

No. 1-16-2732

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

In re L.P., a minor,)
(PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v.)
L.P.,)
Respondent-Appellant.))

) Appeal from the
) Circuit Court of
) Cook County
)
) No. 16 JD 1530
)
) Honorable
) Stuart F. Lubin,
) Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirming respondent’s adjudication of delinquency for aggravated unlawful use of a weapon and unlawful possession of a firearm. The matter is remanded, however, pursuant to the one-act, one-crime doctrine, for the trial court to determine which one of respondent’s adjudications is the most serious, to vacate the other two convictions, and to correct respondent’s order of commitment accordingly.
- ¶ 2 Following a bench trial, respondent L.P., a 15-year old minor, was found guilty of two

counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1)(3)(C), (a)(1)(3)(I) (West 2016)) and one count of unlawful possession of a firearm (UPF) (720 ILCS 5/24-3.1(a)(1) (West 2016)) and adjudicated a delinquent minor pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5 *et seq.* (West 2016)). Respondent was sentenced to an 18-month term of probation and a stayed 30-day term in the Illinois Department of Juvenile Justice. On appeal, respondent contends: (1) the State failed to prove him guilty beyond a reasonable doubt of AUUW and UPF; and (2) that, pursuant to the one-act, one-crime rule, the matter must be remanded to the trial court for a determination as to which of his three convictions is the most serious and to vacate the other two, less serious convictions. For the following reasons, we affirm in part and remand with directions.

¶ 3

BACKGROUND

¶ 4 On July 8, 2016, the State filed a petition for the adjudication of wardship of 15-year-old L.P., alleging that, on July 7, 2016, he committed two counts of AUUW and one count of UPF based on his possession of a firearm. The matter proceeded to a bench trial.

¶ 5 Chicago police officer Oppedisano (Oppedisano) testified that on July 7, 2016, she was on patrol with her partner, Officer Gregory (Gregory) when she received a radio call which required them to respond to a strip mall located in the 2400 block of North Major Avenue in Chicago. Upon arriving at the mall, a concerned citizen spoke with Oppedisano. Gregory, however, was not present at the time, as he had entered a store located in the strip mall. Oppedisano then approached a black sedan parked on Major Avenue where she observed two individuals inside the vehicle; the driver, later identified as Brian Flores (Flores), and respondent who was sitting in the rear right passenger seat. As she directed Flores to exit the vehicle, Oppedisano observed respondent through the clear glass window bent over “placing both of his

hands underneath the front passenger seat of the vehicle.” At that moment, another officer responding to the call approached the black sedan on the passenger side and ordered respondent to display his hands. Respondent did not immediately respond, but eventually did exit the vehicle.

¶ 6 Oppedisano proceeded to search the vehicle and discovered an unloaded small caliber handgun under the front passenger seat. There were no other items or pieces of debris under the front passenger seat. Shortly thereafter, Gregory approached the black sedan and recovered the firearm, which he testified was the size of a hand. Respondent was placed under arrest.

¶ 7 Oppedisano further testified that respondent did not reside at the address where the firearm was recovered and respondent did not have a valid FOID card. In addition, Oppedisano testified that respondent was not conducting any activities under the Wildlife Code at the time.

¶ 8 On cross-examination both Oppedisano and Gregory testified that they did not observe respondent with a weapon in his hand. Oppedisano further testified that the black sedan was stolen, thus respondent was not the owner of the vehicle. Oppedisano also testified that while she did not include the detail regarding respondent having his hands underneath the front passenger seat in her recovered vehicle supplementary report, it was included in respondent’s arrest report.

¶ 9 Following closing arguments, the trial court found respondent delinquent based on his commission of two-counts of AUUW and UPF, but did not indicate that any of the charged offenses would merge. A dispositional hearing was then conducted and the trial court sentenced respondent to an 18-month term of probation and a stayed 30-day term in the Illinois Department of Juvenile Justice. This appeal followed.

¶ 10

ANALYSIS

¶ 11 On appeal, respondent raises two contentions: (1) the evidence was insufficient to support his delinquency adjudications for AUUW and UPF because the State failed to prove that he possessed a firearm; and (2) pursuant to the one-act, one-crime rule, the matter must be remanded to the trial court for a determination as to which one of his three convictions is the most serious and to vacate the other two, less serious convictions. We address each contention in turn.

