NOTICE
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2017 IL App (5th) 160480-U

NO. 5-16-0480

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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 re K.D.L., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Effingham County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 15-JD-78
	)	
K.D.L.,	)	Honorable
	)	Kimberly G. Koester,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Presiding Justice Moore and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: After a hearing, the circuit court improperly adjudicated the respondent delinquent for possession of a stolen firearm.

¶ 2 Following a hearing, the circuit court of Effingham County adjudicated the respondent, K.D.L., delinquent based on his possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2014)). The circuit court sentenced the respondent to 24 months of probation. On appeal, the respondent contends that the evidence was insufficient to support his delinquency adjudication because the State failed to prove that he knew the firearm was stolen or that he was not entitled to possess it. In the alternative, he argues

that the State failed to prove the *corpus delicti* of the charge where no evidence independent of his statement tended to prove that he possessed a stolen firearm. The respondent also contends that the circuit court improperly took judicial notice of another juvenile delinquency case and failed to grant him proper presentence credit for confinement and fines. For the following reasons, we reverse the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 On October 19, 2015, the State filed a petition for adjudication of delinquency, charging the respondent with possession of a stolen firearm. 720 ILCS 5/24-3.8(a) (West 2014). At the respondent's adjudicatory hearing, John Perry testified that in the early morning hours of October 18, 2015, he was preparing to go hunting, and while his truck was left unattended, his .40-caliber Glock Model 27 handgun was removed from the center console of his pickup truck. Once Perry discovered that his firearm had been taken, he reported the theft to police, providing them with the serial number of the firearm.

¶ 5 Detective Todd Ebbert of the Effingham police department testified that on October 18, 2015, the handgun taken from Perry's vehicle was involved in a shooting that killed Kaylee Jacob. The police officers initially dispatched to the shooting determined that the respondent was present during the shooting but had left to seek help for Jacob. The Effingham police department officers thereafter located the respondent and his brother, D.L., and transported them to the police department for interviewing. Detective Ebbert testified that D.L. admitted that he had taken the gun from Perry's truck and that

the gun was involved in the shooting incident that killed Jacob. Detective Ebbert testified that D.L. had shot the gun at a tree in one incident and in a vehicle at Jacob in another. Deputy Brandon Murray, of the Effingham County sheriff's department, testified that D.L. led him and John Long, of the Effingham city police department, to the stolen .40-caliber Glock 27 handgun, which was collected by crime scene services.

¶ 6 Detective Ebbert testified that he and Detective Scott Volpi interviewed the respondent. Detective Ebbert testified that the respondent had stated that he had seen D.L. shoot the firearm, presumably at the tree, but that D.L. had not allowed anyone else to shoot the firearm. Detective Ebbert testified that the respondent had stated that he thought he had "touched it, if it's the black one" but stated that he had "g[iven] it back to [D.L.] the day before the shooting occurred." Detective Ebbert testified that the respondent had stated he had not been in the vehicle when Jacob was shot but had been playing basketball.

¶ 7 On cross-examination, Detective Ebbert was asked, "When [the respondent] was asked if he knew that [D.L.] had stolen the gun from a truck by the lake, he said no, is that correct?" Detective Ebbert responded, "That sounds probably right[.] I would say so." Detective Ebbert testified that Glock pistols were fairly expensive, estimating a value of $550 and higher.

¶ 8 After hearing the State's evidence and defense arguments for a judgment as a matter of law, the circuit court stated that whether the respondent knew that the firearm was stolen was a "gray" area but that the State's "clearly circumstantial" evidence that the respondent lived with D.L., should have known that D.L. did not own and had no

right to possess the firearm, and watched D.L. shoot the firearm at a tree was sufficient to circumvent a directed verdict. At the conclusion of evidence, before announcing judgment, the circuit court further stated the following:

> "I've [ ] considered the creditability of the witnesses[,] and I'm also able to consider everything that I have at my disposal in juvenile cases. And that also involves the case of *** [D.L.], who I heard the factual basis, and basically the case is a charge that resulted as a result of [D.L.] getting into the trouble that he did. So the Court had the advantage in this situation of knowing all of the facts, not just the facts in [the respondent's] case, but the facts in [D.L.'s] case, which ultimately lead [*sic*] to [the respondent] being charged with this offense.
>
> Taking all of that into consideration, it is the Court's finding here today that the State has in fact met it's [*sic*] burden and that I am finding [the respondent] guilty of the offense of possession of a stolen firearm."

