

FIRST DIVISION
January 27, 2014

No. 1-12-1411

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

<i>In the Interest of Alif A., a Minor,</i>)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 10 JD 1919
)	
ALIF A.,)	Honorable
)	Andrew Berman,
Defendant-Appellant.))	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

- ¶ 1 *Held:* Violation of probation order affirmed over respondent's contention that the testimony of the State's eyewitness was improbable and unconvincing.
- ¶ 2 On August 17, 2010, respondent Alif A. was adjudicated delinquent of the offense of aggravated battery with a firearm, and subsequently sentenced to five years' probation. On April 17, 2012, respondent was committed to 268 days in the Department of Juvenile Justice, after the circuit court of Cook County found that he had violated his probation by committing the offense

of unlawful possession of a firearm. On appeal, respondent contends that the State failed to prove him guilty of the violation of probation (vop) by a preponderance of the evidence.

¶ 3 At the revocation hearing, Chicago police officer Joseph Chripala testified that at 11:45 a.m. on February 16, 2012, he and his partners, Officers Gardiner McFadden and Ricky Washington, were in an unmarked car and civilian dress, near 119th Street and Harvard Avenue in Chicago. They were in the area on reports of shots fired earlier in the morning, and recent gang conflict involving the Gangster Disciples whose colors are red and black.

¶ 4 As Officer Chripala was driving westbound on 119th Street, he saw a person, wearing a red and black jacket with a black skull cap and black pants, alone in the backyard of 11837 South Harvard Avenue. Officer Chripala explained there was one church lot, an alley, and two houses between him and that backyard, and that it was a bright and sunny day. He also related that there was a chain link fence and some bushes along the backyard, but that no "vegetation" was growing, and there were no trees in his line of sight. He described the bushes and weeds as very thin and easy to see through, and stated that he was able to discern that the person in the yard was a dark complected, black male in his late teens.

¶ 5 Officer Chripala testified that when he noticed this person in the backyard, he was driving very slowly down 119th Street, and barely moved the car. From this vantage point, he observed this person holding a black item, then saw him kneel down and grab a flat item, later identified as a board. When he stood up, he had nothing in his hands. The officer drove around to the front of the house at 11837 South Harvard Avenue, losing sight of the intruder for 30 seconds, but then observed respondent, coming out of the gangway alone, wearing the same

clothing he observed on the person behind the home in the backyard. The officers exited their car, announced their office, and approached respondent, who started to walk up the stairs to the house, but then complied with their request to come down.

¶ 6 Officer Chripala further testified that he walked to the location in the backyard where he had observed respondent, and saw three boards. Officer McFadden went to the board which had dirt on top and a black plastic bag sticking out of it, then removed the board, and picked up the bag which contained a gun. After recovering the gun, the officers returned to the front of the house, where two other individuals had walked up to them.

¶ 7 Officer McFadden testified that while he was a passenger in Officer Chripala's car, he noticed a young black male alone in the backyard of the house of 11837 South Harvard Avenue wearing red and black clothing and walking toward the gangway. Within 30 seconds of that sighting, he saw respondent exiting that property through the gangway after Officer Chripala had turned northbound on Harvard Avenue. Respondent was wearing the same clothing as the person he saw walking toward the gangway from the backyard.

¶ 8 Officer Mcfadden further testified that he and Officer Chripala went to the area of the backyard where he had seen defendant walking away, and observed a board with fresh dirt on it. He lifted the board and found a black plastic bag containing a handgun. The officer noted that there were three boards in the backyard, and he went to the one where he had observed defendant walking away. The officer also checked the other two boards but found nothing underneath them. Officer McFadden then went to the front of the home, where the two men he had seen across the street, came over and said they would call respondent's mother.

¶ 9 Langdon Mattox, an investigator for the Cook County Public Defender's office, testified that he took photographs of the area in question on February 29, 2012, specifically the east side of 119th Street, Harvard Avenue facing 11837 South Harvard, and the backyard of that house. Mattox noted that he could not get a clear view into the backyard of 11837 South Harvard Avenue while he was in the alley due to the shrubbery along the fence of the home at 11841 South Harvard Avenue, and because the porch of 11839 South Harvard Avenue is a little farther back than the property at 11837, which obstructs the view of the yard.

