2018 IL App (1st) 172164-U

FIFTH DIVISION
June 29, 2018

No. 1-17-2164

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).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re D.M., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 17 JD 979
v.	)	
	)	
D.M.,	)	Honorable
	)	Marianne Jackson,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where the evidence was sufficient to prove respondent guilty beyond a reasonable doubt of aggravated unlawful use of a weapon.

¶ 2 Following a bench trial, respondent D.M., a 17-year-old minor, was found guilty of one count of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1)(3)(I) (West 2016)) and adjudicated a delinquent minor pursuant to the Juvenile Court Act of 1987 (705 ILCS

405/5 *et seq*. (West 2016)). On appeal, respondent contends the State failed to prove him guilty beyond a reasonable doubt of AUUW as the evidence did not produce a reasonable inference that he possessed a firearm. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The State filed a petition for adjudication of wardship of 17-year-old D.M., alleging that, on May 21, 2017, he committed numerous offenses including one count of unlawful possession of a firearm (UPF) based on his possession of a firearm which could be concealed, and two counts of AUUW based on (1) his possession of a firearm while not engaged in a wildlife activity, and (2) his possession of a firearm without a valid firearm owner's identification (FOID) card. The matter then proceeded to a bench trial on these three counts.

¶ 5 At trial, the State presented the testimony of Chicago police officers Carter (Carter), Zych (Zych),[1] and Patrick Bridges (Bridges), and adduced the following evidence. On May 21, 2017, while on patrol, Carter was approached by an individual who stated he had been robbed at gunpoint. The individual indicated that the offenders were in a silver sedan two blocks away, and were in possession of the firearms. Carter called for backup and approached the vehicle at a traffic light. He observed four occupants, including respondent who was seated in the backseat on the passenger's side with another passenger. Carter curbed the vehicle and ordered the occupants to exit, but they refused and both backseat passengers refused to keep their hands up. Carter then observed respondent and the other passenger moving their hands at their sides and "fidgeting." Respondent ultimately exited the vehicle and was searched by Zych, who discovered the magazine to a .40-caliber handgun in respondent's front pants pocket.

¶ 6 Shortly thereafter, Bridges arrived on the scene in a police squadrol wagon, which he had

[1] The first name of Carter and Zych are not included in the record. The parties did not elicit testimony of the officers' first names, and the first names do not appear in the charging instrument.

inspected for contraband prior to beginning his shift. The wagon was empty at that time, and Bridges did not apprehend any other individuals that day prior to respondent's arrest. The officers placed respondent inside of the wagon and performed a second search, which did not produce any additional contraband. The officers then seated the handcuffed respondent in the middle of a bench inside the wagon, buckled his seatbelt, and locked the wagon door. Bridges then drove about three minutes to the police station, followed by Carter. Respondent was alone in the back of the vehicle during the entire time he was being transported to the police station.

¶ 7 Upon arriving at the police station, Bridges opened the wagon door and observed that respondent had removed his seatbelt and had moved down the bench. Bridges further observed a small handgun on the bench across from respondent. The handgun was a diminutive, compact model measuring only three and a half by four or five inches. Carter testified that the magazine previously discovered in respondent's pocket was compatible with this handgun.

¶ 8 At the close of the State's evidence, respondent moved for a directed verdict. The trial court granted the motion as to the AUUW charge based on respondent's possession of a firearm without a valid FOID card because the State failed to produce any evidence that respondent was not issued such a card. The trial court denied the motion as to the UPF charge and the AUUW charge based on respondent's possession of a firearm while not engaged in a wildlife activity.

¶ 9 Respondent then testified as follows. On the day of his arrest he was thoroughly searched upon exiting the sedan. Respondent denied carrying a magazine for a .40-caliber handgun and denied that the officers discovered one in his pocket. He further testified he was searched a second time before being handcuffed and placed in the squadrol wagon. According to respondent, during the second search an officer reached under his clothes but only shook his undergarments without reaching in. Respondent was then placed in the vehicle and an officer

buckled his seatbelt while he remained handcuffed. The officers then searched the sedan before returning to the wagon to perform a third search of respondent. During the third search, respondent's seatbelt, handcuffs, and pants were removed and an officer searched him over his undergarments. He was then handcuffed, seated in the wagon, and transported to the police station. Respondent denied the officers buckled his seatbelt after the third search. He further denied that (1) he was in possession of a handgun on the day of the robbery, (2) he removed his seatbelt while he was in the wagon, (3) he removed the firearm in the wagon, and (4) he placed the firearm on the bench across from him.

