2019 IL App (1st) 181992-U
Order filed: March 29, 2019

FIRST DISTRICT
Fifth Division

No. 1-18-1992

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In the Interest of J.R., a Minor (THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. J.R., a Minor, Defendant-Appellant).	)))))))))	Appeal from the Circuit Court of Cook County. No. 18 JD 877 Honorable Stuart Lubin, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurring in the judgment.

ORDER

¶ 1 *Held*: On respondent's appeal from the trial court's findings of delinquency based on his commission of aggravated unlawful use of a weapon (AUUW) and unlawful possession of a firearm, we vacated one of the delinquency findings based on AUUW due to the erroneous admission of certified abstracts from the Illinois State Police that showed he had not been issued a valid FOID card. We remanded the matter to the trial court for a hearing on respondent's claim of ineffectiveness of counsel.

¶ 2 Respondent-appellant, J.R., a minor, appeals from the trial court's findings of delinquency based on his commission of aggravated unlawful use of a weapon (AUUW) and unlawful possession of a firearm (UPF); and his commitment to the Illinois Department of Juvenile Justice (DJJ). The delinquency charges arose from the recovery of firearms from a

vehicle in which respondent was a passenger after the vehicle was stopped by police. On appeal, respondent argues that: (1) his trial counsel was ineffective for failing to move to suppress his confession either on the ground that his seizure was unconstitutional or his confession was made involuntarily; and (2) that the trial court erred in refusing to allow his counsel to make an offer of proof as to the relevancy of testimony that his girlfriend, the driver of the vehicle, had told an officer that she was eight months pregnant, and by admitting into evidence certified abstracts from the Illinois State Police (ISP) that were testimonial in nature. We reject respondent's claim of error as to the denial of the offer of proof and find that the erroneous admission of the certified abstracts does not require a new trial but does require that a finding of delinquency on one count of AUUW be vacated. Finally, we remand the matter to the trial court for a hearing on respondent's claim of ineffectiveness of counsel as the record on appeal is insufficient to consider whether counsel was ineffective for failing to pursue a suppression motion[1].

¶ 3 BACKGROUND

¶ 4 On June 1, 2018, the State filed a petition for adjudication of wardship alleging that J.R. was delinquent based upon four counts of AUUW and two counts of UPF. Specifically, as to the two firearms recovered under respondent's car seat, counts one and two of the petition alleged respondent had committed AUUW in violation of 720 ILCS 5/24-1.6(a)(1)(3)(C) (West 2018), by carrying a firearm at a time when he was not on his own land or in his own abode or place of business and had not been issued a valid Firearm Owners Identification (FOID) card. Counts three and four alleged that respondent had committed AUUW in violation of 720 ILCS 5/24-1.6(a)(1)(3)(I)(West 2018), by carrying a firearm at a time when he was not on his own land or in

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

his own abode or place of business and while under the age of 21 and not engaged in lawful activities under the Wildlife Code (520 ILCS 5/1.1 *et seq*. (West 2018)). Counts five and six alleged that respondent had committed UPF in violation of 720 ILCS 5/24-3.1(a)(1) (West 2018) by possessing a handgun of a size that could be concealed, while under the age of 18.

¶ 5 On that same date, the trial court found probable cause for the charges, that there was juvenile jurisdiction, and there was an immediate and urgent need to detain respondent. The case was set for bench trial on June 28, 2018.

¶ 6 At the trial, Chicago police officer Kevin O'Brien testified that, on May 31, 2018, at about 7:10 p.m., he and his partner, Officer Dan Doherty, were conducting surveillance in an unmarked police vehicle on the 2500 block of North Neva Avenue in Chicago. The officers had received information from a team member through a confidential informant that a red Nissan Maxima (Nissan) would be on that block at that time "to conduct a firearms transaction." While the officers were there, a red Nissan with three occupants drove south on Neva Avenue and stopped. Officer O'Brien curbed the Nissan and "conducted a traffic stop." The officer identified respondent as being in the front passenger seat. Daisha Allen, respondent's girlfriend, was the driver; Christopher Ramirez was seated behind the driver. Ms. Allen was pregnant.

¶ 7 After the occupants were removed from the Nissan, Officer O'Brien searched the vehicle and recovered "a small amount of cannabis" and three firearms. The first firearm, a .9 millimeter pistol, was found in Ms. Allen's pink purse that had been leaning against the center console. Officer O'Brien also discovered a semi-automatic .380 pistol and a loaded .22 caliber revolver that were concealed in a "desert camouflage" drawstring bag (the "bag"). The bag was found under the front passenger seat where respondent was seated.

