

No. 1-12-1253

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> Matthew B., a minor)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 JD 679
)	
MATTHEW B.,)	Honorable
)	Stuart F. Lubin,
Respondent-Appellant).)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

ORDER

HELD: Judgment entered on respondent's conviction of aggravated unlawful use of a weapon affirmed over his claims that trial counsel was ineffective for failing to file a motion to quash his arrest and suppress his inculpatory statement, that the State failed to prove him guilty beyond a reasonable doubt, and that the trial court erroneously denied his motion to suppress statements; respondent's conviction pursuant to section 24-1.6(a)(1), (a)(3)(A) of the aggravated unlawful use of a weapon statute reversed pursuant to *Aguilar*; cause remanded with directions.

¶ 1 Following a bench trial, minor-respondent Matthew B. was found guilty of three counts of aggravated unlawful use of a weapon (AUUW), one count of unlawful possession of firearms (UPF), and one count of criminal trespass to real property, then sentenced to 3 years on a single count of AUUW. On appeal, respondent contends that: (1) trial counsel was ineffective for failing to file a motion to quash arrest and suppress evidence; (2) the State failed to prove him guilty of AUUW and UPF beyond a reasonable doubt; (3) the trial court erroneously denied his motion to suppress statements; and (4) three of his convictions must be vacated under the one-act, one-crime rule. For the following reasons, we affirm in part, reverse in part, and remand with directions.

¶ 2 BACKGROUND

¶ 3 On December 17, 2012, respondent was arrested inside a home at 2148 North Moody Avenue, in Chicago, for criminal trespass. After his arrest, he volunteered that he was the owner of a small handgun found in a gangway on the south side of the property. He was subsequently charged in a petition for adjudication of wardship with three counts of AUUW, one count of UPF, and one count of criminal trespass to real property.

¶ 4 Prior to trial, defense counsel filed a motion to suppress statements alleging that respondent was not read his *Miranda* rights prior to being interrogated by police. At the suppression hearing, Chicago police officer Blomstrand testified that about 6:20 p.m. on February 17, 2012, he responded to a call of a man with a gun at 2148 North Moody Avenue, in Chicago. Upon arriving at that location, a sergeant on the scene informed the officer that a group of males had been standing in front of the house when he pulled up. The sergeant stated that the group "took off" running along the south side of the house towards the rear and that one of the individuals in the group matched the description of the person with the gun, namely, a Hispanic

male in a light blue hoody. Officer Blomstrand and his partners went to the rear of the house, and there, Officer Blomstrand saw a male Hispanic in a light blue hoody, whom he identified as respondent. He testified that respondent was attempting to exit the house, but that he then shut the door when he noticed the officers. Officer Blomstrand and his fellow officers made forced entry into the house and found respondent and three other males inside. The officers detained all four men and patted them down for weapons. A short time later, Tammy Clara, a resident of the home, told the officers that her brother lived at the house, but that everyone else, including respondent, had been repeatedly told that they could not be in or around the home. She requested that everyone except her brother be arrested for trespassing, and the parties stipulated that three people were ultimately arrested. Officer Blomstrand testified that respondent was arrested for criminal trespass.

¶ 5 Officer Blomstrand and his fellow officers subsequently brought the arrestees out of the home. As Officer Blomstrand was walking through the gangway on the south side of the house, where the arrestees had initially been seen running, he noticed a small semi-automatic pistol lying on the ground. He recovered the weapon and rendered it safe, then told the other officers, "hey, look what's laying here. Look what I found." The officers looked at the arrestees, and respondent stated, "yeah, that's my gun." Respondent then looked at his friend and said that "he was sorry for bringing it to the house and that he didn't want to get them in trouble." Officer Blomstrand testified that neither he nor his fellow officers questioned respondent or the other arrestees. On cross-examination, Officer Blomstrand stated that respondent was in handcuffs and had not been read his *Miranda* rights when he made the statement about the gun.

¶ 6 The defense did not present any evidence at the suppression hearing, and the trial court denied respondent's motion to suppress statements. The court noted that *Miranda* applies to custodial interrogation and stated, "You have got custody but no interrogation."