¶ 12

Sufficiency of the Evidence

¶ 13 Respondent asserts that the State failed to present any evidence that he was in constructive possession of the firearm discovered in the vehicle. Respondent argues that the vehicle did not belong to him, no officer observed him in possession of the firearm, and no physical evidence linked him to the weapon. Respondent maintains that Oppedisano's testimony that he placed two hands under the front passenger seat does not suffice to establish his guilt by a reasonable doubt and his mere presence in a stolen vehicle with a handgun under the seat does not establish he constructively possessed the firearm. Accordingly, respondent requests this court reverse his adjudication of delinquency.

¶ 14 After filing a delinquency petition, the State must prove the elements of the substantive offense charged beyond a reasonable doubt. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). Thus, “[a] reviewing court will not overturn a trial court’s delinquency finding ‘unless, after viewing the evidence in the light most favorable to the State, no rational fact finder could have found the offenses proved beyond a reasonable doubt.’ ” *In re T.W.*, 381 Ill. App. 3d 603, 608 (2008) (quoting *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005)). The determination of the weight to be given the testimony, witnesses’ credibility, resolution of inconsistencies and conflicts in the

evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *People v. Austin M.*, 2012 IL 111194, ¶ 107. When considering the sufficiency of the evidence, it is not the function of the reviewing court to retry the respondent, and we will reverse a conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt. *Id.* (citing *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 15 For AUUW, the State needed to establish that a principal offender knowingly carried a firearm in his vehicle without possessing a valid FOID card or was under the age of 21 and not engaged in a lawful wildlife activity. 720 ILCS 5/24-1.6(a)(1)(3)(C), (a)(1)(3)(I) (West 2016). For the unlawful possession offense, the State needed to prove that a principal offender knowingly possessed a firearm while under the age of 18. 720 ILCS 5/24-3.1(a)(1) (West 2016).

¶ 16 Accordingly, in order for the State to demonstrate respondent committed AUUW and UPF, it must establish respondent possessed the firearm. 720 ILCS 5/24-1.6(a)(1)(3)(C), (a)(1)(3)(I) (West 2016); 720 ILCS 5/24-3.1(a)(1) (West 2016). The element of possession may be satisfied by either actual or constructive possession of the weapon. *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009). "Actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material." *People v. Givens*, 237 Ill. 2d 311, 335 (2010). In order to establish constructive possession, the State has to prove beyond a reasonable doubt that respondent: (1) had knowledge of the presence of the weapon; and (2) that he exercised exclusive and immediate control over the area where the weapon was found. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. Although a respondent's control over a location does give rise to an inference of possession,

mere proximity to the weapon is insufficient to demonstrate possession. *Id.* ¶ 10. Circumstantial evidence may be used to prove knowledge and possession. *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). Factors to infer knowledge include (1) the visibility of the weapon from a defendant's position in the vehicle, (2) the amount of time in which the defendant had an opportunity to observe the weapon, (3) any gestures by the defendant indicating an effort to retrieve or conceal the weapon, and (4) the size of the weapon. *Ingram*, 389 Ill. App. 3d at 900. Courts should also consider any other relevant circumstantial evidence of knowledge, including whether the defendant had a possessory or ownership interest in the weapon or in the automobile when the weapon was found. *Bailey*, 333 Ill. App. 3d at 892.

¶ 17 In support of his contention, respondent relies on *Bailey*. In *Bailey*, the defendant was riding in the front passenger seat of a vehicle that was stopped by police officers. *Id.* at 889. The officers planned to have the vehicle towed due to the presence of open alcohol, and therefore, conducted an inventory search of the vehicle. *Id.* at 889-90. The officers found a handgun under the front passenger seat. *Id.* at 890. During an interview at the police station, the defendant said that the driver had displayed the weapon to him while they were at the defendant's residence, but the defendant claimed that he placed the handgun on his kitchen table. *Id.* Upon further questioning, the defendant said that he looked at the firearm while inside the vehicle, and after looking at it, gave it back to the driver and exited the vehicle. *Id.* The defendant consistently denied knowing that the handgun was inside the vehicle. At trial, one of the arresting officers testified that he believed the weapon was within the defendant's arm reach; however, the handgun was not visible until he looked under the seat. *Id.* The jury found the defendant guilty of AUUW. *Id.*

¶ 18 On appeal, the reviewing court concluded that the State failed to produce any affirmative

evidence, either circumstantial or direct, that the defendant had knowledge of the presence of the weapon under his seat. *Id.* at 892. The reviewing court emphasized that the officer who discovered the handgun testified that the firearm was not visible until he looked under the seat, and therefore, the weapon would not have been visible to the defendant, who was sitting in the passenger's seat. *Id.* The reviewing court further noted that no fingerprints were taken from the firearm and there was no evidence that the defendant made any gestures indicating that he was trying to retrieve or hide a weapon. *Id.* The reviewing court concluded that, although the defendant's credibility "was called into question" because he provided two different accounts of the driver showing him the handgun, "a lack of credibility is not enough to establish that [the defendant] had knowledge of the presence of the weapon in the vehicle." *Id.*

¶ 19 As respondent notes, the *Bailey* court stated that a defendant's mere presence in a vehicle, without more, is not evidence that he knows a weapon is in the automobile. *Id.* at 891.

