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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> DEJUAN B., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County.
Petitioner-Appellee,)	
)	No. 13 JD 3332
v.)	
)	The Honorable
Dejuan B., a Minor,)	Stuart Katz,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Where the court finds that a police officer's testimony that he observed a minor toss or drop a handgun is credible, the evidence is sufficient to convict the minor delinquent under a petition for adjudication of wardship.

¶ 2 Respondent Dejuan B., 15 years old, was charged in a petition for adjudication of wardship with aggravated unlawful use of a weapon, among other counts. The trial court found him delinquent and sentenced him on this count to an indeterminate sentence not to exceed three years with the Department of Juvenile Justice.

¶ 3 On this direct appeal, respondent raises a single issue. He argues that the State’s sole witness, Chicago Police Officer Steve Austin, was “unworthy of belief,” and thus his delinquency adjudication must be reversed due to insufficient evidence. There is no constitutional issue on appeal.

¶ 4 The State’s evidence consisted of: (1) Officer Austin’s testimony that he observed the minor respondent toss a gun on the ground; and (2) respondent’s statement admitting possession of the gun. Respondent does not challenge on appeal either the admission of this statement or the officers’ pursuit and stop of respondent. For the following reasons, we find that there was sufficient evidence to support his adjudication and affirm.

¶ 5 I. Pretrial Proceedings

¶ 6 On August 12, 2013, the State filed a petition for adjudication of wardship for the respondent, alleging four counts. Counts I, II, and III alleged aggravated unlawful use of a weapon for: (1) carrying a firearm that was uncased, loaded and immediately accessible (720 ILCS 5/24–1.6(a)(1), (a)(3)(A) (West 2012)); (2) carrying a firearm without possession of a currently valid firearm owner’s identification (FOID) card (720 ILCS 5/24–1.6(a)(1), (a)(3)(C) (West 2012)); and (3) carrying a firearm when under 21 years of age (720 ILCS 5/24–1.6(a)(1), (a)(3)(I) (West 2012)). Count IV alleged unlawful possession of a firearm (720 ILCS 5/24–3.1 (West 2012)).

¶ 7 At the preliminary hearing on the same date, the State proffered evidence that Chicago Police Officer Colon¹ would testify that, on August 11, 2013, he observed respondent throw or drop a gun onto the ground in an alley near the address of 240 East 47th Street. He would further

¹ Officer Colon’s full name is not in the record.

Nos. 1-14-0326, 1-14-0543, cons.

testify that while Officers Evans² and Austin detained the respondent, he recovered the gun from the alley, a blue steel RG model .38-caliber revolver with a 2.5-inch barrel. The officer would also testify that respondent did not have a valid FOID card. It is uncontested on this appeal that respondent did not possess a valid FOID card.

¶ 8 II. Evidence at Trial

¶ 9 Before trial, the State moved to nol-pros one count of aggravated unlawful use of a weapon (count I) as a result of the supreme court's decision in *People v. Aguilar*, 2013 IL 112116 (holding that section 24-1.6(a)(1), (a)(3)(A), (d) of the Illinois Aggravated Unlawful Use of Weapons Statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) violates the second amendment to the United States Constitution).

¶ 10 The State presented one witness, Chicago Police Officer Steve Austin. Respondent exercised his constitutional right not to testify or to call any witnesses.

¶ 11 Austin's testimony described in chronological order the events immediately preceding, during, and after respondent's arrest. He testified that on August 11, 2013, at approximately 10 p.m., he and his partner, Chicago Police Officer Colon, were driving eastbound on 47th Street in an unmarked vehicle. Officer Colon was driving and both officers were in plain clothes. Austin testified that he observed respondent riding a bicycle on the sidewalk. Respondent was heading eastbound on 47th Street and he turned into an alley heading southbound from 47th Street between Indiana Avenue and Prairie Avenue. This was the first time the officers observed respondent enter the alley. Officer Colon drove south to 48th Street and then east on 48th Street to enter the same alley heading north. Austin testified that they did not observe respondent in the alley, so they exited onto 47th Street, again heading eastbound. He testified that they next

² Officer Evans' full name is not in the record, but he was one of the officers who arrived at the crime scene.

