NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (4th) 220909-U

NO. 4-22-0909

FILED
March 6, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re C.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 21JD63
v.	)	
C.B.,	)	
Respondent-Appellant).	)	Honorable
	)	Jason Chambers,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice DeArmond and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) respondent had not established plain error or ineffective assistance of counsel stemming from the admission of a screenshot of a Facebook profile and (2) the evidence presented was sufficient to show respondent had the requisite knowledge to find him guilty of theft.

¶ 2 After being found guilty of theft, respondent, C.B., was adjudicated a delinquent minor and sentenced to 12 months' supervision. Respondent now appeals from the judgment adjudicating him a delinquent minor, arguing the State failed to (1) lay a proper foundation for the admission of a screenshot of a Facebook profile and (2) prove he knew the subject property was stolen, an essential element of the alleged theft. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Delinquency Petition

¶ 5 In July 2021, the State filed a petition alleging respondent was a delinquent minor

in that he committed the offense of theft on or about May 25, 2021. Specifically, the State alleged respondent committed theft by knowingly obtaining control over stolen property, a bicycle belonging to Alexander Godair, knowing the property to have been stolen (720 ILCS 5/16-1(a)(4) (West 2020)).

¶ 6 B. Bench Trial

¶ 7 In February 2022, the circuit court conducted a bench trial. The following is gleaned from the evidence presented.

¶ 8 On May 18, 2021, Alexander Godair parked his vehicle near downtown Bloomington. Approximately an hour after parking his vehicle, Godair noticed his bicycle, a Kink BMX Drifter bicycle, had been stolen off the bicycle rack attached to the back of his vehicle. Godair purchased the bicycle in 2018 for $497.61. He then made several modifications to it, including modifications to the fork, tires, brake system, pedals, chain, and grips. One of the modifications cost $169.95. The modifications to the bicycle made it distinguishable from other bicycles. A photograph of the modified bicycle was admitted into evidence. Copies of receipts for the purchase of the bicycle and for one of its modifications were also admitted into evidence.

¶ 9 On May 25, 2021, Godair discovered his bicycle had been listed for sale on Facebook Marketplace. Godair identified a screenshot of a Facebook Marketplace listing as a listing for his bicycle. The screenshot of the Facebook Marketplace listing was admitted into evidence. Godair also identified a screenshot of a Facebook profile as the profile that listed his bicycle for sale. The screenshot of the Facebook profile was admitted into evidence. The screenshot of the Facebook profile has a profile name of "Gbg Redd" and a profile photograph of an apparent black male with a ski mask covering most of his face. Godair did not recognize the male depicted in the profile or his name.

¶ 10 After discovering his bicycle had been listed for sale on Facebook Marketplace, Godair contacted the police and spoke with Police Officer Ronald Fryman. Officer Fryman testified Godair provided him with information about the bicycle and the Facebook profile that listed the bicycle for sale. When asked how the Facebook profile helped in his investigation, Officer Fryman testified, "Looking at the profile pictures as well as—or, I guess, report writing system, I was able to identify the user of this profile as [respondent]." Officer Fryman was then asked to explain the different systems he used to identify "the user as [respondent]," to which he testified, "So, in our EJS report writing system, the name R-E-D-D is associated as an alias with [respondent]."

¶ 11 On the evening of May 28, 2021, Officer Fryman spoke with respondent outside respondent's residence. Audio and video footage of the interaction taken from Officer Fryman's body camera was admitted into evidence. The footage shows Officer Fryman and another police officer approaching respondent's residence on foot. Outside the residence, one male, later identified as respondent, is seen getting off a bicycle and walking towards the house, and two other apparent males are seen sitting on the porch. Upon his approach, Officer Fryman repeatedly asks if any of the males went by respondent's first name. Respondent walks inside the house and closes the door. A moment later, a light turns on inside the house, and respondent can be seen looking outside through the window on the door. Respondent then reaches over, and the light inside turns off. Officer Fryman shines a light at the window on the door, at which point respondent's face can be seen, and Officer Fryman indicates aloud that he recognizes respondent. Respondent comes back outside, and Officer Fryman states he wants to speak with respondent about a listing respondent posted on Facebook Marketplace. Respondent responds, "What do you want to know?" Officer Fryman states he wants to speak with respondent about a black bicycle with yellow tires

