2018 IL App (1st) 171953-U
No. 1-17-1953

THIRD DIVISION
April 11, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF CARLOS G. a minor, (THE PEOPLE OF THE STATE OF ILLINOIS)	)	Appeal from the Circuit Court of Cook County.
Petitioner-Appellee,	)	No. 17 JD 00147
v.	)	
CARLOS G., a minor,	)	The Honorable Patricia Mendoza,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

1. *Held:* (1) The State proved beyond a reasonable doubt that respondent committed the offenses of aggravated unlawful use of a weapon and unlawful possession of a firearm.

(2) The circuit court's blanket "no gang contact" probation condition is overly broad and constituted plain error.

2. The circuit court of Cook County found respondent, Carlos G., a minor, guilty of two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C); (a)(1), (a)(3)(I) (West 2016)) and one count of unlawful possession of a firearm (UPF) (720 ILCS 5/24-3.1(a)(1) (West 2016)). The court sentenced respondent to two years' probation, and ordered several conditions of probation. On appeal, respondent contends: (1) the State failed to prove him guilty beyond a reasonable doubt as charged, and (2) a condition of his probation is unreasonable and overly broad. We affirm the circuit court's adjudications of guilt. Based on the State's concession of error, we vacate one of the AUUW counts. Further, pursuant to *In re Omar F.*, 2017 IL App (1st) 171073, we reverse respondent's sentence and remand for resentencing.

3. BACKGROUND

4. Respondent's adjudications were the result of an incident that occurred on January 17, 2017. Respondent was 16 years old at the time. At around 1 a.m. that morning, respondent was a passenger in a car that had been traveling at a high rate of speed and ultimately crashed into a light pole near 87th Street and Cicero Avenue in Chicago. Officer Alfredo Liera testified that he and his partner Officer Josue Bandelos had been following the vehicle and arrived on the scene after it had crashed. Officer Liera approached the car and saw that there were three individuals in the car. The driver of the car had already exited the car, attempting to flee, and was being chased by Officer Bandelos. Officer Leira ordered the remaining individuals to hold up their hands. Respondent, who was seated on the passenger side in the backseat, did not immediately

comply. Officer Leira looked in the car, using his flashlight, and saw a silver and black gun with an extended magazine. The gun was in respondent's lap between his legs. The officer again ordered the individuals to hold up their hands and again respondent did not comply. Officer Leira repeated the order one more time and respondent complied. As the officer removed respondent from the car, the gun that had been in respondent's lap was now on the floor of the car in front of where respondent had been sitting. The gun was about the size of the officer's hand.

5. On January 18, 2017, the State filed a four-count petition for adjudication of wardship. The petition charged two counts of AUUW, with count I alleging that respondent lacked a FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2016)) and count II alleging that respondent possessed a firearm while under 21 years of age and not engaged in lawful activities described by statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2016)). Count III charged respondent with UPF, alleging that respondent was under 18 years of age and knowingly possessed a firearm that could be concealed upon the person (720 ILCS 5/24-3.1(a)(1) (West 2016)). Count IV charged respondent with criminal trespass to a motor vehicle (720 ILCS 5/21-2 (West 2016)).

6. On May 25, 2017, the circuit court held a bench trial pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/5-601 *et seq*. (West 2016)), which adduced the above-recited facts.[1] On June, 19, 2017, the court found respondent guilty of the two AUUW counts. Regarding count I, the court found that respondent had not been issued a FOID card. Regarding count II, the court found that respondent was under 21 years of age and was not engaged in lawful activities described by statute, but rather, was sitting in the

[1] Respondent was arrested with A.R., who was charged with other offenses related only to the vehicle and not the firearm. They received a joint but severed trial.

backseat of a motor vehicle. Also, the court found respondent guilty of the UPF charge in count III. The court found that respondent was under 18 years of age at the time of possession, and that the firearm was concealable because it was able to fit between respondent's legs and was about the size of Officer Leira's hand. The court found that counts II and III merged into count I. However, the court found respondent not guilty of criminal trespass to a motor vehicle as charged in count IV. After the court's findings of guilt, Probation Officer Richard Tekip informed the court that respondent had recently been expelled from school as a result of respondent's involvement in a gang fight.

7. At the sentencing hearing, held on August 1, 2017, respondent's counsel noted that respondent did not have a prior history in juvenile court and suggested that he be placed on probation and subject to: "mandatory school; 30 hours community service; no gangs, no guns, drugs; TASC [Treatment Alternatives for Safe Communities program]; JAC [Juvenile Advisory Council program]; and a DNA swab." Probation Officer Banuelos testified that respondent had been compliant with his mother at home as well as the officer and recommended respondent receive probation. Officer Tekip testified that prior to respondent's expulsion, respondent had done well in school, had good attendance, had good communication with the officer and showed the officer an appropriate level of respect. The court stated that it agreed with the recommendation of the probation officers and sentenced respondent to two years of probation. The court further ordered, as conditions of probation, that respondent attend school every day; perform 30 hours of community service; "have no contact with gangs, guns, or drugs"; participate in the TASC and JAC programs; and provide a DNA sample. Respondent now appeals.