However, the *Bailey* court also explained that knowledge could be inferred from other factors including: "(1) the visibility of the weapon from [the] defendant's position in the [vehicle], (2) the period of time in which the defendant had an opportunity to observe the weapon, (3) any gestures by the defendant indicating an effort to retrieve or hide the weapon, and (4) the size of the weapon." *Id.* at 892. Notably, the instant case is distinguishable from *Bailey* with respect to the third factor. Here, Officer Oppedisano testified she observed respondent bent over in the rear right passenger seat with both hands underneath the front passenger seat. In addition, Oppedisano testified that after respondent was directed to display his hands, he did not immediately comply with the request. Thus, respondent's gestures indicated an effort to hide the weapon underneath the front passenger seat. A trier of fact could reasonably infer from this evidence that respondent was, in fact, in possession of the firearm.

¶ 20 The State, conversely, relies on *Ingram*. In that case, the reviewing court upheld the defendant's UPF conviction because the handgun was in plain view on the floor of the vehicle. *Ingram*, 389 Ill. App. 3d at 900. The defendant had been sitting in the front passenger seat. *Id.* at 898. That seat was broken and was fully reclined and lying on the back seat. *Id.* The court in *Ingram* emphasized that, although the weapon was underneath the driver's seat, testimony and a photograph made "clear that the whole gun was in fact in plain view right behind the driver's seat." *Id.* Specifically, the photograph depicted the black handgun on a red-carpeted floor with nothing else in the immediate vicinity. Further, the front passenger seat was broken and was resting on the backseat, right next to where the gun was found. *Id.* Finally, the size of the gun made it easily identifiable as a gun. *Id.*

¶ 21 We find the State's reliance on *Ingram* is unconvincing. There, the firearm was in plain view and the size of the weapon made it easily identifiable as a handgun. *Id.* Conversely, in this case, the weapon was not in plain view and Oppedisano and Gregory testified that they only became aware of the firearm's presence after they viewed it underneath the front passenger seat.

¶ 22 In sum, the instant case is distinguishable from both the cases cited by respondent and by the State. Nonetheless, in reviewing a challenge to the sufficiency of the evidence, this court is accordingly required to "determine whether the record evidence could *reasonably* support a finding of guilt beyond a reasonable doubt." (Emphasis in original.) *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). The relevant inquiry is whether a reasonable trier of fact could find that respondent knew the firearm was in the vehicle, and therefore constructively possessed it under the evidence presented. We "must allow all reasonable inferences from the record in favor of the prosecution." *Cunningham*, 212 Ill. 2d at 280.

¶ 23 We conclude the trier of fact did not err in finding a reasonable inference that respondent constructively possessed the handgun at the time it was recovered. Respondent’s knowledge of the presence of a firearm may be inferred from the evidence that was presented at trial which included (1) that respondent was observed bent over with both hands under the front passenger seat, (2) when ordered to show his hands he did not immediately comply, and (3) no other items or debris was discovered underneath the front passenger seat. The evidence further established that the weapon was discovered under the front passenger seat, the seat behind which respondent was sitting when he was ordered out of the vehicle. Respondent’s movements combined with the proximity of the weapon under the seat in front of where respondent was sitting, created a reasonable inference that respondent was, in fact, in possession of the firearm such that a “rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. Ross*, 229 Ill. 2d 255, 272 (2008). Viewing the evidence in the light most favorable to the State, we conclude that the evidence in this case was sufficient to support the trial court’s finding that respondent was guilty of AUUW and UPF.

¶ 24 One-Act, One-Crime Doctrine

¶ 25 Respondent next contends, and the State agrees, that we must vacate two of his three adjudications under the one-act, one-crime doctrine because the adjudications were carved from the same physical act; namely, his possession of a firearm.