that respondent posted days earlier and then asks respondent if he knows what he is talking about, to which respondent states, "Yeah." Officer Fryman asks where respondent got the bicycle. Respondent states, a "friend." Officer Fryman asks what friend. Respondent states, "I can't say." Officer Fryman informs respondent the bicycle is stolen and asks again where respondent got it. Respondent responds he did not steal it "if that's what you're asking." Officer Fryman asks where the bicycle is at. Respondent states he sold it. Officer Fryman asks to whom respondent sold the bicycle. Respondent refuses to provide any additional information. At that point, Officer Fryman informs respondent that he would "write it up" that respondent was in possession of the bicycle and then send it to the state's attorney's office for that office to determine if it wanted to charge respondent with theft. Respondent then states he did not have possession of the bicycle. He also, on further inquiry, repeats he did not steal the bicycle and got it from his friend. Officer Fryman again asks for the name of the friend. Respondent states, "You should know I'm not going to tell you." Officer Fryman asks for the name of the person to whom respondent sold the bicycle. Respondent states, someone "on Market Street." Respondent refuses to provide any other information. While the officers are leaving, they discover a suspected bag of marijuana near the bicycle respondent was earlier seen riding, which they then confiscate.

¶ 12 Respondent, who was 14 years old in May 2021, testified he received a bicycle from his friend, Contrell. Respondent did not know Contrell's last name. When asked if he remembered when Contrell gave the bicycle to him, respondent testified, "It was, shoot, whenever the situation happened." When asked if he remembered where he was when Contrell gave the bicycle to him, respondent testified, "I was downtown Market Street." Respondent explained Contrell asked him to sell the bicycle in exchange for half of the proceeds from the sale. When asked what he did with the bicycle after Contrell gave it to him, respondent testified, "Posted it."

Respondent explained, "I posted it right where I was at." When later asked if the "only time you actually had the bike was when you were posting it online," respondent testified, "Yes." Respondent testified he told Contrell that he wanted no part in selling the bicycle after the police officers came to his house. Respondent testified he did not sell the bicycle. When asked if he took "the posting down at any time," respondent testified, "No. It's still up." Respondent testified he did not know the bicycle was stolen. He also testified the bicycle always remained with Contrell. Respondent acknowledged he had not previously seen Contrell with the bicycle and did not ask or learn from where Contrell had obtained the bicycle.

¶ 13 With respect to his interaction with the police on May 28, 2021, respondent, when asked if he was expecting to see a police officer that evening, testified, "Not really, no." When asked to explain why he was "kind of not ready to talk to the police" during the encounter, respondent testified, "Because it's the police. I was told not to talk to the police." When asked who told him not to talk to the police, respondent testified, "Everybody. They kill people." Respondent testified he lied to the police when he stated he sold the bicycle. Respondent explained he lied to keep his "friend out of trouble." When asked why he thought his friend would get in trouble if he did not know the bicycle was stolen, respondent testified: "I don't know. Like I didn't know if it was stolen or not stolen. I didn't know. He said I had a bike. It's the police. I know somebody got to get shot. Know it's going to be somebody that happen. It's the police."

¶ 14 Weeks after discovering the bicycle listed for sale on Facebook Marketplace, Godair observed a "younger kid," not respondent, riding the bicycle in downtown Bloomington. Godair confronted the child about the bicycle, to which the child indicated his mother had purchased it for him. After Godair explained the bicycle had been stolen from him, the child appeared "really nervous" and then "took off" without the bicycle. The bicycle's condition was

"pretty rough." The tires were "trashed," and the entire bicycle had been "spray painted with clearcoat."

¶ 15 In closing argument, respondent's counsel argued the State had not proven respondent (1) had control over the bicycle or (2) knew the bicycle was stolen. With respect to whether respondent had control over the bicycle, counsel highlighted respondent's testimony that the bicycle remained with Contrell and then argued the evidence that respondent took photographs of the bicycle and posted them on Facebook was insufficient to establish control. As to whether respondent knew the bicycle was stolen, counsel argued:

> "[T]he State is asking the Court to infer that [respondent knew the bicycle was stolen based upon his interaction with the police]. We have a minor who is being questioned at night without a parent around, no *Mirandas* or anything. And he indicated to the Court today he doesn't talk to the police. He doesn't give them answers because it's the police. That might not be the Court's background with police, but other people have different experiences with the police and don't necessarily trust them."

¶ 16 After considering the evidence and arguments presented, the circuit court found the State had proven respondent's guilt beyond a reasonable doubt and, therefore, entered an order adjudicating him a delinquent minor. In the oral pronouncement of its decision, the court found, in relevant part, respondent (1) had control over the bicycle and (2) knew the bicycle was stolen. With respect to whether respondent had control over the bicycle, the court stated:

> "Whether or not you know, we all know, or at least those of us in the courtroom often know that control can mean a lot of different

things. I don't know if just posting something alone on Facebook would, would—something for sale would be evidence of control. I think someone could certainly make an argument if you are deciding how to show it, you're deciding who to send it to, you are deciding the amount to sell it for, you know, when to sell it, those are all things I think that are a degree of control. But, also, in this circumstance, I don't have just that. There was testimony that for a brief time, at the very least—even by [respondent's] own admission—he had it while he was posting it. So, there's that in addition to it.

