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2012 IL App (3d) 100354-U

Order filed October 16, 2012

In re J.J-A., a Minor,)	Appeal from the Circuit Court
)	of the 10 th Judicial Circuit
(The People of the State of Illinois,)	Peoria County, Illinois,
)	
Plaintiff-Appellee,)	
)	Appeal No. 3-10-0354
v.)	Circuit No. 09 -JD-525
)	
J.J-A.,)	Honorable Chris L. Fredericksen,
)	Judge, Presiding.
Defendant-Appellant.))	

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The State sufficiently proved the respondent guilty beyond a reasonable doubt of unlawful possession of firearm. The trial court properly adjudicated him a delinquent minor because the State's evidence indicated that the respondent placed a gun beneath a van, fled from the scene, and was subsequently positively identified by an eyewitness.

¶ 2 The circuit court of Peoria County convicted J.J-A., the respondent, of possession of a firearm and adjudicated him a delinquent minor. The respondent appeals, contending that the State's evidence did not prove his guilt beyond a reasonable doubt because the State offered no testimony from anyone who saw him in possession of a gun and its evidence only proved that the respondent was in the vicinity of the firearm. We affirm.

¶ 3

FACTS

¶ 4 The State filed a petition for adjudication of delinquency alleging that the respondent, while under the age of 17, committed the offense of unlawful possession of a firearm. 720 ILCS 5/24-3.1(a)(1) (West 2010). The cause proceeded to an adjudicatory hearing.

¶ 5 At this hearing, Robert Cowser testified that he was an armed security guard patrolling the Village Green neighborhood in Peoria around 2 a.m. on December 20, 2009. At this time, Cowser was in his work truck, and he saw a male walking towards him on the sidewalk. Cowser decided to stop the individual because he matched the description of a person for whom the police were looking. Cowser parked his truck behind a van, got out and walked towards the young man. At that time, the person was in the front of the van, and Cowser saw him bend down, stand up, and continue to walk towards him. As the individual bent down in front of the van, Cowser heard the sound of metal hitting the ground. The individual and Cowser met at the passenger side of the van and stood within two feet of one another. Cowser subsequently identified the individual as the respondent.

¶ 6 According to Cowser, he asked the respondent to remove his hands from his pockets and requested identification, but the respondent answered that he did not have identification because he was only 16 years old. Cowser stated that the respondent was wearing a black coat, dark jeans, and brown or tan shoes. This area was illuminated by streetlights, and Cowser was also using his flashlight. Cowser told the respondent to stay where he was, shone his flashlight under the van and saw a silver, chrome-plated revolver with a wooden handle. There were no other objects in the vicinity that would have made the sound of metal hitting the ground that Cowser heard moments earlier.

¶ 7 Cowser told the respondent to get on the ground, but the respondent ran away. Cowser

gave chase and informed the police via radio that he was in pursuit of a suspect. During the 30 to 45 second chase Cowser had an unobstructed view of the respondent and never lost sight of him. He saw the respondent run through an open field and enter an apartment at 114 Village Green. Cowser remained outside the apartment until the police arrived, and informed them that the respondent had just entered the apartment. As Cowser stood outside the apartment, a female entered it, indicating that she lived there. At no time did Cowser see anyone climb over a fence that was near the property.

¶ 8 After the police arrived, Cowser returned to the area of the initial encounter and showed Peoria police officer Jacob Faw the location of the revolver. Ostensibly, the revolver had not been moved since Cowser left the area to chase the defendant 3 to 4 minutes earlier. Cowser then returned to 114 Village Green. At that time, the police were questioning a young man, who was not the one he had chased. After the police brought the respondent downstairs, Cowser identified him as the individual whom he had chased, indicating that he recognized the respondent's face. He also saw a black coat in the dining room.

¶ 9 Peoria police officer John McCavitt testified that he arrived at 114 Village Green after Cowser left the scene to locate the revolver. During this time, McCavitt did not see anyone enter or leave the residence. At some point, Demaris Claudin, who was wearing only boxer shorts, opened the door. McCavitt ordered him to come outside, but Demaris permitted him to come inside to conduct the rest of his investigation.

¶ 10 Once inside, McCavitt located the respondent sitting fully dressed on a bed in the upstairs portion of the residence. Since "he matched the description[,]" McCavitt told the respondent to come downstairs, at which point Cowser positively identified him. According to McCavitt, the

respondent stated that he had been inside the apartment all night and he had seen another individual jump over the fence while he was using the computer.