¶ 10 Following the closing arguments, the trial court found respondent delinquent based on his commission of AUUW while not engaged in a wildlife activity, and not guilty of the UPF charge. The trial court specifically stated it found credible Bridges' testimony that a firearm was not in the wagon prior to respondent's arrest. The trial court further stated that respondent possessed the handgun and placed it down in the wagon. A combined sentencing hearing was held for the case at bar and respondent's unrelated probation violation in another case. As to the case at bar, the trial court entered a "finding and judgment of guilty to stand" and closed the case. With respect to the probation violation, the trial court adjudged respondent a ward of the court and committed him to the Department of Juvenile Justice. This appeal followed.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent argues the evidence was insufficient to support his delinquency adjudication for AUUW because the State failed to prove beyond a reasonable doubt that he possessed the handgun discovered in the squadrol wagon. Respondent contends the evidence does not give rise to a reasonable inference of his guilt because (1) the officers searched him at least twice and failed to discover the firearm, (2) none of the officers observed him with the

firearm in his possession, (3) the State failed to present physical evidence linking him to the firearm, (4) there was nowhere for him to hide the weapon, and (5) the weapon's presence in the squadrol wagon gave rise to many possible explanations. Accordingly, respondent requests this court reverse his adjudication of delinquency. For the reasons that follow, we affirm.

¶ 13 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 the 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 determination of the weight to be given the testimony, witnesses' credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *People v. Austin M.*, 2012 IL 111194, ¶ 107. When the evidence produces conflicting inferences, the trier of fact resolves the conflict. *People v. Tates*, 2016 IL App (1st) 140619, ¶ 17. Moreover, when considering the sufficiency of the evidence, it is not the function of the reviewing court to retry the respondent, and we will reverse a conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 14 In order to find respondent guilty of AUUW, the State needed to prove he knowingly possessed a handgun while he was under the age of 21 and not engaged in a lawful activity under the Wildlife Code. 720 ILCS 5/24-1.6(a)(1)(3)(I) (West 2016).

¶ 15 Respondent contends the evidence was insufficient to find him in constructive possession of the handgun. The element of possession may be satisfied by either actual or constructive

possession of the weapon. *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009). "Actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material." *People v. Givens*, 237 Ill. 2d 311, 335 (2010). In order to establish constructive possession, the State must prove beyond a reasonable doubt that respondent: (1) had knowledge of the presence of the weapon; and (2) exercised immediate and exclusive control over the area where the weapon was found. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. The State may demonstrate knowledge through evidence of a defendant's acts, declarations, or conduct, from which it may be inferred that he knew of the firearm's presence. *Id*.

¶ 16 We may also consider any other relevant circumstantial evidence to infer a defendant's knowledge of a firearm. *People v. Bailey*, 333 Ill. App. 3d 888, 892 (2002). Circumstantial evidence is proof of facts and circumstances from which the trier of fact may infer other facts which reasonably and usually follow according to common experience. *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010). "In determining the reasonableness of an inference, the trier of fact need not look for all possible explanations consistent with innocence or 'be satisfied beyond a reasonable doubt as to each link in the chain of circumstances.' " *In re Nasie M.*, 2015 IL App (1st) 151678, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007)). It is sufficient if all of the evidence taken together satisfies the trier of fact of the defendant's guilt beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). The trier of fact need not disregard the inferences that flow normally from the evidence before it. *People v. Patterson*, 217 Ill. 2d 407, 435 (2005). Moreover, we "must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 17 We find *People v. Peete*, 318 Ill. App. 3d 961, 963-66 (2001), to be instructive. In *Peete*, the officers testified the defendant fled down an alley and reached into his waistband in what looked like an attempt to remove an object. *Id*. at 965. The defendant then turned a corner and remained out of view of the officers for several seconds. *Id*. When the officers next observed the defendant, he was no longer reaching into his waistband. *Id*. at 963, 965. The officers ultimately captured the defendant and a handgun was discovered by a homeowner behind the hedges of the residence located on the same corner the defendant had run past. *Id*. at 964-65. The owner of the residence testified that his children had played on the porch earlier that day and his father-in-law had performed yard work, and no one had noticed a firearm. *Id*. at 965-66. When the weapon was discovered by his wife, it was clean and lying on top of paint debris that had fallen from the porch. *Id*. at 964-65. Additionally, the firearm was visible from the porch where his children had played earlier. *Id*. at 965. On appeal from the defendant's conviction of possession of a weapon, the reviewing court affirmed, holding that based on the circumstantial evidence described above, a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id*. at 966. This was so despite the fact that none of the officers observed the defendant in possession of the handgun. *Id*. at 963-66.