¶ 8 Officer O'Brien related that, at the time the firearms were recovered, respondent: was under the age of 18; did not present a FOID card; was not at his residence; and was not engaged in lawful acts under the Wildlife Code. The two firearms from the bag were approximately four to five inches in length. Ms. Allen and Mr. Ramirez were adults.

¶ 9 On cross-examination, Officer O'Brien did not recall whether the confidential informant had reported that Mr. Ramirez would be the person in possession of the firearms. However, when asked: "[If] your report said that your team received confidential information that listed *** [Mr.] Ramirez being an occupant in possession of firearms, would that be correct," Officer O'Brien responded: "If that's what the report said."

¶ 10 In responding to questions by the trial court, Officer O'Brien said that, when he was standing outside the Nissan on the passenger side, he could not see the bag. He recovered it only after he reached under the front passenger seat.

¶ 11 Officer Roldan testified that he and his partner, Officer Guzman[2], in response to a request for assistance, drove to the scene at about 7:10 p.m. Once there, the officers unsuccessfully pursued a person who was fleeing. When they returned to the Nissan, other officers were removing the occupants from the vehicle. Officer Roldan, who was wearing a functioning body camera, assisted Officer O'Brien in taking respondent from the front passenger seat, and respondent was "detained."

¶ 12 Officer Roldan testified that, later, when respondent was in the back seat of his police vehicle, respondent stated "not verbatim, but he said, those are all my guns."

¶ 13 The State referred Officer Roldan to a compact disc ("CD") (People's exhibit number 1). Officer Roldan agreed the CD contained an accurate copy of a recording from his body camera.

[2]The first names of Officers Roldan and Guzman are not contained in the record.

People's exhibit number 1 was admitted into evidence without objection. Only a portion of the recording from Officer's Roldan's body camera relating to respondent's statement to the officer was then published by twice playing that portion to the court.

¶ 14 On cross-examination, Officer Roldan stated that he did not know whether Officer Guzman heard Mr. Ramirez tell respondent while both were handcuffed at the scene: "take it, don't say anything, get a lawyer." Respondent's counsel asked whether Mr. Ramirez's conversation with respondent was captured on Officer Guzman's body camera but the court sustained the State's objection as to "what was on Officer's Guzman's body cam[era]." Additionally, respondent's counsel asked Officer Roldan whether Ms. Allen had told him she was eight months pregnant, but the State's objection as to relevancy was sustained. Defense counsel stated that he would "do an offer of proof as to how relevant" and the trial court responded: "Objection. Sustained. Ask something else."

¶ 15 Officer Roldan agreed, as revealed in the video recording, that respondent, while in the police vehicle, had asked him what was going to happen to Ms. Allen. And, although the trial court sustained an objection to this testimony on relevancy grounds, Officer Roldan added that he told respondent "[it's] up to you."

¶ 16 Officer Roldan confirmed that the Nissan was not registered to respondent and that it had been "obtained" by Mr. Ramirez.

¶ 17 On redirect, Officer Roldan testified that he "didn't ask [respondent] nothing. He asked me what was going to happen." The State again asked the officer what respondent had said to him. Defense counsel objected, stating that "we heard it on the video cam[era]." At this point, the court said that what it heard respondent say on the video recording was: "I don't know s***." The court allowed the portion of the video recording relating to respondent's statement to be

played again. Officer Roldan then testified that, "basically," respondent said the guns were his. The officer explained that respondent was concerned about Ms. Allen's safety and what would happen to her. After he told respondent that he was going to the police station, respondent told the officer that the guns were his and that he had told the other officers that the guns were "all mine." According to Officer Roldan, respondent used the words, "my s***" when referring to the guns.

¶ 18 Before resting, the State moved for the admission into evidence of two "certified abstracts" from the ISP Firearms Service Bureau (People's exhibit numbers 2 and 3), which were dated June 4, 2018, and were signed by Leo P. Schmidt as director of the ISP. The certified abstracts listed respondent's birthdate as June 19, 2000.

¶ 19 The first certified abstract (People's exhibit number 2) stated that, as to respondent, pursuant to the Firearm Owners Identification Card Act (430 ILCS 65/15(b) (West 2018)), there was "No Record On File." Above the signature, there was a statement that this "official record" was received from the ISP's FOID computer system and certified, to the best of the director's knowledge and belief, that the information was true and accurate. The second abstract (People's exhibit number 3), in a similar fashion, certified that there were no records on file for J.R. in the ISP concealed carry licensing computer system.