And then, also, the officer asked him about it. I think his—the way that he referred to it was I got it from a friend. So, I think his—I'm sorry, not his testimony. On the video, I got it from a friend. Which certainly his own statement even implies I got it. That's, I think, indicative of a level of control. He was saying he had it."

As to whether respondent knew the bicycle was stolen, the court stated:

"I certainly see why the parties are arguing this. I'm not saying that there isn't merit on either side on the arguments. But his testimony today was he didn't know if it was stolen. He didn't want to know if it was stolen. That wouldn't be sufficient. *** But as an officer approached him, he went away, went inside. And when asked about where he got the bike from, saying I can't tell you that. And when

> he was asked who he sold it to, he didn't want to talk about that either. That is all indicative to me of something that lends itself to the State's argument that he was aware of the circumstances with this bike. Maybe not how it was stolen, but that it was not properly obtained and that it was stolen at the time."

¶ 17 C. Sentencing Hearing

¶ 18 In September 2022, the circuit court conducted a sentencing hearing. After considering the evidence and recommendations presented, the court sentenced respondent to 12 months' supervision. The court also order respondent to pay an amount in restitution.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent argues the State failed to (1) lay a proper foundation for the admission of the screenshot of the Facebook profile and (2) prove he knew the bicycle was stolen, an essential element of the alleged theft. The State disagrees with each of respondent's arguments.

¶ 22 A. The Admission of the Screenshot of the Facebook Profile

¶ 23 First, respondent argues the State failed to lay a proper foundation for the admission of the screenshot of the Facebook profile. Specifically, respondent asserts the State did not present sufficient evidence connecting him to the Facebook profile. Respondent acknowledges his failure to raise this issue below results in its forfeiture but requests it be reviewed under the plain-error doctrine and as matter of ineffective assistance of counsel.

¶ 24 The plain-error doctrine provides a "narrow and limited exception" to the general rule of forfeiture. *People v. Reese*, 2017 IL 120011, ¶ 72, 102 N.E.3d 126. Under the plain-error doctrine, a reviewing court may disregard a respondent's forfeiture and consider an

unpreserved claim of error where, as it is argued here, "a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the [respondent]." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 70, 958 N.E.2d 227. The respondent bears the burden of persuasion in establishing plain error. *In re Samantha V.*, 234 Ill. 2d 359, 368, 917 N.E.2d 487, 494 (2009).

¶ 25 A forfeited issue may also be addressed as a matter of ineffective assistance of counsel. See *In re Johnathan T.*, 2022 IL 127222, ¶ 26, 193 N.E.3d 1240 ("Although juvenile delinquency proceedings are civil in nature [citation], minors in delinquency proceedings have a constitutional right to effective assistance of counsel [citation]."). To prevail on a claim of ineffective assistance of counsel, it must be shown both "(1) counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the [respondent]." *In re Danielle J.*, 2013 IL 110810, ¶ 31, 1 N.E.3d 510. Prejudice to the respondent will be found where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Simpson*, 2015 IL 116512, ¶ 35, 25 N.E.3d 601. The respondent bears the burden of persuasion of establishing ineffective assistance. *Danielle J.*, 2013 IL 110810, ¶ 31.

¶ 26 Even assuming, *arguendo*, the State failed to lay a proper foundation for the admission of the screenshot of the Facebook profile, respondent has not shown (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against him or (2) there is a reasonable probability the result of the proceeding would have been different had counsel objected to the admission of the evidence.

¶ 27 Initially, we are not convinced there is any reasonable probability the result of the proceeding would have been different had counsel objected to the admission of the screenshot of

the Facebook profile. Had there been a foundational objection, the State could have sought further explanation from Officer Fryman as to how he was able to connect respondent to the Facebook profile. See *People v. Korzenewski*, 2012 IL App (4th) 101026, ¶ 7, 970 N.E.2d 90 ("[A]n objection requirement is especially important in cases of an improper foundation because errors in laying a foundation are easily cured."). Moreover, respondent, during the May 28, 2021, encounter with the police officers, did not refute making a Facebook Marketplace listing for a bicycle that matched the description of Godair's bicycle and, further, provided information about the bicycle, such as from whom it was received and to whom it was sold. Under these circumstances, we are not convinced counsel's failure to make a foundational objection to the admission of the screenshot of the Facebook profile resulted in prejudice to respondent.

