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2019 IL App (3d) 190149-U

Order filed July 19, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> J.J.W.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-19-0149
)	Circuit No. 18-JD-241
v.)	
)	
J.J.W.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State failed to present sufficient evidence to prove respondent committed the offense of unlawful possession of a firearm beyond a reasonable doubt.
- ¶ 2 Respondent, J.J.W., appeals from his adjudication of delinquency and dispositional order of commitment. Respondent contends that the State failed to present sufficient evidence to prove his guilt beyond a reasonable doubt. We reverse.

I. BACKGROUND

¶ 3
¶ 4 The State filed a delinquency petition alleging respondent committed the offense of unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 2018)). The cause proceeded to an adjudicatory hearing.

¶ 5 At the hearing, Peoria police officers Sean Clarke and Tyler Hodges testified that at approximately 4 p.m. on the day in question they observed a vehicle parked in front of a grocery store. The officers exited their squad car and approached the vehicle because it was playing loud music. The vehicle had four individuals inside. Clarke and Hodges observed respondent sitting in the rear passenger-side seat. Hodges spoke with the driver who consented to a search of the vehicle. All four passengers exited the vehicle.

¶ 6 Officer Drew Flinn eventually arrived at the scene and searched the vehicle. According to Flinn, “As [he] was searching under the front passenger seat [he] observed a white towel and a white glove. When [he] moved those items [he] observed an old semiautomatic handgun.” Flinn described a photograph showing the gun “laying under the front passenger seat accessible by the rear passenger area.”

¶ 7 Officer David Buss photographed the scene and processed the gun for fingerprints. Buss could not find any suitable fingerprints on the gun. Buss also did not attempt to discover the ownership of the gun.

¶ 8 By stipulation, the defense presented a laboratory report which indicated that the gun had a mixture of human DNA profiles of at least three individuals. The stipulation did not contain any indication as to whom the DNA profiles belonged. Instead, the stipulation stated that the mixed profile was potentially incomplete and unsuitable for comparison to known standards.

¶ 9 Respondent testified that in the morning on the day in question he and two friends walked to the grocery store. At some point while they were at the grocery store, respondent's friend, Jacari, arrived in his vehicle. Respondent and his two friends entered Jacari's vehicle. Jacari started playing loud music. Police officers then arrived and spoke with Jacari. Respondent and his two friends exited the vehicle and were patted down by the officers. According to respondent, he did not have a gun on him that day, he did not see any of his friends carrying a gun, and he did not see or touch a gun in Jacari's vehicle. Contrary to Officer Hodge's testimony, respondent claimed that he occupied the rear driver-side seat of the vehicle.

¶ 10 Ultimately, the court found that respondent was not a credible witness due to respondent's testimony as to where he was seated inside the vehicle. The court found respondent to be a delinquent minor and sentenced him to 15 months' probation.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent challenges the sufficiency of the evidence. Specifically, respondent contends that the State failed to prove that he knowingly possessed the gun found inside the vehicle. When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The relevant question is whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. See *People v. Pintos*, 133 Ill. 2d 286, 292 (1989).

¶ 13 As charged in this case, a person commits the offense of unlawful possession of a firearm when, “[h]e is under 18 years of age and has in his possession any firearm of a size which may be concealed upon the person.” 720 ILCS 5/24-3.1(a)(1) (West 2018). An essential element of this offense is that the person knowingly possessed a firearm. *In re S.M.*, 347 Ill. App. 3d 620, 626 (2004). “Knowing possession” may be either actual or constructive. *People v. Stack*, 244 Ill. App. 3d 393, 398 (1993). At issue here is whether the State established that respondent knowingly possessed the firearm by constructive possession.

¶ 14 Constructive possession is established where (1) the respondent had knowledge of the presence of the weapon, and (2) the respondent exercised immediate and exclusive control over the area where the weapon was found. *Id.* Factors from which knowledge could be inferred include: (1) the visibility of the weapon from respondent’s position in the vehicle, (2) the period of time in which the respondent had an opportunity to observe the weapon, (3) any gestures by the respondent indicating an effort to retrieve or hide the weapon, and (4) the size of the weapon. *People v. Davis*, 50 Ill. App. 3d 163, 168 (1977). Courts should also consider any other relevant circumstantial evidence of knowledge, including whether the respondent had a possessory or ownership interest in the weapon or in the automobile in which the weapon was found. *People v. Bailey*, 333 Ill. App. 3d 888, 892 (2002). Although knowledge may be proved by circumstantial evidence, it is incumbent upon the State to present such evidence. *Davis*, 50 Ill. App. 3d at 167.

¶ 15 Here, we find that the State failed to produce any evidence, either circumstantial or direct, to establish that respondent had knowledge of the presence of the gun found hidden under the front passenger seat of the vehicle. According to Officer Flinn, who discovered the gun, the weapon was not visible until he removed the towel and glove from underneath the front passenger seat. Therefore, the gun would not have been visible to respondent. Additionally, no

physical evidence, such as fingerprints, tied respondent to the gun. Although DNA evidence was processed from the gun, the mixed profile was unsuitable for comparison and did not indicate that respondent's DNA was present on the gun. There is also no evidence as to the owner of the gun, and the vehicle in which the gun was found was not owned by respondent or any of his family members. None of the officers that were present testified to seeing respondent make any gestures that indicated that he was trying to retrieve or hide the gun. Respondent made no incriminating statements nor did he exhibit any consciousness of guilt. Finally, while the record is unclear as to how long respondent was inside the vehicle that day, respondent's testimony suggests that he was only in the vehicle for a short period of time before the police officers approached.

¶ 16 In sum, we find no evidence from which respondent's knowledge of the presence of the gun can be inferred. Although respondent's credibility was called into question because he contradicted the officer's testimony as to the seat in the vehicle he occupied, a lack of credibility is not enough to establish that respondent had knowledge of the presence of the weapon in the vehicle. *Bailey*, 333 Ill. App. 3d at 892. At best, the State's evidence established that respondent occupied a vehicle in which a weapon was found. However, mere presence in the vehicle is insufficient to support an inference of knowledge. *Id.* Since the State failed to introduce any evidence that respondent had knowledge of the weapon's presence in the vehicle, we reverse his adjudication of delinquency. Because we find that the State failed to establish that respondent had knowledge of the presence of the gun, we need not consider whether he exercised immediate and exclusive control over the area in which the gun was found.

¶ 17 In reaching our conclusion, we reject the State's argument that knowledge can be inferred due to respondent's close proximity to the gun and the fact that the gun would only have been

accessible to respondent. The State's argument is relevant to the second element of constructive possession. That is, those arguments are considered when determining whether respondent had exercised exclusive control over the weapon. However, the State may not collapse together the elements of constructive possession. In other words, the State cannot ask the fact finder to infer knowledge of the presence of a gun because respondent may have controlled the location where the gun was found. See *People v. Hampton*, 358 Ill. App. 3d 1029, 1031 (2005).

¶ 18

III. CONCLUSION

¶ 19

The judgment of the circuit court of Peoria County is reversed.

¶ 20

Reversed.