¶ 26 Initially, we note that the respondent did not raise this issue in the trial court. While a minor is not required to file a post-adjudication motion, he or she must object at trial to preserve a claimed error for appeal purposes. *In re Samantha V.*, 234 Ill. 2d 359, 368 (2009). We may review this issue only if the plain-error exception to the forfeiture rule applies in this case. *Id.* “[T]he plain-error rule instructs us to consider whether ‘(1) the evidence is close, regardless of

the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.’ ” *Id.* at 378 (quoting *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). A plain error has occurred if either of the two prongs are satisfied. *Id.* A violation of the one-act, one-crime doctrine affects the integrity of the judicial process and thus, where such an error occurs, the second prong of the plain-error test is satisfied. *Id.* at 378-79.

¶ 27 Pursuant to the one-act, one-crime doctrine, a defendant cannot be convicted of multiple offenses “carved from the same physical act,” where the “act” is defined as “any overt or outward manifestation which will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566 (1977). It has long been recognized that when two or more related offenses arise from the same conduct, only the conviction for the most serious offense is permitted. *People v. Price*, 221 Ill. 2d 182, 193 (2006) (citing *King*, 66 Ill. 2d at 562-64). Accordingly, the less serious offenses should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Whether a conviction should be vacated under the one-act, one crime doctrine is a question of law which the court reviews *de novo*. *In re Angel P.*, 2014 IL App (1st) 121749, ¶ 63.

¶ 28 At the dispositional hearing in this case, the trial court did not indicate that the counts were merged and proceeded to sentence respondent to a stayed 30-day term in the Illinois Department of Juvenile Justice and an 18-month term of probation. Respondent’s multiple adjudications are improper because they are based on precisely the same act, respondent’s possession of a firearm. See *id.* ¶ 77 (finding a violation of the one-act, one-crime doctrine where the respondent’s adjudication of delinquency on multiple counts were based on the single act of possessing a pistol); *People v. Quinones*, 362 Ill. App. 3d 385, 397 (2005) (holding the defendant’s two convictions for AUUW violated the one-act, one-crime doctrine since each was based on the defendant’s act of possessing the firearm).

¶ 29 While the parties agree that a violation of the one-act, one-crime doctrine occurred, they disagree as to the remedy. Respondent asserts this court must remand the matter for the trial court to determine which of the three adjudications shall stand. The State, on the other hand, argues that a remand is unnecessary where the penalties and sentences for each of the adjudications is identical. For the reasons that follow, we agree with respondent.

¶ 30 When multiple convictions are obtained for offenses arising from a single act, the trial court should impose a sentence on the more serious offense and vacate the convictions on the less serious offenses. *Artis*, 232 Ill. 2d at 170. To determine which offense is the more serious one, a reviewing court ordinarily compares the relative punishments imposed for each offense, but if the degree of the offenses and their sentencing classifications are identical, we may also consider which conviction has the more culpable mental state. *Id.* at 170-71. If, however, we cannot determine which offense is the more serious of the two or more convictions based on a single physical act, we must remand the cause to the trial court for that determination. *Id.* at 177.

¶ 31 Our legislature has classified both AUUW and UPF as Class 4 felonies. 720 ILCS 5/24-1.6(d); 24-3.1(b) (West 2016) (Class 4 felony sentencing range is not less than one year and not more than three years). Moreover, the AUUW convictions and the UPF conviction have the same mental state of “knowledge.” See 720 ILCS 5/24-1.6(a)(1)(3)(C), (a)(1)(3)(I) (West 2016); 720 ILCS 5/24-3.1(a)(1) (West 2016). Due to the fact that we cannot determine which offense is the more serious of the three convictions, we must remand the cause to the trial court for that determination. See *Artis*, 232 Ill. 2d at 177. Accordingly, we remand this case to the trial court for the entry of a single adjudication of delinquency on the count which the court determines to be the most serious of the offenses charged in the counts. The trial court shall then vacate the remaining two counts. See *In re Angel P.*, 2014 IL App (1st) 121749, ¶ 86 (holding a violation

of the one-act, one-crime rule occurred and remanding to the trial court for it to determine the most serious of the offenses charged and to vacate the remaining counts).

¶ 32

CONCLUSION

¶ 33 For the reasons stated above, the judgment of the circuit court of Cook County is affirmed. Under the one-act, one-crime rule, however, only one of respondent's adjudications may stand. Therefore, we remand the cause to the trial court to: (1) determine which of respondent's delinquency adjudications is the most serious; (2) vacate the other two adjudications; and (3) correct respondent's order of commitment accordingly.

¶ 34 Affirmed in part; cause remanded.