¶ 9 Accordingly, on May 25, 2016, the circuit court found the respondent guilty of possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2014)) and ordered that the respondent be adjudicated delinquent and made a ward of the court. By agreement of the parties, the circuit court sentenced the respondent to 24 months of probation, ordered that the respondent serve 60 days of his sentence on electronic home confinement, and in addition to other terms and conditions, credited the respondent for 83 days for time served in the juvenile detention facility.

¶ 10 On June 24, 2016, the respondent filed a motion to reconsider, arguing that the circuit court erred in considering evidence not presented at his hearing but in a separate

case involving D.L. The respondent argued that the circuit court's error denied him his due process rights and his right to confront the witnesses against him. The respondent also argued that the evidence at his hearing was insufficient to prove that he committed the offense. On October 26, 2016, at the hearing on the motion to reconsider, the court stated as follows:

> "Being that this is a juvenile matter and this Court hears all of the juvenile matters in this county, the Court cannot act in a vacuum when reaching its ruling. This Court did hear substantially similar evidence in this case as it heard in the case of People v. [D.L.].
>
> ***
>
> If in fact the Court did consider some evidence from a companion case, it would have been harmless error, as this Court found there was substantial circumstantial evidence regardless of any evidence in the companion case."

¶ 11 Following the circuit court's denial of the respondent's motion to reconsider, the respondent timely appealed on November 3, 2016.

¶ 12 ANALYSIS

¶ 13 The Juvenile Court Act of 1987 provides that "[i]n all procedures under this Article, minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors." 705 ILCS 405/5-101(3) (West 2014). Among the rights afforded a juvenile respondent in a delinquency proceeding is the sixth amendment right to confrontation. *In re Rolandis G.*, 232 Ill. 2d 13, 31-34 (2008). "The central concern of the Confrontation Clause is to

ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." *Maryland v. Craig*, 497 U.S. 836, 845 (1990).

¶ 14 The State concedes that evidence introduced in D.L.'s separate hearing was improperly considered as proof of the respondent's guilt because the respondent had no opportunity to confront the evidence and testimony presented at D.L.'s hearing and no opportunity to subject it to cross-examination. Indeed, taking judicial notice, *sua sponte*, of the evidence in D.L.'s juvenile delinquency hearing, after the close of evidence at the respondent's hearing, in order to determine the respondent's guilt, violated the respondent's constitutional right to confront witnesses against him. See generally *In re Kenneth W.*, 2012 IL App (1st) 101787, ¶ 71; see also *People v. Stechly*, 225 Ill. 2d 246, 264 (2007) (sixth amendment to the United States Constitution (U.S. Const., amend. VI) applies to the states through the fourteenth amendment (U.S. Const., amend. XIV) and provides that an accused shall enjoy the right to confront witnesses against him); *People v. Barham*, 337 Ill. App. 3d 1121, 1129 (2003) (trial court may not take judicial notice, *sua sponte*, of facts after the evidence is closed). The State argues, however, that reversal is not required because the evidence of the respondent's guilt, presented at his own hearing, was sufficient to find him guilty. We disagree. We find that the circuit court's error not only violated the respondent's constitutional right to confront witnesses against him, it was indicative of the insufficiency of the evidence presented against the respondent at his hearing.

¶ 15 The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted " 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.' " *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). "The same considerations that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child." *In re Winship*, 397 U.S. at 365 (when State alleges violation of criminal code, due process safeguards protect the accused, whether an adult or juvenile). The burden is always upon the State to prove the respondent's guilt beyond a reasonable doubt and to prove each and every element of the crime charged, as it is a fundamental principle of our criminal jurisprudence system that the law presumes the innocence of an accused until he is proven guilty beyond a reasonable doubt of the crime charged. *People v. Gordon*, 204 Ill. App. 3d 123, 126-27 (1990).