¶ 7 At the ensuing trial, Officer Blomstrand was called again and largely reiterated his testimony from the motion to suppress hearing. He testified that about 6:20 p.m. on February 17, 2012, he responded to a call of a person with a gun at 2148 North Moody Avenue. He testified that the sun was starting to go down at that time and that "it was right in between it being *** daylight and the night was coming." He and his fellow officers initially walked through a gangway and went to the rear of the house. There, he saw respondent step out of the house wearing a light blue hooded sweatshirt, then go back into the house and slam the door when he saw the officers. The officers went after respondent because he matched the description of a person with a gun. They entered the house into the kitchen and discovered respondent and other individuals inside. Once they had detained everyone and patted them down for weapons, they asked the detainees for their names and tried to determine who lived at the house. At some point, the officers spoke with a resident of the house named Tammy Clara. Thereafter, they arrested three of the four individuals for criminal trespass, one of whom was respondent.

¶ 8 Officer Blomstrand testified that he spent about 15 minutes in the house. He then brought respondent out the rear of the house and led him through the gangway towards the front. As he was walking through the gangway, he noticed a small chrome semi-automatic pistol lying on the ground. He recovered the gun, rendered it safe, and showed it to the other officers with him. The officers looked at the three arrestees, then respondent said that the gun was his and that "he ran because he didn't want to get his boys in trouble."

¶ 9 The parties stipulated that respondent was 13 years of age at the time of his arrest. Officer Blomstrand testified that he did not attempt to determine whether respondent had a valid Firearm Owner's Identification (FOID) Card because respondent was a minor and minors cannot own firearms or apply for a FOID card. He further testified that the recovered firearm was uncased and loaded with five live rounds. On cross-examination, Officer Blomstrand clarified that he showed the gun to his fellow officers, but not to respondent.

¶ 10 Tammy Clara testified that she is 21 years old and lives at 2148 North Moody Avenue with her mother, her two brothers, and her two children. Shortly after 6:30 p.m. on February 17, 2012, Clara arrived home to find police inside of her house along with respondent. Clara knew respondent through her 15-year-old brother and had last seen him at the house in the summer of 2011. Clara testified that, at that time, a police officer spoke with respondent at her request and told him that he was not welcome around the property. On February 17, 2012, Clara had not given respondent permission to be in the house and her mother was not home at the time either.

¶ 11 The defense rested without presenting any evidence, and the trial court subsequently found respondent guilty on all charges. The court then committed respondent to the Illinois Department of Juvenile Justice (Department) for "aggravated unlawful use of a weapon" and sentenced him to a term of three years. This appeal follows.

¶ 12 ANALYSIS

¶ 13 Respondent first contends that trial counsel was ineffective for failing to file a motion to quash his arrest and suppress his inculpatory statement. We note that claims of ineffective assistance of counsel are evaluated under the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010). Under this standard, respondent must demonstrate: (1) that counsel's performance fell below an objective

standard of reasonableness; and (2) a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Ramsey*, 239 Ill. 2d at 433. The supreme court recently held that when a defendant claims that counsel was ineffective for failing to file a suppression motion, he can only establish prejudice by demonstrating that the unargued suppression motion is meritorious and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed. *People v. Henderson*, 2013 IL 114040, ¶ 15. "A defendant's failure to make the requisite showing of either deficient performance or sufficient prejudice defeats an ineffectiveness claim." *People v. Palmer*, 162 Ill. 2d 465, 475 (1994) (citing *Strickland*, 466 U.S. at 687).

¶ 14 In the case at bar, respondent claims that trial counsel was ineffective for failing to file a motion to quash and suppress where police lacked probable cause to enter the Clara home and no exigent circumstances otherwise justified their warrantless entry. Notably, respondent is not arguing that the police lacked probable cause to arrest him in the Clara home at the time of his actual arrest. Rather, he is arguing that the police did not have probable cause to arrest him when they first entered the Clara home and therefore his seizure within the home was unlawful. The State responds that respondent lacked a legitimate expectation of privacy in the property on which he was trespassing and thus it was reasonable for trial counsel to forego filing a motion to quash and suppress.