¶ 28 We are further not convinced the evidence is so closely balanced that any error in the admission of the screenshot of the Facebook profile threatened to tip the scales of justice against respondent. Respondent claims the evidence is closely balanced as to whether he had control of the bicycle. See 720 ILCS 5/16-1(a)(4) (West 2020). We disagree. Respondent, during the May 28, 2021, encounter with the police officers, indicated he received a bicycle matching the description of Godair's bicycle from a friend, posted it for sale on Facebook Marketplace, and sold it to someone on Market Street. Respondent also, during his trial, testified repeatedly about receiving a bicycle from his friend and posting it online. While respondent testified he only had the bicycle for a short period, we are not convinced his testimony renders the evidence as to whether he had control of the bicycle closely balanced. See *People v. Sebby*, 2017 IL 119445, ¶ 53, 89 N.E.3d 675 ("In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.").

¶ 29 As a result, we conclude respondent has not established plain error or ineffective assistance of counsel stemming from the admission of the screenshot of the Facebook profile.

¶ 30 B. The Sufficiency of the Evidence

¶ 31 Next, respondent argues the State failed to prove he knew the bicycle was stolen, an essential element of the alleged theft. Respondent contends his interactions with the police officers and his later testimony demonstrate he was afraid of the officers, not that he knew the bicycle was stolen.

¶ 32 When presented with a challenge to the sufficiency of the evidence to support an adjudication of delinquency, the question 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 alleged offense beyond a reasonable doubt. *In re Q.P.*, 2015 IL 118569, ¶ 24, 40 N.E.3d 9. The trier of fact remains responsible for judging the credibility of witnesses and resolving conflicts or inconsistencies in the evidence. *Jonathon C.B.*, 2011 IL 107750, ¶ 59. This court will not reverse an adjudication of delinquency unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the respondent's] guilt." *People v. Austin M.*, 2012 IL 111194, ¶ 107, 975 N.E.2d 22.

¶ 33 In this case, the State, in order to prove respondent guilty of the alleged theft, had to show, amongst other things, respondent knew the bicycle was stolen. 720 ILCS 5/16-1(a)(4) (West 2020). As respondent concedes, knowledge that property is stolen can be inferred from the surrounding facts and circumstances. See *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23, 62 N.E.3d 1081 ("Direct proof of a defendant's knowledge that the property was stolen is unnecessary, and a defendant's knowledge that the [property] was stolen can be inferred from the surrounding facts and circumstances, which would lead a reasonable person to believe that the property was

stolen”).

¶ 34 Initially, respondent’s appellate counsel asks this court “to take judicial notice of George Floyd’s death.” Respondent’s counsel contends taking judicial notice of Floyd’s death would provide context for respondent’s interactions with, and testimony about, the police. The State objects, asserting respondent’s counsel is improperly asking this court to consider facts outside the trial record. The State’s objection is well-taken. Respondent’s counsel asserts Floyd’s death “likely” resulted in respondent, a young black teenager, hearing about deadly interactions between the police and black people, which, in turn, affected his interactions with the police officers. As the record stands, there is no indication that Floyd’s death had any effect on respondent’s actions. The reasons for why respondent acted were matters that needed to be presented in the circuit court. See *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9, 1 N.E.3d 936 (“Judicial notice cannot be extended to permit the introduction of new factual evidence not presented to the trial court.”). Accordingly, we decline respondent’s request to take judicial notice of Floyd’s death.

¶ 35 As argued by respondent and conceded by the State, there was evidence suggesting respondent’s interactions with the police officers were the result of a generalized fear of the police, not that respondent knew the bicycle was stolen. Indeed, respondent’s trial counsel presented argument to support that suggestion. However, there was also evidence suggesting respondent’s interactions with the police officers were the result of a consciousness of guilt—that he knew the bicycle was stolen. See *People v. Walker*, 2020 IL App (4th) 180774, ¶ 93, 180 N.E.3d 156 (noting lying to the police may be considered evidence of consciousness of guilt). The circuit court, as the trier of fact, was responsible for evaluating and weighing the evidence and determining whether respondent’s evasiveness with the police officers was because he knew the bicycle was stolen or

because he was afraid of the police. See *Frazier*, 2016 IL App (1st) 140911, ¶ 23 ("Knowledge is a question of fact for the trier of fact to decide."). Given the evidence presented, we find the circuit court could reject respondent's explanation and find, beyond a reasonable doubt, respondent knew the bicycle was stolen. As a result, we conclude the evidence presented was sufficient to show respondent had the requisite knowledge to find him guilty of theft.

¶ 36 III. CONCLUSION

¶ 37 We affirm the circuit court's judgment.

¶ 38 Affirmed.