Additional pertinent background will be discussed in the context our analysis of the issues.

8. ANALYSIS

9. I. Sufficiency of the Evidence

10. On appeal, respondent first contends that the State failed to prove him guilty beyond a reasonable doubt of the charged offenses. Initially, we note respondent's argument that the State failed to prove respondent guilty of AUUW, as charged in count I, by failing to establish that he had not been issued a valid FOID card. The State concedes that the evidence was insufficient to prove respondent guilty of AUUW as charged in count I. Accordingly, we vacate that adjudication.

11. The constitutional safeguard of proof beyond a reasonable doubt applies during the adjudicatory stage of juvenile delinquency proceedings. *In re Winship*, 397 U.S. 358, 368 (1970); *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007). Accordingly: "The State must prove the elements of the substantive offenses alleged in delinquency petitions beyond a reasonable doubt." *In re W.C.* 167 Ill. 2d 307, 336 (1995). In delinquency proceedings, as in criminal cases, a reviewing court must decide 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. *In re Q.P.*, 2015 IL 118569, ¶ 24; *W.C.*, 167 Ill. 2d at 336; *Malcolm H.*, 373 Ill. App. 3d at 893-94. Under this standard of review, it is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. Therefore, a court of review will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses.

People v. Gray, 2017 IL 120958, ¶ 35; *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A criminal conviction will not be reversed for insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Q.P.*, 2015 IL 118569, ¶ 24; *Siguenza-Brito*, 235 Ill. 2d at 225. This same standard of review applies in all criminal cases, whether the evidence is direct or circumstantial (*People v. Howery*, 178 Ill. 2d 1, 38 (1997)), or whether the defendant received a bench or jury trial (*Siguenza-Brito*, 235 Ill. 2d at 225).

12. Subject to exceptions not relevant here, section 24-1.6(a)(1), (a)(3)(I) of the Criminal Code of 2012 provides that a person commits the offense of AUUW when, *inter alia*, he or she is under 21 years of age and possesses a "handgun." 720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2016). Also, section 24-3.1(a)(1) of the Criminal Code provides that a person commits the offense of UPF when, *inter alia*, he or she is under 18 years of age and possesses "any *firearm* of a size which may be concealed upon the person." (Emphasis added.) 720 ILCS 5/24-3.1(a)(1) (West 2016).

13. Respondent contends that the State failed to prove him delinquent of AUUW and UPF, as charged in counts II and III respectively, by failing to establish that he possessed "a firearm." According to respondent, the State failed to "present sufficient evidence that the gun Officer Liera recovered from the [vehicle] was in fact a firearm." Respondent acknowledges that Officer Liera described the gun resting on respondent's lap. However, respondent argues that "Liera failed [to] explain to the court how he knew the gun was a firearm. Liera's experience in the recognition of firearms was never explored."

14. Respondent alternatively argues that the State failed to prove him guilty of UPF, as charged in count III, because it failed to establish that the firearm was "of a size which

may be concealed upon the person." 720 ILCS 5/24-3.1(a)(1) (West 2016). Respondent acknowledges that Officer Liera described the gun as "the size of my hand." However, respondent argues that "[n]o record was made of the size of Liera's hand or the length of the magazine. Moreover, there was no evidence that would allow a reasonable inference that the gun could be concealed other than the vague approximation of the size of the gun."

15. We cannot accept these challenges to the sufficiency of the evidence. It is quite established that the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant. When considering a challenge to the sufficiency of the evidence, it is not the function of a reviewing court to retry the defendant. Rather, in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences from the facts, and to resolve any conflicts in the evidence. A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Siguenza-Brito*, 235 Ill. 2d at 228 (and cases cited therein).

16. In the case at bar, Officer Liera's testimony was unrebutted and unimpeached. Respondent's challenge to Officer Liera's credibility is purely speculative. See *In re Angel P.*, 2014 IL App (1st) 121749, ¶ 52.

17. Viewing all of the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found respondent guilty of AUUW based on his possession of a firearm and for UPF. We affirm the court's adjudications with respect to counts II and III of the petition for adjudication of wardship.

18. II. Probation Conditions

19. As recited above, the circuit court sentenced respondent to two years' probation. One of the conditions of probation was that respondent "have no contact with gangs." Before this court, respondent contends that this probation condition was unreasonable and overly broad.