Nos. 1-14-0326, 1-14-0543, cons.

observed respondent as he headed eastbound on 47th Street, and then he turned around in the intersection of 47th Street and Prairie Avenue and proceeded westbound on 47th Street. At this point, respondent was traveling toward Officers Austin and Colon.

¶ 12 Austin testified that, when respondent passed their vehicle, Officer Colon rolled down his window and said, “Hey. Stop. Come here,” but respondent continued riding. After respondent failed to stop, Officer Colon made a U-turn in the intersection, and at that point respondent “took off” on his bike. Austin observed that respondent was biking “much faster” than he was previously. According to Austin’s testimony, respondent entered the same alley, which was between Indiana Avenue and Prairie Avenue, a second time.

¶ 13 When the officers were approximately 50 feet behind the respondent, they observed respondent drop a handgun to the ground in the alley. When asked, Austin testified that he did “actually see” the gun fall from respondent’s hand. Although it was approximately 10 p.m. at the time of the incident, Austin testified that the alley was “very well-lit.” The area was a business district and there were “a couple different streetlights” in the alley.

¶ 14 Respondent continued riding and the officers pursued him. Respondent next biked through a vacant lot heading westbound toward Indiana Avenue. The officers followed respondent through the vacant lot and placed him in custody at approximately 4719 S. Indiana Avenue.

¶ 15 Austin testified that other officers arrived on the scene after respondent was in custody. Austin returned to the alley with Officer Evans to retrieve the handgun that he observed respondent drop.

¶ 16 Officer Austin described recovering the handgun as follows:

“ASSISTANT STATE’S ATTORNEY (‘ASA’): You remember the location that he threw the handgun?

OFFICER AUSTIN: Yes.

ASA: And did you relocate to that location in –

OFFICER AUSTIN: Yes.

ASA: -- the alley? And can you describe the area where you found the handgun.

OFFICER AUSTIN: *** The handgun was sitting in *** the middle of the alley.

ASA: Ok.

OFFICER AUSTIN: There’s some dumpsters around there ‘cause there’s business on 47th Street, but the handgun was just sitting in the middle of the alley.

ASA: Was there anything on top of it or concealing it?

OFFICER AUSTIN: No.

ASA: Now, Officer, you stated earlier that this alley was one that you and Officer Colon had just driven through, you said about 20 seconds prior; correct?

OFFICER AUSTIN: Yes.

ASA: Now, let me ask you. When you initially drove through the alley between -- between Indiana and Prairie, did you notice any gun or anything in the middle of the -- of the alley?

OFFICER AUSTIN: No. There was nothing there.

ASA: Okay. So when you went back there with Officer Evans, did you actually find a gun?

OFFICER AUSTIN: Yes.

ASA: Okay. And when you located the gun *** how long after you saw the minor respondent drop that gun until the time you were back there with Officer Evans to recover it?

OFFICER AUSTIN: I would say under two minutes.”

¶ 17 Austin described the gun as a RG Model 40 .38-caliber revolver, a “blue steel,” with a 2.5-inch barrel. He testified that, in his experience as a Chicago police officer and dealing with handguns, the gun was a size that could be concealed upon somebody’s person. He further testified that the gun had five live rounds. Officer Evans performed a safety check and inventoried the gun.

¶ 18 Following respondent’s arrest, Austin testified that they took him back to the Second District for processing and to do their arrest and case reports. He testified that once there, Officer Colon gave respondent his *Miranda* warnings and respondent stated that he understood them; he then made a statement. Austin described respondent’s statement as follows:

“He said that he had the weapon, the handgun, for protection from the ‘Jig Dawgs’ -- the ‘Jig Dawgs’ which are another street gang from 43rd and Prairie, and that they had come to his house -- his mom’s house before looking for him, so that’s why he had the weapon.”

¶ 19 Austin further testified that at no time was respondent able to provide a valid FOID card. He testified that an individual must be 18 years old to have a valid card. The statute states:

“Each applicant for a Firearm Owner's Identification Card must *** submit evidence to the Department of State Police that: [h]e or she is 21 years of age or over, or if he or she is under 21 years of age that he or she has the written consent of his or her parent or legal guardian to possess and acquire firearms and firearm ammunition and that he or she has never been convicted of a misdemeanor other than a traffic offense or adjudged delinquent, provided, however, that such parent or legal guardian is not an individual prohibited from having a Firearm Owner's Identification Card and files an affidavit with the Department as prescribed by the Department stating that he or she is not an individual prohibited from having a Card.” 430 ILCS 65/4 (a)(2)(i) (West 2012).

