. See *id.* at 170-71.

¶ 21 The AUUW convictions and the UPF conviction have the same mental state of "knowledge." See 720 ILCS 5/24-1.6(a)(1), (3)(C), (3)(I) (West 2014); 720 ILCS 5/24-3.1(a)(1) (West 2014). In addition both versions of AUUW (as alleged here) and UPF are Class 4 felonies

with the same sentencing range. See 720 ILCS 5/24-1.6(d)(1) (West 2014); 720 ILCS 5/24-3.1(b) (West 2014); 730 ILCS 5/5-4.5-45(a) (West 2014) (Class 4 felony sentencing range is not less than one year and not more than three years). On this basis, we must remand this matter to the trial court for that determination. See *Artis*, 232 Ill. 2d at 177.

¶ 22 Furthermore, the record in this case reveals that the order of commitment also only refers generally to the AUUW statute as the committing offense without specifying which of the two AUUW counts forms the basis of the commitment order. If the trial court determines that one of the AUUW counts is the more serious conviction, then the order of commitment should specify which count is the committing offense and vacate all others.

¶ 23 CONCLUSION

¶ 24 The evidence was sufficient to support respondent's delinquency adjudications for AUUW and UPF. The State presented sufficient evidence to establish that respondent possessed a gun and that the gun could be concealed about the person. Under the one-act, one-crime rule, however, only one of respondent's adjudications may stand. Therefore, we remand the cause to the trial court to: (1) determine which of respondent's delinquency adjudications is the most serious, (2) vacate the other two adjudications, and (3) correct respondent's order of commitment accordingly. We affirm the judgment of the trial court in all other respects.

¶ 25 Affirmed in part; cause remanded.