¶ 20 Respondent's counsel, in response, stated: "We'd object." The court overruled this objection and admitted the abstracts into evidence as they were "certified." Respondent's counsel did not raise any further objection or make any other argument as to the admission of the certified abstracts.

¶ 21 Respondent's motion for directed verdict was denied. He did not present any evidence.

¶ 22 The trial court found respondent delinquent on two counts of AUUW (counts one and three) and one count of UPF (count five). In doing so, the court stated, in part:

> "Now, constructive possession requires two elements; knowledge of the presence of the weapons in control of the area over where they are found. Defendant sitting in the seat certainly had control over the area, and his statement 'that the [s***] is mine," referring to the guns, establishes knowledge of the presence of those weapons."

¶ 23 The court merged counts one and three and also made a finding of not guilty on counts two, four, and six, as they were "duplicates."

¶ 24 After a sentencing hearing, respondent was committed to the DJJ for up to three years on the merged AUUW charge. Respondent now appeals.

¶ 25 ANALYSIS

¶ 26 On appeal, respondent first contends that his trial counsel was ineffective for failing to move to suppress his confession on the ground that it was either made as the result of an illegal seizure, or made involuntarily. When, as here, a claim of ineffective assistance of counsel was not raised in the trial court, our review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶24.

¶ 27 A minor respondent, in a delinquency proceeding, has a non-waivable statutory right to counsel and is entitled to the effective assistance of that counsel. *People v. Austin M.*, 2012 IL 111194, ¶¶ 73, 74, 76. A respondent's ineffectiveness of counsel claim is assessed under the two-part test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Dante W.*, 383 Ill. App. 3d 401, 411 (2008). To prevail under *Strickland*, a respondent must demonstrate that trial counsel's performance was deficient, *i.e.*, that it fell below an objective standard of reasonableness (*Strickland*, 466 U.S. at 687-88), and that he was prejudiced as a result. *Id.* at

687. To establish prejudice, a respondent must "show that there was a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." *In re D.B.*, 303 Ill. App. 3d 412, 418 (1999).

¶ 28 As to the deficiency prong of an ineffectiveness claim based on a failure to bring a suppression motion, a respondent must overcome the presumption that the decision to forego the motion was one of strategy. *People v. Martinez*, 348 Ill App 3d 521, 537 (2004). And as to the prejudice prong, "the [respondent] must show that a reasonable probability exists both that the motion would have been granted, and that the result of the trial would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 12.

¶ 29 When a motion to suppress has not been made in the trial court, the appellate court "'must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose.'" *In re Alonzo O.*, 2015 IL App (4th) 150308, ¶ 21 (quoting *People v. Bew*, 228 Ill. 2d 122, 134 (2008)). Additionally,

> "'the record likely does not reflect counsel's reasoning behind his or her actions or omissions, and thus the reviewing court may lack a "way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive or was taken because the counsel's alternatives were even worse.'" *Id.* ¶ 22 (quoting *In re Ch. W.*, 399 Ill. App. 3d 825, 829 (2010) (quoting *Massaro v. United States*, 538 U.S. 500, 505 (2003))).

An ineffectiveness claim, based on a failure to bring a suppression motion, may be considered on direct appeal, only where the record is sufficient to evaluate the merits of the claim. *Bew*, 228 Ill. 2d at 135.

¶ 30 Respondent argues first that his confession would have been suppressed because at the time he was arrested the police did not have probable cause to arrest him. He asserts that he was arrested when he was removed from the Nissan and handcuffed after the traffic stop. In the alternative, he argues if this seizure was considered a stop under *Terry v. Ohio*, 392 U.S. 1 (1968) (a *Terry* stop), police did not have a reasonable suspicion of criminal activity. The State responds that respondent's counsel made a reasonable decision not to pursue a motion to suppress on this basis because the police had a reasonable suspicion, based on the tip from the confidential source, that criminal activity was afoot to justify a *Terry* stop.