¶ 20 On cross-examination, Austin testified that “five or six seconds” passed between his witnessing respondent turn around in the intersection and when Officer Colon asked respondent to stop. When they pursued respondent down the alley, Officer Colon was accelerating to approximately 15 miles per hour. Austin did not jump out of his vehicle upon witnessing respondent drop the handgun. Also on cross-examination, Austin testified that the vehicle they were driving did not have a spotlight; on redirect-examination, he clarified that the vehicle had operational headlights that were on at the time the incident took place.

¶ 21 III. Adjudication and Sentencing

¶ 22 In the court’s ruling, the trial court noted that, “less [sic] there be any question in anybody’s mind, the minor admitted to having the gun, to dropping the gun, and why he had it.”

Nos. 1-14-0326, 1-14-0543, cons.

The trial court found respondent delinquent on counts II and III for aggravated unlawful use of a weapon and count IV for unlawful possession of a firearm. On October 18, 2013, respondent filed a posttrial motion, which included a motion to reconsider. We will not discuss the other portions of the posttrial motion, because this appeal is limited to the matter of the sufficiency of the evidence. The trial court denied the posttrial motion.

¶ 23 During sentencing, the trial court considered in aggravation that respondent had 20 cases referred to the juvenile court, 15 of which were filed. Further, respondent was on probation for aggravated possession of a stolen motor vehicle, a Class I felony. In mitigation, respondent stated that he had learned his lesson and would like to go home.

¶ 24 On November 22, 2013, the trial court merged counts III and IV into count II, aggravated unlawful use of a weapon under section 24–1.6(a)(1), (a)(3)(C) of the Illinois Aggravated Unlawful Use of Weapons Statute (720 ILCS 5/24–1.6(a)(3)(C) (West 2012)). The trial court then sentenced respondent to the Illinois Department of Juvenile Justice for an indeterminate amount of time not to exceed three years.

¶ 25 On February 27, 2014, respondent filed a motion before this court for leave to file a late notice of appeal, which was granted, and this direct appeal followed.

¶ 26 ANALYSIS

¶ 27 On this direct appeal, respondent raises a single issue. He argues that the State’s sole witness, Chicago Police Officer Steve Austin, was “unworthy of belief,” and thus respondent’s delinquency adjudication must be reversed due to insufficient evidence. For the following reasons, we affirm respondent's adjudication.

Nos. 1-14-0326, 1-14-0543, cons.

¶ 28 As a preliminary matter, we note that respondent does not claim that the officers' pursuit and stop of him was unreasonable under the fourth amendment, or that the officers lacked probable cause to arrest him.

¶ 29 I. Standard of Review

¶ 30 Supreme Court Rule 660(a) provides that adjudication appeals shall be governed by the "rules applicable to criminal cases." Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001). Thus, when a minor respondent challenges the sufficiency of the evidence to sustain an adjudication of delinquency, the standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007). We will not find the evidence insufficient unless the evidence is so "unreasonable, improbable or unsatisfactory" that it creates a reasonable doubt of the respondent's guilt. See *People v. Rowell*, 229 Ill. 2d 82, 98 (2008).

¶ 31 II. Elements of Aggravated Unlawful Use of a Weapon

¶ 32 In *Aguilar*, our supreme court held that section 24-1.6(a)(1), (a)(3)(A), (d) of the Illinois Aggravated Unlawful Use of Weapons Statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) violates the second amendment to the United States Constitution. *Aguilar*, 2013 IL 112116, ¶ 22. However, respondent was convicted under 24-1.6(a)(1), (a)(3)(C) of the Illinois Aggravated Unlawful Use of Weapons Statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(C), (d) (West 2012)), which states as follows:

“(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; [and]

* * *

(3) One of the following factors is present:

* * *

(C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card.” 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012).

This section was not at issue in *Aguilar*.