¶ 15 "The fourth amendment protection against unreasonable government search and seizure extends only to individuals who have a reasonable expectation of privacy in the place searched or property seized." *People v. Johnson*, 114 Ill. 2d 170, 191 (1986) (citing *Rakas v. Illinois*, 439 U.S. 128, 143 (1978)). The supreme court has identified several factors that are relevant to the determination of whether a respondent had a legitimate expectation of privacy in the place

searched or property seized: (1) property ownership; (2) whether respondent was legitimately present in the area searched; (3) respondent's possessory interest in the area searched or property seized; (4) prior use of the area searched or property seized; (5) ability to control or exclude others' use of the property; and (6) a subjective expectation of privacy in the property. *People v. Rosenberg*, 213 Ill. 2d 69, 78 (2004). "The question whether a [respondent] has a reasonable expectation of privacy in the area searched or the items seized must be resolved in view of the totality of the circumstances of the particular case." *Johnson*, 114 Ill. 2d at 192.

¶ 16 Here, we cannot say that trial counsel was ineffective for failing to file a motion to quash and suppress based on the warrantless entry of the Clara home. Although respondent spends a significant amount of time arguing that police did not have probable cause to enter the Clara home, we note that he has not even attempted to argue that he had a reasonable expectation of privacy in the residence such that the warrantless entry implicated his fourth amendment rights. In applying the relevant factors, it is clear that respondent had no legitimate expectation of privacy in the Clara home as a trespasser. *Rosenberg*, 213 Ill. 2d at 78; see also *Minnesota v. Carter*, 525 U.S. 83, 90 (1998) (noting that an individual who is merely present in a home with the consent of the householder may not claim the protection of the fourth amendment); *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978) (noting that "[a] burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate' "). We therefore find that a motion to quash and suppress based on the warrantless entry of the home would have lacked merit (*Henderson*, 2013 IL 114040, ¶ 15; *Johnson*, 114 Ill. 2d at 191); and, consequently, respondent's ineffectiveness claim fails (*Palmer*, 162 Ill. 2d at 475).

¶ 17 Respondent next contends that the State failed to prove him guilty of AUUW and UPF beyond a reasonable doubt. He specifically challenges the State's proof that he possessed the firearm recovered by Officer Blomstrand. Respondent argues that Officer Blomstrand's testimony was "incredible because it is inherently illogical and contrary to human experience" that respondent would inform police that the gun belonged to him. He further argues that it is "beyond belief that Blomstrand and his three partners failed to see the gun when they initially went down the gangway."

¶ 18 In reviewing a challenge to the sufficiency of the evidence, "a reviewing court 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. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "It is the responsibility of the trier of fact to determine the credibility of witnesses, to weigh their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence." *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of respondent's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 19 We note that the positive and credible testimony of a single witness is sufficient to sustain a conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Here, the trial court found that Officer Blomstrand credibly testified that he was walking respondent to the front of the house when he discovered a gun in a gangway and respondent claimed ownership of it. Despite respondent's attempt to discredit the officer's testimony on appeal, we find no basis for disturbing the court's credibility determination. *Williams*, 193 Ill. 2d at 338; see also *People v.*

Collins, 214 Ill. 2d 206, 217 (2005) ("In reviewing the evidence, it is not the function of the court to retry the defendant, nor will we substitute our judgment for that of the trier of fact."). Contrary to respondent's claim, we do not find it "beyond belief" that the officers would not have seen the gun when they first walked through the gangway. The record shows that the officers were responding to call of a man with a gun at that particular time, and it would be more "beyond belief" if they had been staring at the ground rather than keeping watch for potential danger ahead. We also find that it is not "inherently illogical and contrary to human experience" that respondent would inform police that the gun recovered by Officer Blomstrand belonged to him. Experience shows that it is not uncommon for criminals to confess to crimes that they have committed. Additionally, the evidence established that respondent was worried about "get[ting] his boys in trouble," which would explain why he took responsibility for the gun on the property. Under the circumstances, we cannot say that Officer Blomstrand's testimony in this case was so improbable as to raise a reasonable doubt of respondent's guilt. *Hall*, 194 Ill. 2d at 330.

¶ 20 Respondent challenges the denial of his motion to suppress statements as well. He claims that the trial court's finding that Officer Blomstrand did not question him before his inculpatory statement about the gun was against the manifest weight of the evidence. Because this finding led to the conclusion that there was no *Miranda* violation, he requests this court to reverse the denial of his motion to suppress along with his weapons convictions and to remand the cause for a new trial.