¶ 31 The fourth amendment of our federal constitution protects individuals from unreasonable searches and seizures. U.S. Const., amend. IV. The standard of reasonableness imposed on the exercise of police discretion generally requires a warrant supported by probable cause. *People v. Sanders*, 2013 IL App (1st) 102696, ¶13. There are exceptions to the warrant requirement. There are three types of police-citizen encounters that do not constitute an unreasonable seizure: (1) arrests, which must be supported by probable cause; (2) brief investigatory stops that are known as "*Terry* stops," which require a reasonable, articulable suspicion of criminal activity; and (3) consensual encounters that do not involve coercion, and do not implicate the fourth amendment. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). Probable cause for an arrest exists where the facts and circumstances known to the officers at the time are sufficient to warrant a person of reasonable prudence and caution to believe that an offense has been committed by the person arrested. *People v. Sims*, 192 Ill. 2d 592, 614 (2000). Whether sufficient probable cause exists is a case specific analysis that must be determined after examining the totality of the circumstances. *Id*. at 615.

¶ 32 Respondent also argues that his confession to Officer Roldan in the back of the police vehicle should have been challenged on the ground that it was involuntary and without *Miranda* warnings. The State responds that the statement was not coerced and *Miranda* warnings were not necessary as there was no custodial interrogation.

¶ 33 "The test for voluntariness is whether, under the totality of the circumstances, the statement was made freely, without compulsion or inducement, with consideration given to the characteristics of the accused and the details of the interrogation." *D.B.*, 303 Ill. App. 3d at 418 In making this determination, the court considers "[a defendant's] age, education, intelligence, experience and physical condition; the length and intensity of the interrogation; the existence of any threats, promises, or physical coercion; whether the confession was induced by police deception; and whether the defendant was informed of his constitutional rights." *Id*. at 419. The court will also consider whether a parent or interested party was present. *Id*.

¶ 34 Although a suppression motion on these grounds was not litigated below, respondent argues that the record is adequate to consider the issue of ineffectiveness of counsel, as it contains People's exhibit number 1, the CD which respondent maintains includes video footage of the entire incident — from the stop of the Nissan to the transport of the passengers to the police station — recorded by the body cameras of both Officers Roldan and O'Brien. The State in its brief also uses the CD when arguing that the ineffectiveness claims lack merit. Our review of the CD showed it contains footage from the body cameras of several officers and from other unrelated police matters.

¶ 35 "A recording containing both audio and video is admissible if the State presents the foundation necessary to admit both the video and audio." *People v Johnson*, 2016 IL App (4th) 150004, ¶63. "'[V]ideotapes are admissible on the same basis as photographs.'" *Id*. (quoting

People v. Taylor, 2011 IL 110067, ¶27. Videos, like photographs, are admissible when authenticated and relevant as a way to illustrate or corroborate a witness' testimony or probative as to what the video or photograph depicts. *Id.* A sufficient foundation is laid where a witness with the personal knowledge of the subject of the video testified it accurately portrays what it purports to show. *Id.*

¶ 36 The CD was admitted into evidence after Officer Roldan testified that it contained an accurate and correct copy of the video recording from his body camera. Significantly, only a part of the video was published to the court: that part which recorded respondent's statement as to the guns. Further, Officer's Roldan's testimony as to what was depicted in the video was limited to respondent's confession about the guns while he was in the back of the police vehicle. Respondent did not question either Officer Roldan or O'Brien as to what else was depicted on the CD. Officer O'Brien did not even testify that he was wearing a properly functioning body camera or that the CD contained anything from his body camera. The court did not allow respondent to question Officer Roldan about video from Officer Guzman's body camera. Because the State did not provide sufficient foundation for the CD as a whole and the CD's use and publication by the parties and its consideration by the trial court was strictly limited to respondent's statement which was captured by Officer Roldan's body camera only, we do not believe the CD can be used in the sweeping manner suggested by respondent.

¶ 37 There are many deficiencies in the record as to the issue of the constitutionality of respondent's seizure. There is no evidence as to the confidential informant, details of how and when the confidential information was provided to police or to whom. We have no details as to the specific nature of the "firearm transaction" which was reported by the informant. The record is devoid of any other information relating to the reasons for the police surveillance and the

initial stop of the Nissan. We cannot determine from the record the true nature of respondent's seizure, when police removed him from the Nissan, and whether that seizure was valid.

¶ 38 Additionally, as to the voluntariness of respondent's statement, the record was not developed as to respondent's background, history or characteristics. Testimony was not elicited as to what police said to respondent at the scene and in particular when he was taken from the Nissan, handcuffed and placed in the squad car. Without such development of the record, we cannot assess the merits of a motion to suppress on voluntariness grounds.

¶ 39 In summary, the record is insufficient to support respondent's ineffectiveness claims. It is not possible for this court to consider whether there is a reasonable probability that a motion to suppress would have been granted on either of the grounds asserted by respondent. Further, the record does not reveal any strategic thinking or intent on the part of respondent's trial counsel as to her decision to forego a suppression motion. Such evidence is necessary to assess whether her representation was deficient.