¶ 18 The circumstantial evidence in this case is similarly sufficient to find that respondent constructively possessed the firearm. *Id*. Most notably, in this case, as in *Peete*, the weapon was discovered in an area where witnesses had not observed a firearm prior to respondent's presence. *Id*. at 965-66. Moreover, as in *Peete*, the responding officers in this case testified to respondent's suspicious behavior. *Id*. at 965. Specifically, while the officers in *Peete* observed the defendant attempting to remove an object from his waistband, here the officers observed respondent moving his hands near his sides and refusing to keep his hands up while in the sedan. *Id*. The

officers later observed respondent in the squadrol wagon with his seatbelt removed, in a different position than where the officers had placed him, and across from the handgun. We further observe that here, as in *Peete*, none of the officers observed respondent with the weapon. *Id*. at 963-65.

¶ 19 In addition, the remaining circumstantial evidence in this case is even stronger than that in *Peete* and establishes respondent (1) had knowledge of the weapon and (2) exercised immediate and exclusive control over the squadrol wagon when the weapon was discovered. First, respondent's knowledge of the presence of a firearm may be inferred from the evidence that was presented at trial (*Sams*, 2013 IL App (1st) 121431, ¶ 10; *Bailey*, 333 Ill. App. 3d at 892), which included (1) that respondent was observed failing to keep his hands up while in the sedan and instead moving them near his sides, (2) respondent's possession of a .40-caliber magazine which was compatible with the handgun, (3) the handgun was the smaller, compact model, (4) respondent's testimony that the officer who searched him did not reach into his undergarments, (5) testimony from three officers that the squadrol wagon was empty prior to respondent's apprehension, and (6) Bridges' testimony that respondent removed his seatbelt while in the squadrol wagon and was discovered in a different seat on the bench. All of this evidence supports the reasonable inference that, while in the wagon, respondent unbuckled his seatbelt, removed the firearm from inside his undergarments, and placed the weapon across from him on the bench. See *Sams*, 2013 IL App (1st) 121431, ¶ 10; *Bailey*, 333 Ill. App. 3d at 892; *Peete*, 318 Ill. App. 3d at 965-66.

¶ 20 Second, the evidence further supports that respondent exercised immediate and exclusive control over the back of the squadrol wagon. The testimony established respondent was placed in the back of the empty wagon and the door was locked. Respondent was the only individual

present in the back of the vehicle during his transportation to the police station and the weapon was discovered immediately upon his arrival at the police station. Thus, during his transport to the police station, respondent was the only individual in control of the back of the wagon. These facts therefore give rise to the reasonable inference that respondent possessed the weapon. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (control over the location where a weapon is found gives rise to an inference that defendant possessed the weapon).

¶ 21 Even if respondent did not have control over the back of the vehicle, such control is not a prerequisite for a finding of constructive possession provided there is sufficient circumstantial evidence of possession. *People v. Adams*, 161 Ill. 2d 333, 344-45 (1994). Here, in light of all of the circumstantial evidence described above, the conclusion that respondent possessed and hid the weapon inside his undergarments is an inference that "flow[s] normally from the evidence." *Patterson*, 217 Ill. 2d at 435. Respondent's fidgeting movements in the sedan, and his movement in the wagon, combined with the diminutive size of the firearm and testimony that the squadrol wagon was empty prior to respondent's apprehension create a reasonable inference that respondent was, in fact, in possession of the firearm such that a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Givens*, 237 Ill. 2d at 334. Viewing the evidence in the light most favorable to the State, we conclude that the evidence in this case was sufficient to support the trial court's finding that respondent was guilty of AUUW.

¶ 22 Respondent's contention that the weapon's presence in the wagon gave rise to many possible explanations is meritless, as "the trier of fact need not look for all possible explanations consistent with innocence." *Nasie M.*, 2015 IL App (1st) 151678, ¶ 24. Based on the trial court's acceptance of Bridges' testimony that the wagon was empty prior to respondent's arrest, the trial court may reasonably infer that respondent possessed the firearm and removed it in the squadrol

wagon. See *id.*; *McPeak*, 399 Ill. App. 3d at 801; *Patterson*, 217 Ill. 2d at 435. Moreover, in light of the evidence presented, the fact that Zych did not discover the firearm during his search of respondent does not render the verdict " 'so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt of [respondent's] guilt.' " *In re Gregory G.*, 396 Ill. App. 3d 923, 926 (2009) (quoting *People v. Ross*, 229 Ill. 2d 255, 272 (2008)). The small size of the weapon combined with respondent's exclusive control over the wagon and his testimony that the officers did not search inside his undergarments is sufficient evidence to create a reasonable inference that respondent was in possession of the firearm. See *Sams*, 2013 IL App (1st) 121431, ¶ 10; *McCarter*, 339 Ill. App. 3d at 879; *Bailey*, 333 Ill. App. 3d at 892; *Peete*, 318 Ill. App. 3d at 965-66.

¶ 23 CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.