FOURTH DIVISION
September 8, 2016

No. 1-16-1014

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Marquise W., a Minor		
(The People of the State of Illinois,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 16 JD 140
	)	
Marquise W.,	)	Honorable
	)	Marianne Jackson,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment adjudicating respondent delinquent based on finding him guilty of unlawful use of a weapon for not having a valid FOID card is vacated because the State failed to adduce sufficient evidence respondent had not been issued a FOID card, and respondent's adjudication of delinquency for theft from the person is vacated on one-act, one-crime principles.

¶ 2 The circuit court of Cook County adjudicated respondent delinquent based on finding him guilty of armed robbery, aggravated battery, theft from the person, and aggravated unlawful use of a weapon (AUUW) based on not having been issued a currently valid FOID card. For the

following reasons, respondent's adjudications for AUUW and theft from the person are vacated. In all other respects, the judgment of the circuit court is affirmed.

¶ 3 BACKGROUND

¶ 4 The State filed a petition for adjudication of wardship against respondent, Marquise W., charging him with having committed armed robbery, aggravated battery, theft from the person, and three counts of aggravated unlawful use of a weapon (AUUW), including one count based on not having a valid Firearm Owner's Identification (FOID) card. The petition arose from an incident in which four males struck the victim on his head and took his cellular telephone. The victim testified that after he was struck on the head he observed four men standing over him. One of the men pointed a gun at the victim while another took his phone. Police responded and four men fled from behind a vehicle in the vicinity of the robbery. Police recovered the victim's cell phone behind the vehicle. Police ultimately discovered one of the men who fled hiding on residential property and two other men hiding behind a truck. Police identified respondent as the man hiding on the residential property. The victim later identified respondent by his clothing. One of the men hiding behind the truck was Jaquon W., a minor, who was tried jointly with respondent. While pursuing the suspected offenders, police observed Jaquon W. throw an object over a fence. Police later recovered a gun from the area Jaquon threw the object, which the victim identified as the gun used in the robbery. Police testified that while "processing" respondent he was not able to produce a valid FOID card. The trial court sentenced respondent to the custody of the Illinois Department of Juvenile Justice and continued the matter for Bring Back in eight months.

¶ 5 ANALYSIS

¶ 6 Respondent argues the State failed to prove beyond a reasonable doubt that he had not been issued a currently valid FOID card, or that he actually or constructively possessed the gun

or was accountable for Jaquon W.'s possession of the gun without a valid FOID card. The State does not dispute that the only evidence in support of finding that respondent had not been issued a valid FOID card is the officer's testimony that he failed to produce a valid FOID card during processing. Respondent argues the officer's testimony fails to establish respondent had not been *issued* a valid FOID card. Respondent also argues evidence that respondent is a minor (respondent was under 18-years old at the time of the offense) is insufficient to support his adjudication because a minor under 21-years old is permitted to obtain a FOID card with his or her parents' consent. See 430 ILCS 65/4(a)(2)(i) (West 2014).

¶ 7 Section 4 of the Firearm Owners Identification Card Act (FOID Card Act) states that an applicant for a FOID card must "Submit evidence to the Department of State Police that: (i) He or she is 21 years of age or over, or if he or she is under 21 years of age that he or she has the written consent of his or her parent or legal guardian to possess and acquire firearms and firearm ammunition." 430 ILCS 65/4(a)(2)(i) (West 2014). Even without consent, respondent argues, a minor may appeal to the Director of the Illinois State Police, who may issue a FOID card to the minor. *Horsley v. Trame*, 808 F.3d 1126, 1132 (7th Cir. 2014) (citing 430 ILCS 65/10(c) (West 2014)). In *Horsley*, the Seventh Circuit held that Illinois, specifically section 4(a)(2)(i) of the FOID Card Act "does not impose a categorical ban on firearm possession for 18-to-20-year-olds whose parents do not consent." The court found that

> "the FOID Card Act does not in fact ban persons under 21 from having firearms without parent or guardian consent. Having a parent or guardian signature may speed up the process, but it is not a prerequisite to obtaining a FOID card in Illinois. Rather, a person for whom a parent's signature is not available can appeal to the Director of the Illinois State Police. Upon a sufficient showing regarding the applicant's criminal record, lack of dangerousness, and the public

> interest, the Director may issue a card. 430 ILCS 65/10(c). And if the Director were to deny the application, the denial is subject to judicial review. 430 ILCS 65/11(a)." *Id.* at 1131-32.

¶ 8 We note the *Horsley* court's focus on the ability of 18-to-20-year-olds to obtain a FOID card. See *id.* at 1132 ("The absence of a parent or guardian signature is not a 'veto' on the ability of a person *between 18 and 21* to get a FOID card in Illinois.") (Emphasis added.)). Respondent is under 18-years old. Nonetheless, that fact is not sufficient to prove beyond a reasonable doubt respondent had not been issued a valid FOID card. The FOID Card Act does not impose a minimum-age requirement on applying for a FOID card (see 430 ILCS 65/4 (West 2014) (application for FOID card)), and being under 18-years old is not grounds to deny an application (see 430 ILCS 65/8 (grounds for denial and revocation)). The State concedes the evidence is not sufficient to prove respondent guilty beyond a reasonable doubt of AUUW for not having been issued a valid FOID card and the State does not assert that the trial court found respondent guilty on a theory of accountability for one of the other offenders. We agree the evidence does not prove respondent was not issued a valid FOID card. We have no need to reach respondent's alternative argument the State failed to prove respondent possessed the gun for purposes of the AUUW charge. The trial court's adjudication as to AUUW for having not been issued a currently valid FOID card is vacated.

¶ 9 Next, respondent argues his conviction for theft should be vacated under one-act, one-crime principles because his adjudications for armed robbery and theft from the person were based on the same physical act, and theft from the person is the less-serious offense. Although this claim of error was not preserved for review, respondent argues a violation of one-act, one-crime principles affects the integrity of the judicial process and therefore is plain error.

¶ 10 Under the one-act, one-crime rule, "a defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act. [Citations.] Thus, if a defendant is convicted of two offenses based upon the same single physical act, the conviction for the less serious offense must be vacated." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). The one-act, one-crime rule applies to juvenile proceedings, and "it is well established that a one-act, one-crime violation affects the integrity of the judicial process, thus satisfying the second prong of the plain-error test." *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009). The State concedes that the armed robbery and theft stem from the same physical act, thus respondent's multiple delinquency adjudications cannot stand. We agree.

¶ 11 "In this context, an 'act' is any overt or outward manifestation which will support a different offense. [Citations.]" (Internal quotation marks omitted.) *People v. Kotero*, 2012 IL App (1st) 100951, ¶ 20. We look to the charging instrument to determine whether the two offenses were based on the same act. *Id.* ¶ 22. The State's petition for adjudication charged respondent with committing armed robbery in that he knowingly took a cell phone from the victim by the use of force or threatening the imminent use of force. The theft charge alleged that respondent "obtained by threat control over property" of the victim, "to wit: cell phone." The two adjudications were based on the same act of taking the victim's cell phone and both cannot stand. In this case, the adjudication for the less serious offense must be vacated. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Common sense indicates that the legislature will provide a greater punishment for the crime it deems to be more serious. *Id.* Here, theft, a Class 3 felony (720 ILCS 5/16-1(b)(4) (West 2014)) is less serious than armed robbery, a Class X felony (720 ILCS 5/18-2(a)(2), (b) (West 2014)). Accordingly, respondent's adjudication for theft from the person is vacated.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons the judgment of the circuit court of Cook County is affirmed in part, and vacated in part.

¶ 14 Affirmed in part and vacated in part.