¶ 10 On March 8, 2012, Mattox went back to the scene based on information he received as to the location of police during the incident. He took photographs of the backyard of 11837 South Harvard Avenue from the north sidewalk of 119th Street. He was able to see into the backyard from this vantage point, but not clearly due to the shrubbery along the backyard, and could not see what, if anything was in the backyard. Mattox further testified that no one was in the backyard when he took the photographs, and that he had "zoomed out" with his camera.

¶ 11 Travonette Hicks testified that she and respondent are friends. At 11:45 a.m. on February 16, 2012, she and respondent were at his home at 11839 South Harvard Avenue. She then saw respondent exit the home from the side door, cross the street and talk to his brothers. When respondent came back across the street, a black car pulled up, and the men inside that car grabbed respondent and placed him in handcuffs.

¶ 12 Barbara Walsh testified that she is a friend of respondent's family, and at the time in question she was on her front porch at 11821 South Harvard Avenue. From there, she saw respondent exit the gate in front of his home, walk up and talk to his brothers on the other side of

the street, then return. At that point, the police drove up and placed respondent in handcuffs.

¶ 13 Respondent's brother, Lorenzo Williams, testified that at the time in question he was standing across the street from 11837 South Harvard Avenue talking to his brother Marcus. He then saw respondent exit the side door of their home at 11839 South Harvard Avenue, cross the street, and ask him and Marcus for a condom. Williams gave respondent a condom, and as respondent walked back to their home, three officers drove up, placed respondent in handcuffs, and searched him. When they placed respondent in their car, Williams asked why they were taking him, but they did not respond.

¶ 14 Melissa Terrell testified that she resides at 11837 South Harvard Avenue, and was home at the time in question. She had been in the back room looking out her back window since 8:30 a.m. and at 11:45 a.m. she saw police enter her backyard and "tear[] up" her garage. The officers were in her backyard for 20 minutes and did not find anything. Terrell yelled out her window asking police what they were doing, but they did not respond. She then sent her cousin out to talk to the officers. Terrell stated that she did not see respondent in her backyard the entire morning.

¶ 15 Officer Washington testified in rebuttal that he arrested respondent and conducted a custodial search. He did not recall finding any condoms in his possession at that time.

¶ 16 At the close of evidence, the court found by a preponderance of the evidence that the State had proved that respondent violated his probation by committing unlawful possession of a firearm. In making that determination, the court noted that when a camera is zoomed out, as in this case, it makes things look a lot farther away than they are. The court observed that although

some vegetation was depicted in the photographs, one can see into the yard in question, as well as a figure wearing clothing, bending and picking up an object from a distance that was, "not that far." The court thus found that it was not unbelievable that police could see into the yard. The court also found the officers "internally consistent," and that the defense witnesses were not "particularly credible".

¶ 17 On appeal, respondent maintains that the State failed to prove by a preponderance of the evidence that he violated his probation by committing the offense of unlawful possession of a firearm. He maintains that Officer Chripala's testimony was unconvincing, improbable and likely impossible, and that the sequence of events as reported was highly unlikely, and do not describe criminal behavior. He further claims that the testimony failed to establish a link between the events described and the contraband found, and that he was the person seen in the backyard.

¶ 18 The State must prove a violation of probation by a preponderance of the evidence. *In re Seth S.*, 396 Ill. App. 3d 260, 272 (2009). On review this court will not disturb a trial court's ruling on a petition to revoke probation unless the ruling was against the manifest weight of the evidence. *In re Seth S.*, 396 Ill. App. 3d at 272. A trial court's conclusion is against the manifest weight of the evidence when the opposite conclusion is readily apparent. *People v. Jackson*, 2012 IL App (1st) 103300, ¶13.