¶ 16 When presented with a challenge to the sufficiency of the evidence, the reviewing court must determine 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, 319 (1979); *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009). "This standard is applicable in all criminal cases, regardless of whether the evidence is direct or circumstantial." *People v. Campbell*, 146 Ill. 2d 363, 374 (1992); *People v. Saxon*, 374 Ill. App. 3d 409, 417 (2007) ("Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish guilt or innocence of the defendant."). In

reviewing the evidence, a reviewing court will not retry the respondent or substitute its judgment for that of the trier of fact, but a reviewing court must reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the respondent's guilt. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006); *People v. Evans*, 209 Ill. 2d 194, 209 (2004); see also *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 28 (although reasonable inference may support criminal conviction, there is a line between reasonable inference and mere speculation). "[M]erely because the trier of fact accepted certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision." *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

¶ 17 The offense of possession of a stolen firearm is a Class 2 felony. 720 ILCS 5/24-3.8(b) (West 2014). Section 24-3.8(a) of the Criminal Code of 2012 provides that "[a] person commits possession of a stolen firearm when he or she, not being entitled to the possession of a firearm, possesses the firearm, knowing it to have been stolen or converted." 720 ILCS 5/24-3.8(a) (West 2014). Thus, to sustain a charge of possession of a stolen forearm, the State must prove beyond a reasonable doubt that the minor possessed the firearm, that the minor was not entitled to possess said firearm, and that the minor knew the firearm was stolen. *People v. Jenkins*, 383 Ill. App. 3d 978, 982-83 (2008).

¶ 18 In proving that the minor knew the firearm was stolen, "[t]he element of knowledge may be established by proof of circumstances that would cause a reasonable man to believe that the property had been stolen." *People v. Ferguson*, 204 Ill. App. 3d

146, 151 (1990). "Direct proof of this element is not necessary, and where possession has been shown, an inference of defendant's knowledge can be drawn from the surrounding facts and circumstances." See *Ferguson*, 204 Ill. App. 3d at 151 (in prosecution for possession of stolen motor vehicle, element of knowledge may be established by proof of circumstances that would cause reasonable person to believe that property had been stolen); see also *People v. Miller*, 2013 IL App (1st) 110879, ¶ 55. It is not necessary that knowledge be derived from personal observation or from information given by others who knew the facts of the stealing. *People v. Mulford*, 385 Ill. 48, 57 (1943).

¶ 19 Citing *People v. McCracken*, 244 Ill. App. 3d 318, 322 (1993); *People v. Smith*, 124 Ill. App. 3d 914, 923 (1984); and *People v. Martin-Trigona*, 111 Ill. App. 3d 718, 722 (1982), the State argues that in the context of a prosecution of theft, the sudden, unexplained possession of property may give rise to an inference that the property was stolen. See *McCracken*, 244 Ill. App. 3d at 322 (evidence of recent, exclusive, and unexplained possession of recently stolen property may give rise to an inference of guilt of theft in a revocation proceeding, which has a different burden of proof than a criminal trial); *Smith*, 124 Ill. App. 3d at 923 (defendant can be found guilty of theft solely on the basis of knowingly exerting unauthorized control over the property of another with the intent to permanently deprive the owner of the use of the property, which can be inferred by defendant's recent, exclusive, and unexplained possession of stolen property); *Martin-Trigona*, 111 Ill. App. 3d at 722 (theft evidence showed intent to permanently deprive owner of property where defendant deposited proceeds of check into his own personal

check account, did not have authority to endorse the check, and transferred the funds to another personal account, from which he paid mortgages and loans). The State thus suggests that the respondent's possession of the firearm may give rise to an inference that he knew the firearm was stolen.