¶ 33 Further, our supreme court explained that “the possession of handguns by minors is conduct that falls outside the scope of the second amendment’s protection.” *Aguilar*, 2013 IL 112116, ¶ 27 (“nothing like a right for minors to own and possess firearms has existed at any time in this nation’s history”). In other words, minors have no second amendment rights. Thus, it follows that a minor’s adjudication of delinquency due to aggravated unlawful use of a weapon, such as in our case, is not barred by the second amendment.

¶ 34 To find respondent delinquent for aggravated unlawful use of a weapon, the State must prove beyond a reasonable doubt: (1) that the respondent knowingly carried a firearm on or

Nos. 1-14-0326, 1-14-0543, cons.

about his person or in a vehicle or concealed the firearm on or about his person; (2) that the respondent was not on his own land or in his abode or fixed place of business; and (3) that respondent had not been issued a currently valid FOID card. See *People v. Zimmerman*, 239 Ill. 2d 491, 499 (2010) (explaining that in order to convict for aggravated unlawful use of a weapon, the State must prove beyond a reasonable doubt the elements set forth in subsection (a)(1), in addition to one of the nine aggravating factors in subsection (a)(3), including not having been issued a currently valid FOID card, at issue here); *People v. Foster*, 394 Ill. App. 3d 163, 168 (2009) (delineating elements of proof for subsection (a)(1)); 720 ILCS 5/24–1.6(a)(1), (a)(3)(C) (West 2012).

¶ 35 Respondent does not contest the sufficiency of the evidence for the second or third elements, namely that he was not on his own property, or that he lacked a valid FOID card. This appeal therefore turns on whether the State provided sufficient evidence to prove beyond a reasonable doubt that the respondent knowingly carried a firearm on or about his person.

¶ 36 III. Sufficiency of the Evidence

¶ 37 The State’s evidence that respondent knowingly possessed a firearm on or about his person consisted of: (1) respondent’s statement admitting possession of the gun; and (2) Officer Austin’s testimony that he observed the minor respondent toss or drop a gun on the ground.

¶ 38 Although respondent does not raise this issue, we observe that respondent’s out-of-court admission that the weapon was his is insufficient, by itself, to obtain a valid adjudication of delinquency. In order to obtain a valid adjudication, the State must prove the *corpus delicti*, that a crime has been committed. *In the Interest of D.A.*, 114 Ill. App. 3d 522, 524 (1983). The *corpus delicti* cannot be proven by a respondent's confession, or out-of-court statement alone; the State must also provide independent corroborating evidence. *People v. Lara*, 2012 IL 112370,

Nos. 1-14-0326, 1-14-0543, cons.

¶ 17. However, to avoid “running afoul” of the *corpus delicti* rule, the independent evidence provided need only “tend to show” the commission of a crime. *Lara*, 2012 IL 112370, ¶ 18. Therefore, to prove that respondent knowingly carried a firearm, respondent’s Mirandized confession is, by itself, insufficient, and the independent evidence of Officer Austin’s testimony must “tend to show” that respondent knowingly carried a firearm. *Lara*, 2012 IL 112370, ¶ 18.

¶ 39 In addressing respondent's challenge to the sufficiency of Austin’s testimony, we observe that it is the trier of fact, in this case the trial judge, who determines the credibility of the witnesses. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). “The trial court, as the trier of fact in a bench trial, hears and sees the witnesses and, thus, has the responsibility to judge their credibility, resolve any inconsistencies, determine the weight to give their testimony, and draw reasonable inferences from all the evidence presented.” *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004).

¶ 40 Respondent’s appellate brief uses the phrase “dropsy testimony” to describe Officer Austin’s testimony that respondent dropped a handgun in view of the officers. “Dropsy” testimony is false testimony given by a police officer that a defendant dropped an illegal substance in plain view in order to avoid the exclusion of that evidence on fourth-amendment grounds. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004). The term comes from a line of New York cases in the 1970s that followed after the United States Supreme Court decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), which held that the exclusionary rule for unconstitutional searches and seizures applies to the states. Gabriel Chin and Scott Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. Pitt. L.Rev. 233, 267 (1998).

Nos. 1-14-0326, 1-14-0543, cons.

