

No. 1-16-1056

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 re</i> SZECHAN M., A MINOR)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 15 JD 2613
)	
SZECHAN M., a minor,)	Honorable
)	Terrence V. Sharkey,
Respondent-Appellant).)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 **Held:** Where a police officer testified credibly that he saw a handgun in respondent’s waistband, the evidence was sufficient to prove him guilty of aggravated unlawful use of a weapon.
- ¶ 2 Following a bench trial, respondent Szechan M. was found guilty of two counts of aggravated unlawful use of a weapon (AUUW) and one count of unlawful possession of firearms. He was sentenced to three years in the Department of Juvenile Justice. On appeal, respondent contends that his adjudication of delinquency for AUUW must be vacated because

the State did not prove beyond a reasonable doubt (1) that the handgun recovered by the police was the same object a police officer had earlier seen in his waistband, and (2) that the object seen in his waistband was, in fact, a handgun or firearm.

¶ 3 For the reasons explained below, we affirm.

¶ 4 Respondent's adjudication of delinquency arose from the events of August 1, 2015. Following respondent's arrest, the State filed a petition for adjudication of wardship, alleging one count of AUUW based on respondent being under age 21, one count of AUUW based on respondent not possessing a FOID card, and one count of unlawful possession of a firearm.

¶ 5 At trial, Chicago police officer Matthew Evans, who had been employed as a police officer for over eight years, testified that at about 11:30 a.m. on the day in question, he was on patrol with his partner in the vicinity of 1835 West Garfield Boulevard when he saw respondent from a distance of 15 to 20 feet, leaning into a vehicle and talking to someone. Officer Evans recognized respondent and knew he was wanted for a robbery and had an active warrant against him. As such, Officer Evans exited his car and said, "[P]olice, come over here." In response, respondent started to flee. While respondent was running, Officer Evans noticed the butt of a handgun in his waistband. When Officer Evans made this observation, nothing obstructed his view. Officer Evans chased respondent into an apartment building at 1835 West Garfield Boulevard and up some stairs. He heard the door to an apartment shut, but by the time he got upstairs, the door to the unit was locked.

¶ 6 Officer Evans testified that he and three other officers forced entry into the apartment, where they found respondent, co-respondent Marvel P., Marvel P.'s mother, a young girl, and an infant. After the officers got the apartment door open, they were met with "a little resistance" in

that “the people up front” tried to stop them and asked why they were coming inside. Also, Marvel P.’s mother struck one of the officers. Once inside the apartment, Officer Evans’s partner found respondent hiding under a bed. He did not have a gun in his waistband.

¶ 7 Officer Evans searched the apartment and found a gun in a second bedroom, lying on a bed next to the young girl and the infant. Marvel P. told the officers that he put the gun in the bedroom, stated that his sister and the infant had nothing to do with it, and implored, “[D]on’t charge us.” Another officer recovered the gun, which was loaded. Respondent and Marvel P. were arrested and taken to the police station.

¶ 8 Officer Evans testified that neither respondent nor Marvel P. presented a FOID card, and that at the police station, it was confirmed that they were both under the age of 18. When the prosecutor asked Officer Evans to describe “the gun that you saw [respondent] carrying in his waistband,” the officer stated that it was a blue steel, semi-automatic Smith and Wesson handgun with a 4½-inch barrel. Officer Evans further stated that it was the same gun that was found on the bed next to the infant.

¶ 9 Respondent did not testify or present any witnesses.

¶ 10 Following closing arguments, the trial court found respondent guilty on all three counts. In the course of doing so, the court reviewed Officer Evans’s testimony and commented, “The officer describes the weapon that was recovered as the blue steel semi-automatic Smith and Wesson handgun, four and a half inch barrel. But he could only see the butt of a handgun [in respondent’s waistband]. He doesn’t -- I don’t know if he knows that’s the identical gun because I didn’t think I heard him say that was the gun.” However, the court went on to find that the State proved actual possession because when Officer Evans saw the object in respondent’s

waistband, “[T]he officer recognizes a handgun. And when he sees one, partially or not partially *** there is no constructive possession here on the part of [respondent]. Officer Evans sees him with the handgun.” The court subsequently sentenced respondent to three years in the Department of Juvenile Justice.

¶ 11 On appeal, respondent contends that his adjudication of delinquency for AUUW must be vacated because the State did not prove beyond a reasonable doubt (1) that the handgun recovered from the bed was the same object Officer Evans had earlier seen in his waistband, and (2) that the object Officer Evans saw in his waistband was, in fact, a handgun or firearm. According to respondent, Officer Evans’s description of the object he saw in his waistband was incredible. He argues that it is inconceivable that Officer Evans would have been able to determine, from a distance of 15 to 20 feet as respondent was running, that the object in his waistband was a blue steel, semi-automatic Smith and Wesson handgun with a 4½-inch barrel, especially since Officer Evans testified that he only saw the butt portion of a gun at that point in time. Respondent further asserts that because Officer Evans’s description of the object he saw in his waistband was incredible, he cannot be connected to the handgun recovered from the apartment. He maintains that without establishing that the recovered handgun was the object in his waistband, the State failed to prove that the object was, in fact, a handgun or firearm.

¶ 12 When reviewing the sufficiency of the evidence, the relevant inquiry is 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47 (the reasonable doubt standard applies in delinquency proceedings). The credibility of the witnesses,

the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Reversal is justified only where the evidence is “so unsatisfactory, improbable or implausible” that it raises a reasonable doubt as to the defendant’s guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 13 Here, Officer Evans, an experienced police officer, testified that when respondent turned to run from him, he saw the butt of a gun in respondent’s waistband. Officer Evans was only 15 to 20 feet from respondent when he made this observation, in the daylight, with nothing obstructing his view. Respondent fled into an apartment, and when Officer Evans and other officers searched that unit shortly thereafter, they only found one gun. Officer Evans stated that this gun was the same one he had seen in respondent’s waistband, and described it as a blue steel, semi-automatic Smith and Wesson handgun with a 4½-inch barrel.

¶ 14 We find that this evidence, viewed in the light most favorable to the prosecution, was sufficient to establish that respondent possessed a handgun or firearm. Based on the trial court’s finding of guilt, it is evident that it found Officer Evans’s testimony credible, which was its prerogative in its role as the trier of fact. *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. As the trial court noted in announcing its findings, Officer Evans was an eight-year veteran of the police force, and as such, would recognize a handgun, even if it was partially obscured by respondent’s waistband. Here, the evidence was not “so unsatisfactory, improbable or

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implausible” to raise a reasonable doubt as to respondent’s guilt. *Slim*, 127 Ill. 2d at 307.

Accordingly, respondent’s challenge to the sufficiency of the evidence fails.

¶ 15 For the reasons explained above, we affirm the judgment of the trial court.

¶ 16 Affirmed.