¶ 11 Peoria police officer Scott Goforth testified that he saw the revolver underneath the front of the van, and there were no other objects near the gun. Officer Felicia Bonds testified that the respondent had informed her that on the night of the incident, a black male tried to enter 114 Village Green through the sliding glass door, but was unsuccessful.

¶ 12 The respondent testified that he was 13 years old and had spent December 19, 2009, the night prior to the incident, with his friends, the Claudins, who lived at 114 Village Green. On that day, he went to his home "to check in" and then returned to 114 Village Green around 2 p.m. At some point, he, Damaris and Coby Claudin went out and returned around 9 p.m., and then the respondent used the computer. Around 1 a.m. on December 20, Candice Claudin, Demaris' aunt, returned to the residence.

¶ 13 According to the respondent, Candice was intoxicated. She told him that the police were outside, so he went upstairs and alerted Demaris. After a few minutes, officers came upstairs and directed the respondent to come downstairs. The respondent saw Demaris sitting in a chair in handcuffs.

¶ 14 The respondent acknowledged that he did not inform McCavitt that a person had tried to break into the residence through the sliding door, but stated that he gave Bonds this information because he thought the police "would be blaming somebody but me that I didn't do." The respondent, testified, however, that he heard someone at the sliding door but no one broke in. He also stated that he heard a rattling noise at a gate and saw someone running, and also saw an individual jump over the fence near the property. The respondent denied having a gun on the

night in question, and denied ever seeing the gun shown in the State's exhibits.

¶ 15 The defendant presented testimony from alibi witnesses, including Demaris. Demaris specifically testified that the defendant did not leave 114 Village Green after he returned on the afternoon of December 19, but also stated that he and the defendant walked around the Village Green until dark and then used his computer. Also, on the night of the incident, Demaris heard something at the back door, but did not see anyone trying to jump over the fence near the property.

¶ 16 The trial court found that the State proved the allegations in the petition beyond a reasonable doubt. In so holding, the court specifically determined that Cowser was credible and the respondent and his witness were not. The respondent moved for an acquittal or a new trial, which the court denied. The cause proceeded to a dispositional hearing, and the court sentenced the respondent to a two-year term of probation. The respondent appeals.

¶ 17 ANALYSIS

¶ 18 On appeal, the respondent contends that the State's evidence was insufficient to support a finding of delinquency because the State did not prove the offense of unlawful possession of a firearm beyond a reasonable doubt. In support of this assertion, the respondent relies on, among other things, cases in which a reviewing court reversed a conviction for possession of drugs because the State's evidence did not adequately establish that the defendant actually possessed the drugs. See *People v. Jackson*, 23 Ill. 2d 360 (1961); *People v. Jones*, 105 Ill. App. 3d 1143 (1982); *People v. Stewart*, 27 Ill. App. 3d 520 (1975).

¶ 19 To sustain a charge of unlawful possession of a firearm, the State must prove that a respondent was under 18 years old and had in his possession any firearm of a size which may be

concealed on his person. 720 ILCS 5/24.31(a)(1) (West 2010). The respondent concedes that he is under 18 years old and that the firearm was of a size that it could be concealed on his person. Thus, the case depends on whether the defendant possessed the firearm.

¶ 20 The state may establish possession through evidence indicating actual physical possession. "Actual possession is proved by testimony which shows defendant exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away." *People v. Scott*, 152 Ill. App. 3d 868 (1987), citing *People v. Howard*, 29 Ill. App. 3d 387 (1975).

¶ 21 When faced with 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 State, any rational trier of fact could have found the elements of this crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985). "Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A conviction will be reversed when there is a reasonable doubt as to the defendant's guilt because the evidence is so unreasonable, improbable, or unsatisfactory. *Ross*, 229 Ill. 2d 255.

¶ 22 In this case, the evidence was sufficient to prove beyond a reasonable doubt that the respondent possessed the firearm. When viewed in the light most favorable to the State, the evidence indicates that Cowser saw the respondent bend down near the van and heard the sound of metal hitting the ground. Moments later, using his flashlight, Cowser looked under the van in the area where the defendant had bent down and saw a metal gun with a wooden handle. There

were no other objects in the area. Cowser ordered the defendant to the ground, and the defendant fled. Flight can provide some evidence of guilt. See *People v. Harris*, 52 Ill. 2d 558 (1972) (court stated that flight was admissible as a circumstance that tended to show consciousness of guilt). Police recovered the weapon 3 to 4 minutes after the chase from the exact spot that Cowser had seen it. The evidence indicates that the respondent had possession of the firearm, placed it under the van, and then fled the scene once Cowser confronted him.