20. Respondent concedes that this contention is procedurally forfeited because his trial counsel failed to object to this probation condition during the sentencing hearing. See *People v. Bannister*, 232 Ill. 2d 52, 76-77 (2008). However, seeking our review, defendant invokes the plain error doctrine, which provides a narrow and limited exception to the general rule of procedural default. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Under the plain error rule, a defendant's forfeiture of a sentencing issue will be excused where (1) a clear or obvious error occurs and the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) (and cases cited therein). In addressing a defendant's plain-error contention, it is appropriate to determine whether error occurred at all. *Bannister*, 232 Ill. 2d at 77.

21. Section 5-715(2) of the Juvenile Court Act of 1987 provides various conditions that the circuit court may impose as conditions of juvenile probation, and states in relevant part that the circuit court "may as a condition of probation *** require that the minor: *** (s) refrain from any contact, directly or indirectly, with certain specified persons or particular types of persons, including but not limited to members of street gangs ***." 705 ILCS 405/5-715(2)(s) (West 2016). Generally, courts have broad discretion to impose probation conditions, whether expressly allowed by statute or not, to achieve the goals of fostering rehabilitation and protecting the public. However, the court's discretion must be

exercised in a reasonable manner. *People v. Meyer*, 176 Ill. 2d 372, 378 (1997). Thus, when deciding the propriety of a probation condition in a particular case, whether explicitly statutory or not, the overriding concern is reasonableness. *In re J.W.*, 204 Ill. 2d 50, 78 (2003). When assessing the reasonableness of a probation condition, it is appropriate to consider whether the restriction is related to the nature of the offense or the rehabilitation of the offender. Other considerations include whether: (1) the probation condition reasonably relates to the rehabilitative purpose of the legislation; (2) the value to the public in imposing this probation condition clearly outweighs the impairment to the probationer's constitutional rights; and (3) there are any alternative means that are less subversive to the probationer's constitutional rights, but still comport with the purposes of conferring the benefit of probation. *Id*. at 79.

22. In the case at bar, respondent argues that the "no gang contact" probation condition is unreasonable because "there was no evidence presented either at trial or sentencing that showed [he] was a gang member, or that the crime he committed was gang-related." The record belies this argument. At the close of respondent's trial, Probation Officer Tekip informed the court that respondent had recently been expelled from school as a result of respondent's involvement in a gang fight. Also, respondent provided the following information in his social investigation report. Respondent "reported he is gang affiliated and that some of his friends are gang members," and that, during the summer, "he usually spends about nine to ten hours" daily with his friends. He further reported that he had been suspended from school twice for fighting and "tagging," both of which are commonly associated with gang activity. Respondent also stated that "some of his friends have been arrested," and that "he knows some of his friends are not a good influence on

him." During the sentencing hearing, the prosecutor referred to respondent's gang involvement, and defense counsel recommended a "no gang contact" probation condition, characterizing it as "normal" in such a case. Thus, the propriety of the court's "no gang contact" probation condition was obvious to all of the parties at the sentencing hearing. We conclude that the instant probation condition was reasonable, and connected to the behavior or attitude of the respondent that the circuit court thought needed adjusting. See *In re M.P.*, 297 Ill. App. 3d 972, 977 (1998); see also *In re Omar F.*, 2017 IL App (1st) 171073, ¶ 62 (concluding that "no gang contact" probation condition imposed was "valid" because it "related to [respondent's] rehabilitation").

23. Relying on *Omar F.*, respondent next argues that the "no gang contact" probation condition is overly broad "because it could lead to inadvertent violations while acting in a constitutionally protected manner." This court in *Omar F.* concluded that a blanket "no gang contact" probation condition was overly broad and unreasonable. According to the *Omar F.* court, the probation condition: did not contain a means by which the respondent could obtain an exception from the restriction for legitimate purposes; there was "no exclusion for people based on familial, employment, or educational relationships"; and "no explanation as to what type of contact (physical or online), no matter how innocuous, will result in a probation violation." *Omar F.*, 2017 IL App (1st) 171073, ¶ 63. Further, "a juvenile could be inadvertently caught violating probation in a number of scenarios, including when conducting himself in a constitutionally protected manner." *Id.* ¶ 68. Further, the *Omar F.* court concluded that imposition of the blanket "no gang contact" probation condition constituted plain error, which excused the respondent's procedural default.

24. In light of *In re Omar F.*, 2017 IL App (1st) 171073, we hold that the circuit court's imposition of the blanket "no gang contact" probation condition was overly broad and constitutes plain error. We reverse respondent's sentence and remand for resentencing consistent with *Omar F.*

25. CONCLUSION

26. For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in part, reversed in part, vacated in part, and remanded.

27. Affirmed in part, reversed in part, vacated in part, and remanded.