¶ 40 In a criminal setting, our analysis would end upon a finding that the record was insufficient to evaluate the ineffectiveness claim. That is because where the record is insufficient, the claim is "preferably brought on collateral review, rather than on direct review." *Bew*, 228 Ill. 2d at 134. While a criminal defendant may raise a claim of ineffectiveness of counsel in a postconviction petition (see 725 ILCS 5/122-1 *et seq.* (West 2018)), this procedure is not available for respondents in delinquency proceedings. *In re Vincent K.*, 2013 IL App (1st) 112915, ¶ 50. This court may, however, remand the matter to the trial court for a full hearing on a respondent's ineffectiveness claims. *In re Alonzo O.*, 2015 IL App (4th) 150308, ¶ 30.

¶ 41 However, we will consider whether respondent's other claims of error require a new trial that would make it unnecessary for the trial court to determine the ineffectiveness of counsel claims.

¶ 42 Respondent's first assertion of error deals with his counsel's question to Officer Roldan as to whether Ms. Allen had told him that she was eight months pregnant. After the court sustained the State's relevancy objection, the court refused counsel's offer of proof as to the question's relevancy.

¶ 43 An offer of proof is necessary to preserve an error in the exclusion of evidence. *People v. Thompkins*, 181 Ill 2d 1, 10 (1998). The offer of proof serves to notify the trial court and opposing counsel of the nature of the offered evidence so that they may take appropriate action and provides a record for the reviewing court to determine whether the exclusion of the evidence was incorrect and caused harm. *Id*. Therefore, "[t]rial courts are required to permit counsel to make offers of proof, and a refusal to permit an offer generally is error." *Id*. at 9. A reviewing court will order a new trial where the trial court abused its discretion in denying an offer of proof. *People v McGath*, 2017 Il App (4th) 150608, ¶55.

¶ 44 We conclude that a new trial is not warranted for several reasons. First, an offer of proof was not necessary to show the nature of the offered evidence as it was clear from the question posed to Officer Roldon. Counsel sought to elicit whether Ms. Allen told him she was eight months pregnant. Additionally the question sought to elicit inadmissible hearsay. See *People v. Davison*, 2019 IL App (1st) 161094, ¶30 (hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted, and is generally inadmissible). Finally, there was testimony at the trial that Ms. Allen was pregnant and that respondent was concerned for her safety at the time he made his statements. Thus there was evidence upon which respondent's

counsel could make the argument that respondent only made the confession because of his concerns for Ms. Allen.

¶ 45 Respondent also claims that the trial court erred in admitting the certified abstracts. Citing *People v. Diggins*, 2016 IL App (1st) 142088, respondent argues that the abstracts were testimonial in nature and the author was not subject to cross-examination regarding the nature and substance of the information contained therein. This claim, that respondent's sixth amendment confrontation rights were violated, involves a question of law that is reviewed *de novo*. *People v. Williams*, 238 Ill. 2d 125, 141 (2010).

¶ 46 Generally, to preserve an argument for review in a criminal case, a defendant must raise it at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). To preserve an issue "[i]n juvenile proceedings, the respondent must object at trial, but need not include the issue in a post-adjudication motion." *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 16. See also *In re W.C.*, 167 Ill. 2d 307, 327 (1995) (posttrial motion not necessary to preserve error in juvenile proceedings).

¶ 47 At trial, respondent's counsel made a general objection without elaboration or argument to the admission of the abstracts. "A general objection raises only the question of relevance." *People v. Buie*, 238 Ill. App. 3d 260, 275 (1992). Respondent did not make a specific right-to-confrontation objection to the admission of the abstracts. Therefore, his claim has been forfeited on appeal.

¶ 48 "However, the rules of waiver and forfeiture are also applicable to the State." *People v. Reed*, 2016 IL App (1st) 140498, ¶13. The State has not argued that respondent forfeited the issue of a violation of his confrontation rights and has forfeited the forfeiture challenge to this issue. Additionally, the State has not argued that respondent invited the error by not raising a

violation of his confrontation rights as to the admission of the certified abstract. See *People v Cox*, 2017 IL App (1st) 151536. The invited error argument has also been forfeited. We will review whether the abstracts were inadmissible.