¶ 21 A circuit court's ruling on a motion to suppress evidence is assessed under the two-part test adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Absher*, 242 Ill. 2d 77, 82 (2011). Under this standard, factual findings of the court will be upheld unless they are against the manifest weight of the evidence. *Absher*, 242 Ill. 2d at

82. However, the ultimate legal question of whether suppression is warranted will be reviewed *de novo*. *Absher*, 242 Ill. 2d at 82.

¶ 22 In the case at bar, respondent does not challenge the trial court's conclusion that suppression was not warranted based on its findings. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We therefore confine our analysis to his claim that a factual finding made by the trial court, *i.e.* that Officer Blomstrand did not question him before his inculpatory statement, was against the manifest weight of the evidence. In doing so, we observe that "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented." *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 45 (quoting *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)).

¶ 23 Here, Officer Blomstrand testified at the suppression hearing that he was responding to a call of a man with a gun on the date in question when he initially saw respondent, who matched the description of the offender, in the rear of the Clara home. He testified that respondent was attempting to exit the residence, but that he then shut the door upon seeing police. Officer Blomstrand and his fellow officers subsequently forced entry into the house, detained everyone inside, and patted them down for weapons. The officers then learned a short time later from a resident of the home that respondent and two of the other detainees were not welcome on the property, and they arrested these individuals, including respondent for criminal trespass. After respondent was brought out of the house, Officer Blomstrand discovered a small handgun in a gangway on the south side of the house. He showed the gun to the other officers, at which time respondent volunteered that the gun was his and told his friend that "he was sorry for bringing it to the house and that he didn't want to get them in trouble." Officer Blomstrand testified that he and his fellow officers had not questioned respondent or the other arrestees. Thus, although

respondent had not been read his *Miranda* rights when he made the statement about the gun, the trial court found that respondent's statement was admissible because it was not the product of a custodial *interrogation*. See *People v. Peo*, 391 Ill. App. 3d 815, 818 (2009) (noting that police must supply *Miranda* warnings only if a defendant is under "custodial interrogation"). We find nothing so unreasonable about Officer Blomstrand's testimony to conclude that the trial court's findings of fact were against the manifest weight of the evidence. We thus reject respondent's challenge to the denial of his motion to suppress.

¶ 24 In reaching our conclusion, we have considered *People v. McDaniel*, 326 Ill. App. 3d 771 (2001), cited by respondent, and find his reliance on that case unavailing. In *McDaniel*, 326 Ill. App. 3d at 773, the defendant moved to suppress a confession that he claimed was not voluntarily given. It was established at the suppression hearing that the defendant was arrested at his mother's house at 2 a.m. when he was 14 years old. *McDaniel*, 326 Ill. App. 3d at 773. A detective testified that defendant's mother had arrived separately at the police station about 3 a.m., that she did not ask to see defendant, and that he next spoke with her shortly after 8 a.m., after the assistant State's Attorney had interviewed defendant. *McDaniel*, 326 Ill. App. 3d at 774. Defendant's mother testified, however, that she had ridden in a squad car with defendant to the police station, that they arrived about 2:30 a.m., that they were separated, and that she did not see defendant again until later in the afternoon despite repeated requests to speak with him. *McDaniel*, 326 Ill. App. 3d at 776. A police officer partially corroborated her testimony in that she testified defendant's mother had called her twice on the date in question attempting to figure out why she could not see defendant. *McDaniel*, 326 Ill. App. 3d at 777. The trial court nonetheless found the detective's testimony credible and denied defendant's motion to suppress. *McDaniel*, 326 Ill. App. 3d at 779. On appeal, this court found the trial court's factual findings to

be against the manifest weight of the evidence and noted that "[i]t is not believable that the defendant's mother waited at the Area 4 police station for over five hours, twice calling Officer Sykes for advice on how she could see her son, without asking to see the defendant." *McDaniel*, 326 Ill. App. 3d at 780-81.

¶ 25 *McDaniel* is clearly distinguishable from the case at bar. Unlike that case, respondent presented no evidence at the suppression hearing to contradict the testimony of Officer Blomstrand. Moreover, there is nothing inherently implausible about Officer Blomstrand's testimony. Under the circumstances, respondent's reliance on *McDaniel* is clearly misplaced.