¶ 20 However, the State concedes that this principle does not apply in the context of receiving stolen property (*People v. DeFilippis*, 34 Ill. 2d 129, 136 (1966) (proof of recent and unexplained possession of stolen goods is insufficient to convict of receiving stolen goods)), which today would be possession of stolen property (720 ILCS 5/16-1(a)(4) (West 2014)). Indeed, the knowledge element of possession of stolen property (720 ILCS 5/16-1(a)(4) (West 2014); *People v. Greco*, 204 Ill. 2d 400, 420 (2003) (Thomas, J., specially concurring) (it is a crime to exert control over stolen property if the person knows it to be stolen or obtains it under circumstances that would reasonably lead him to believe the property was stolen)) is more akin to the knowledge element of possession of a stolen firearm (720 ILCS 5/24-3.8(a)(1) (West 2014) (a person commits possession of a stolen firearm when he possesses the firearm, knowing it to have been stolen)). Accordingly, although an inference of knowledge may be drawn from surrounding facts and circumstances, the respondent's possession alone would not give rise to an inference that he knew the firearm was stolen.

¶ 21 Moreover, the State proffers not the respondent's possession, but D.L.'s sudden, unexplained, and exclusive possession of the firearm as circumstantial evidence of the respondent's knowledge that the firearm was stolen. We find the State's position tenuous. The respondent's statement that he touched the firearm and returned it to D.L.,

who was shown to have stolen it, was insufficient in itself to convict the respondent of knowing possession of a stolen firearm. Although exclusive and unexplained possession of a stolen firearm may evidence that a possessor is guilty of wrongful taking, it does not follow that he is guilty of the wholly distinct crime of possessing the stolen firearm knowing it to have been stolen by another. See generally *People v. Malone*, 1 Ill. App. 3d 860, 863 (1971) (recent, exclusive, and unexplained possession of stolen property may be evidence that the possessor is guilty of the wrongful taking, but it does not follow that he is guilty of the wholly distinct crime of possessing stolen property knowing it to have been stolen by another).

¶ 22 The State further argues that it proved the respondent's knowledge that the weapon was stolen by showing that the weapon was expensive and appeared out of thin air, D.L. would not ordinarily be permitted to lawfully possess a weapon, the respondent and D.L. were brothers so D.L. probably indicated he had stolen the weapon, and the respondent watched D.L. shoot the weapon at the tree. However, the State's argument about the suspicious circumstances of an expensive gun appearing from thin air would apply equally if D.L. had acquired a firearm that had not been stolen. See *United States v. Ayala-Garcia*, 574 F.3d 5, 15 (1st Cir. 2009) (despite State's argument, suspicious circumstances of buying a firearm for a few hundred dollars in a housing project parking lot did not support finding of knowledge that firearm was stolen because suspicious circumstances argument would apply equally if seller was reselling firearm that associate had legitimately acquired); *United States v. Howard*, 214 F.3d 361, 364 (2d Cir. 2000) (neither the proximity of the gun in question to gun with obliterated serial number nor the

fact that gun was purchased on "black market" was sufficient to allow jury to conclude that defendant knew or had reason to know that firearm was stolen). Moreover, the fact that the respondent may have known that D.L. may not ordinarily be permitted to possess a firearm does not tend to prove that he had reason to know that the firearm in question was stolen. *Howard*, 214 F.3d at 364 (fact that appellant may have known that as a convicted felon he could not lawfully obtain a firearm does not tend to prove that he had reason to know that the gun in question was stolen). Further, the respondent's relationship with D.L. does not provide sufficient evidence that the respondent knew the firearm had been stolen. See *Sanchez*, 2013 IL App (2d) 120445, ¶ 28.

¶ 23 The evidence presented at the respondent's hearing was so unsatisfactory that it raises a reasonable doubt of the respondent's guilt. Thus, the evidence was insufficient to support the respondent's delinquency adjudication for possession of a stolen weapon. The State failed to prove an essential element of the offense, *i.e.*, that the respondent knew the firearm to have been stolen. 720 ILCS 5/24-3.8(a) (West 2014). None of the evidence−circumstantial or otherwise−demonstrated that the respondent knew that the firearm had been stolen. Therefore, the State failed to prove the respondent guilty beyond a reasonable doubt of possession of a stolen firearm. Because we find the State presented insufficient evidence to sustain the respondent's adjudication, we reverse. See *Burks v. United States*, 437 U.S. 1, 11 (1978) ("The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding."). Given our disposition, we need not address the respondent's remaining arguments.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we reverse the circuit court's judgment.

¶ 26 Reversed.