¶ 49 Section 15(b) of the Firearm Owners Identification Card Act (430 ILCS 65/15(b) (West 2018)), states, in relevant part, as follows:

> "Any certified abstract issued by the Director of State Police or transmitted electronically by the Director of State Police under this Section to a court or on request of a law enforcement agency for the record of a named person as to the status of the person's Firearm Owner's Identification Card is prima facie evidence of the facts stated in the certified abstract and if the name appearing in the abstract is the same as that of a person named in an information or warrant, the abstract is prima facie evidence that the person named in the information or warrant is the same person as the person named in the abstract and is admissible for any prosecution under this Act or any other applicable violation of law and may be admitted as proof of any prior conviction or proof of records, notices, or orders recorded on individual Firearm Owner's Identification Card records maintained by the Department of State Police." *Id*.

However, "[t]o be properly admitted, an out-of-court statement must satisfy both a hearsay exception and a defendant's rights under the sixth amendment." *People v. Cox*, 2017 IL App (1st) 151536, ¶ 66.

¶ 50 The federal and state constitutions ensure that an accused has the right to confront witnesses against him. US Const., amend. VI; Ill. Const. 1970, art. I., §8. The out-of-court testimonial statements of a witness are admissible only if the witness is unavailable and the

defendant had a prior opportunity to cross examine the witness. *Crawford v. Washington*, 541 US 36, 59 (2004).

¶ 51 This court in *People v. Diggins*, 2016 IL App (1st) 142088, ¶16, and in *People v Cox*, 2017 IL App (1st) 151536, ¶63 has held that certifications from an agent of the ISP that a defendant has not been issued a FOID card as of a certain date were testimonial in nature and absent showings that the witness was unavailable and that the defendant had prior opportunities to cross examine him, the admission of this evidence violated the defendant's constitutional rights of confrontation. The State agrees that the abstracts were improperly admitted in this case but maintains that the error impacted only the adjudication on count one, the AAUW charge based on respondent's lack of a valid FOID card.

¶ 52 A violation of confrontation rights is "subject to harmless-error review and the test is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2009). The admission of the certified abstract showing respondent had not been issued a concealed carry license was harmless as none of the adjudicated charges pertained to a lack of such a license. Count one, however, required the State to establish that respondent had not been issued a FOID card. *In re Manuel M.*, 2017 IL App (1st) 162381, ¶15. Officer O'Brien's testimony that respondent did not present a FOID card on the day of his arrest was insufficient to prove this element of the charge. *Id*. The fact that respondent was a minor was not sufficient to show beyond a reasonable doubt that he had not been issued a valid FOID card as the Firearm Owners Identification Card Act does not impose a minimum age requirement on applying for a card. See 430 ILCS 65/4 (West 2018); see also 430 ILCS 65/8 (West 2018) (grounds for denial and revocation of FOID card). Therefore, the admission of the certified abstract showing respondent had not been issued a valid FOID card

was not harmless as this evidence was essential to proving respondent committed AUUW by carrying a firearm outside of his premises without a valid FOID card as set forth in count one. *In re Gabriel W.*, 2017 IL App (1st) 172120, ¶39. We therefore vacate the finding of delinquency on count one. Nonetheless, a finding of delinquency was also made on count three, which charged respondent with AUUW by carrying a firearm outside his home while he was under the age of 18. The admission of the certified abstracts was harmless as to this charge as this evidence was unnecessary to prove the elements of the charge. Respondent has admitted in his reply brief that he has not challenged the sufficiency of the evidence as to count three. We conclude that it is unnecessary to order a new trial as respondent was sentenced on the merged AUUW counts. See *id*. ¶59.

¶ 53 CONCLUSION

¶ 54 For the reasons discussed above, we vacate the finding of delinquency on count one but affirm the findings of delinquency on counts three and five and respondent's sentence. Pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we remand this matter to the trial court for a hearing on respondent's ineffectiveness of counsel claim. "'Such a hearing will give respondent a full opportunity to prove facts establishing ineffectiveness of counsel, the State a full opportunity to present evidence to the contrary, and the establishment of a factual record on the issue.'" *In re Alonzo O.*, 2015 IL App (4th) 150308, ¶31 (quoting *In re Ch. W.*, 399 Ill. App 3d at 830). If the trial court finds that counsel was ineffective, it should grant respondent a new trial. If the trial court rejects the claim, respondent may appeal from the denial and the appellate court may address the issue based on a properly developed record. *In re Alonzo O.*, 2015 IL App (4th) 150308, ¶32.

¶ 55 Affirmed in part; vacated in part; remanded with directions.