¶ 26 Respondent lastly contends that two of his AUUW convictions and his conviction of UPF must be vacated under the one-act, one-crime rule. The State responds that there is no one-act, one-crime violation because respondent was committed and sentenced on a single count of AUUW. The State nonetheless requests that this court correct the commitment and sentencing orders to reflect respondent's conviction under section 24-1.6(a)(1), (a)(3)(I) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2012)), noting that his conviction under section 24-1.6(a)(1), (a)(3)(A) must be vacated pursuant to *People v. Aguilar*, 2013 IL 112116, ¶ 22. Respondent concedes in reply that the commitment and sentencing orders reflect that he was sentenced on a single count of AUUW. He also agrees with the State's proposed correction.

¶ 27 We agree with the State that there was no one-act, one-crime violation in this case. The record shows that respondent was found guilty of multiple weapons offenses; namely, three counts of AUUW under sections 24-1.6(a)(1), (a)(3)(A), (a)(3)(C), and (a)(3)(I) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (a)(3)(C), (a)(3)(I) (West 2012)), and one count of UPF (720 ILCS 5/24-3.1(a)(1) (West 2012)). The court's oral pronouncement at sentencing and its written orders reflect that judgment was imposed on only a single count of AUUW, however.

See *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007) ("The oral pronouncement of the judge is the judgment of the court, and the written order of commitment is merely evidence of that judgment."). Where judgment was entered on only a single offense, there has been no one-act, one-crime violation. See *People v. Smith*, 233 Ill. 2d 1, 20 (2009) (noting that "when a defendant is charged in several counts with a single offense and multiple convictions have been entered, the 'one-act, one-crime' doctrine provides that judgment and sentence may be entered only on the most serious offense"). We nonetheless agree with the parties that respondent's commitment and sentencing orders should be corrected to reflect the specific count of AUUW of which respondent was ultimately convicted. Before addressing that issue, however, we first address the State's claim that respondent's conviction pursuant to section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute must be vacated.

¶ 28 A conviction under an unconstitutional statute is void and may be attacked at any time. *People v. Wagner*, 89 Ill. 2d 308, 311 (1982). In *Aguilar*, the supreme court held the Class 4 form of section 24-1.6(a)(1), (a)(3)(A) facially unconstitutional and reversed defendant's conviction under that section. *Aguilar*, 2013 IL 112116, ¶ 22. Here, the record shows that respondent was convicted under the exact same section of the AUUW statute held unconstitutional in *Aguilar*. We therefore must reverse respondent's conviction under section 24-1.6(a)(1), (a)(3)(A). *Aguilar*, 2013 IL 112116, ¶ 22.

¶ 29 This leaves the matter of which remaining AUUW conviction should be reflected on respondent's commitment and sentencing orders. We believe this issue should be addressed by the trial court on remand. In the context of the one-act, one-crime rule, the supreme court instructs us that sentence should be imposed on the more serious offense and the less serious offense should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). "In determining which

offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense." *Artis*, 232 Ill. 2d at 170. If the degree of the offenses and their sentencing classifications are identical, we may consider which of the convictions has the more culpable mental state. *Artis*, 232 Ill. 2d at 170-71. "[W]hen it cannot be determined which of two or more convictions based on a single physical act is the more serious offense, the cause will be remanded to the trial court for that determination." *Artis*, 232 Ill. 2d at 177.

¶ 30 Here, respondent's remaining AUUW convictions share the same mental state, sentencing classification, and punishment. Specifically, both are Class 4 felonies with a mental state of knowingly (720 ILCS 5/24-1.6(a)(1), (a)(3)(C), (a)(3)(I), (d)(1) (West 2012)), and a sentencing range of one to three years (730 ILCS 5/5-4.5-45(a) (West 2012)). Since we cannot determine which offense is the more serious, we remand this cause to the trial court for that determination.

¶ 31 Accordingly, we reverse respondent's conviction pursuant to section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, remand the cause with instructions, and affirm the judgment in all other respects.

¶ 32 Affirmed in part and reversed in part.

¶ 33 Cause remanded with directions.