¶ 41 In these cases, courts expressed skepticism of police testimony that suspects had dropped narcotics during a chase, and speculated that this testimony was fabricated to avoid *Mapp*'s exclusionary rule. See, e.g., *People v. McMurty*, 314 N.Y.S.2d 194, 197 (N.Y. Crim. Ct. 1970) (holding that "dropsy testimony," consisting of testimony of arresting police officer that suspect dropped packet of narcotic drugs to the ground, should be "scrutinized with especial caution"). Respondent's reference to "dropsy" testimony implies that Officer Austin's testimony was fabricated in order to hide fourth amendment violations and secure respondent's adjudication. Additional support for this claim in respondent's brief includes evidence and reports that Chicago police sometimes commit perjury in order to secure convictions. However, the appellate court has previously held that, "[j]ust because of the plenitude of 'dropsy cases,' we will not require, as a matter of law, the corroboration of a police officer's testimony," when the testimony is credible. *Ash*, 346 Ill. App. 3d at 818.

¶ 42 Respondent's brief argues that it is inherently unbelievable that respondent would drop an incriminating gun in plain view of police officers. To the contrary, it is completely believable that a teenager, who realizes that he is being pursued by law enforcement, would attempt to toss incriminating evidence from his person. In fact, opting to dispose of contraband after becoming aware of law enforcement is both believable and common. See *People v. Moore*, 2014 IL App (1st) 110793-B, ¶ 10 (collecting cases where defendants attempted to dispose of contraband after becoming aware of police presence).

¶ 43 In the present case, there is no evidence in the record to indicate at what time the respondent first became aware of Officers Austin and Colon's presence. The facts, uncontested at trial and on appeal, reveal that the officers were in plain clothes and driving an unmarked vehicle. When they first observed respondent, they observed him bike into an alley. There is no

Nos. 1-14-0326, 1-14-0543, cons.

evidence in the record as to whether respondent biked into the alley based on the belief that there was law enforcement present. The next time the officers observed respondent, they observed him making a U-turn in the intersection of Prairie Avenue and 47th Street, and begin biking *toward* the officers. It was only after Officer Colon rolled down the window to speak to respondent, and made a U-turn to head in the direction of respondent, that respondent “took off” on his bike and started biking faster than before. A rational trier of fact, based on the above evidence, could reasonably infer that respondent was not aware of the presence of law enforcement until Officer Colon asked him to stop. Thus, it makes sense for him to not have attempted to toss the weapon before this point.

¶ 44 Respondent argues that it is improbable that respondent did not choose to discard the gun the moment he entered the alley the second time and thus was concealed from the officers. However, a rational trier could infer that respondent *did* discard the gun the moment he entered the alley for the second time. Given the short distance between the intersection of Prairie Avenue and 47th Street; the alley located on 47th Street between Prairie Avenue and Indiana Avenue; and the location of arrest at approximately 240 East 47th Street, which are all within a square city block, a rational trier of fact could reasonably believe that very little time had passed between when respondent entered the alley and the time when Austin testified that respondent dropped or tossed the handgun. Additionally, a 15-year-old on a bike on a sidewalk who “takes off” when simply asked by police to “come here” does not suggest the behavior of a sophisticated criminal. Given this short time frame, a rational trier of fact could reasonably infer that respondent disposed of the gun the moment he entered the alley and underestimated how close the officers were behind him.

Nos. 1-14-0326, 1-14-0543, cons.

¶ 45 Accordingly, we do not find persuasive respondent's argument that the officer's testimony is "unworthy of belief." A rational trier of fact could reasonably believe that the minor respondent dropped the handgun in plain view of the officers when attempting to evade law enforcement.

¶ 46 Therefore, Officer Austin's testimony "tends to show" that respondent knowingly carried a firearm on or about his person. *Lara*, 2012 IL 112370, ¶ 18. This evidence is sufficient to corroborate respondent's confession and establish the *corpus delicti* of the crime of aggravated unlawful use of a firearm. Since the other elements of the crime are uncontested, the State's evidence was sufficient to adjudicate respondent delinquent for aggravated unlawful use of a weapon.

CONCLUSION

¶ 47 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 48 Affirmed.