¶ 19 Here, the testimony of the officers, found credible by the court, showed that Officer Chripala observed a black male in his late teens wearing a red and black jacket, black pants, and a skull cap in the backyard in question. He also observed this person holding a black item, then

saw him bend down, and lift up a board. When this person stood up, he was no longer holding the object. Officer McFadden saw this person walk towards the gangway, and when the officers drove to the front of that house, they immediately saw respondent exiting the gangway dressed in the same clothes as the person seen alone in the yard. After stopping respondent, they entered the area of the yard where respondent had been observed, and saw a board with fresh dirt on top of it and a black bag sticking out from under it. When Officer McFadden pulled the bag out, he found a handgun inside. The inference naturally flowing from this evidence was that respondent was the teen male viewed in the yard who placed the gun under the board there (*In re Marquita M.*, 2012 IL App (4th) 110011, ¶28), and was thus shown by a preponderance of the evidence to be in unlawful possession of a firearm (720 ILCS 5/24.31(a)(1) (West 2010)), and in violation of his probation (*In Interest of Ephriam*, 60 Ill. App. 3d 848, 852 (1978)).

¶ 20 Respondent maintains, however, that Officer Chripala's testimony was suspect and unbelievable because there were spring flowers starting to bloom at the time in question as it was the warmest day in February in 80 years, and that this vegetation blocked the view of the yard. Respondent asks this court to take judicial notice of these facts regarding the vegetation and weather as they are readily verifiable from sources of indisputable accuracy.

¶ 21 We have no basis for taking judicial notice of whether there was "vegetation" growing on the trees and bushes near or in the yard in question. The photographs taken of the area and the scene three weeks later, and admitted into evidence, reveal the trees and bushes. The court noted that these photographs were taken with a zoom lens making things look further away than they are, then found that from their vantage point, the officers could see into the yard, and a person

inside. Moreover, Officer Chripala testified as to how the yard appeared to him on February 16, 2012, and whether he could view the person in the yard and the actions he took. These matters alternatively concern the credibility of the witness, and here, we find no basis in the record for disturbing the court's determination that the officer was a credible witness. *In re Donald R.*, 343 Ill. App. 3d 237, 246 (2003); *In Interest of Lane*, 71 Ill. App. 3d 576, 579 (1979).

¶ 22 We also find, contrary to respondent's contention, that the gun and the events surrounding that gun were linked to him by the testimony of the police officers. Officer Chripala observed a lone male teen clad in a red and black jacket in the yard, who placed a black item under a board. Officer McFadden saw this person walk toward the gangway, and within 30 seconds, observed respondent coming out of the gangway of that property alone. Respondent fit Officer Chripala's description of the person in the yard, and the two other people in the area, defendant's brothers, were across the street, nowhere near the yard, and appeared to be older. In addition, Officer Chripala indicated that he was barely moving the car when he observed respondent bend down with something in his hand, move the board, and then get up without the object in his hand, and was not distracted as further maintained by respondent.

¶ 23 Respondent further maintains that whether Officer Chripala saw the person manipulate the exact board that he found the gun under was suspect because there were three boards. We observe that Officer McFadden indicated that he went to the location he had seen respondent walking away from, looked under the board there and found the gun. In sum, the observations of the officers, and the substantial circumstantial evidence associated therewith, linked respondent to the gun found under the board.

¶ 24 Respondent, nonetheless, relies on *People v. Johnson*, 191 Ill. App. 3d 940 (1989), in maintaining that the testimony of Officer Chripala was suspect and without corroborating evidence, and thus insufficient to prove him guilty of the vop. In *Johnson*, 191 Ill. App. 3d at 941, a criminal prosecution, defendant was convicted of unlawful delivery of less than 10 grams of cocaine based on the testimony of a single officer, despite the fact that there were 11 officers involved in the narcotics surveillance. There was also a lapse of over one year between the incident and when the charges were filed against defendant, and a lapse of two weeks between the recovery of the narcotics and when they were sent to the crime lab. *Johnson*, 191 Ill. App. 3d at 945-47. Based on those unique circumstances, this court reversed defendant's conviction. *Johnson*, 191 Ill. App. 3d at 945-47.

¶ 25 Here, by contrast, the case was a vop proceeding subject to the preponderance of the evidence, rather than proof beyond a reasonable doubt standard. In addition, all three officers involved in the case testified, and the court found the officers credible and their testimony "internally consistent." It is thus apparent that *Johnson* is clearly distinguishable from this case, and provides no basis for reversal.

¶ 26 For the reasons stated, we conclude that the court's finding is not against the manifest weight of the evidence (*In Interest of Ephraim*, 60 Ill. App. 3d at 852), and we, therefore, affirm the order of the circuit court of Cook County revoking respondent's probation.

¶ 27 Affirmed.