¶ 23 Although the defendant presented a different version of events, the court did not have to accept the testimony of the defendant and his witnesses. In fact, the trial court specifically found that Cowser was credible and that the defendant and his witnesses were not credible. On review we may not reweigh the evidence or reassess the court's credibility findings. See *People v. McCann*, 348 Ill. App. 3d 328 (2004). Based on the evidence, the trial court, as the trier of fact, could have reasonably concluded that the defendant was in possession of the firearm located underneath the van.

¶ 24 We acknowledge the respondent's reliance on *People v. Jackson*, 23 Ill. 2d 360 (1961); *People v. Mason*, 211 Ill. App. 3d 787 (1991); *People v. Jones*, 105 Ill. App. 3d 1143 (1982); and *People v. Stewart*, 27 Ill. App. 3d 520 (1975) for the proposition that because no one ever saw him with the firearm either before or at the time that an object was allegedly discarded, the State did not prove his guilt beyond a reasonable doubt. He also asserts that the State did not present evidence that anyone searched him for any other metal objects in his pockets that may have fallen to the ground and been retrieved, nor did it present evidence as to the condition of the gun with respect to the area where police subsequently found it.

¶ 25 In *Jackson*, the supreme court reversed a defendant's conviction for possession of

narcotics. There, the defendant ran from police into her bathroom carrying her purse. When the police entered the bathroom, they found footprints on the bathtub, the defendant's open purse on the floor, and a package of dry and clean drugs in an otherwise dirty and wet airwell beneath the window. The court noted that while it was likely that the defendant ran to the bathroom and discarded the drugs from the window into the airwell, the airwell was accessible to seven other apartments and there was no other evidence linking the defendant to the drugs. Thus, the State's evidence did not support a conviction beyond a reasonable doubt.

¶ 26 Similarly, in *Jones*, the court reversed a defendant's conviction for possession of narcotics in an instance where police officers saw the defendant reach into a closet and subsequently located a vial of heroin. However, the officers did not see the defendant with heroin or see what he had done in the closet. Thus, there was no direct proof that the defendant had possessed the heroin.

¶ 27 In *Stewart*, three witnesses saw the defendant park, leave the car, bend over, return to the car and drive way, and although one of these witnesses saw the defendant's hand near the ground, no one saw whether the defendant dropped something or threw an object from his car. The court held that such evidence was insufficient to convict the defendant beyond a reasonable doubt of possession of cannabis because it only showed that the defendant acted suspiciously in an area where narcotics were later found.

¶ 28 Finally, in *Mason*, the court reversed the defendant's conviction for burglary because while the evidence showed that the defendant was near the scene of the offense and fled from that vicinity, there was no evidence that the defendant entered the premises, removed anything from the premises, or possessed the stolen property. Nor were there any of the defendant's

fingerprints on the recovered property.

¶ 29 While these cases support the respondent's proposition that suspicion of possession is insufficient for a conviction and might otherwise *sustain* a tenable argument for reversal, *Collins'* requirement that we view all of the evidence in the light most favorable to the State trumps respondent's contentions. In this case, under that standard, there is sufficient evidence to support the respondent's conviction beyond a reasonable doubt. Under that standard, this case does not involve the respondent's mere presence near contraband as he argues. Rather, Cowser saw the respondent bend down next to the van, heard the sound of metal hitting the ground, noticed a revolver only moments later on the ground in the area where the respondent had bent over and did not find any other items in the area that could have made the sound Cowser heard. The facts: (1) that Cowser did not search the respondent for other metal items in his pocket that could have fallen to the ground and (2) that the State did not present testimony as to the condition of the firearm with respect to the area where it was found do not refute the evidence the State did present or the trial court's credibility findings.

¶ 30 Overall, our review of the record using the standard set out in *Collins* does not indicate that the State's evidence was so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of the defendant's guilt. Therefore, we conclude that the State sufficiently proved the respondent guilty beyond a reasonable doubt of unlawful possession of a firearm and the court properly adjudicated him a delinquent minor.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 33 Affirmed.