Circuit Court for Baltimore City
Case No. 619291003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 881

September Term, 2020

IN RE T.C.

Nazarian,
Ripken,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: September 20, 2021

In October of 2019, appellant T.C. ("T.C.") was stopped by a police officer after the officer observed T.C. armed with a handgun. As a result of this encounter, T.C. was ultimately charged with various delinquent acts in the Circuit Court for Baltimore City, sitting as a juvenile court. The offenses listed in the delinquency petition included one count of possession of a regulated firearm while under the age of twenty-one, and three counts of wearing, carrying, or transporting a handgun. The delinquency petition stated that T.C. was fifteen years old. Although the State produced no evidence of T.C.'s age in its case-in-chief during the adjudication hearing, the State did request the court to take judicial notice of T.C.'s age after the conclusion of its case. The court acknowledged that T.C. was in juvenile court and took judicial notice that T.C. was under the age of twenty-one at the time of the offense. The court found T.C. involved in one count of possession of a regulated firearm while under the age of twenty-one and three counts of related handgun offenses. T.C. now appeals to this Court seeking to reverse his convictions arguing that such judicial notice of his age was in error and that the evidence was insufficient to support all counts. For the reasons explained below, we shall affirm the circuit court's judgments.

FACTUAL AND PROCEDURAL BACKGROUND

On October 17, 2019, Officer Juan Rivas was inside a convenience store located in Baltimore City when he observed T.C. enter the store. T.C. hesitated when he saw Officer Rivas, and he "bladed his body"[1] and left the store. As T.C. turned to leave, Officer Rivas

[1] Officer Rivas explained that blading one's body refers to the action of shifting one's body "towards an opposite way" in an effort to prevent another person from seeing the side of the body the person is trying to conceal. He further explained that it is done when

observed the barrel of a handgun in T.C.'s front jacket pocket. Officer Rivas exited the store and followed T.C. After leaving the store, Officer Rivas got in his patrol car and requested additional units while he continued to follow T.C. Officer Rivas observed T.C. enter the passenger side of a Honda Civic, which was parked just outside of the convenience store. The Honda was driven away, and Officer Rivas followed it until the driver parked the vehicle, at which point additional officers arrived. The officers approached the Honda and detained T.C. Officer Rivas located a loaded handgun on the front passenger seat where T.C. had been sitting.

T.C. was subsequently placed under arrest and charged under Public Safety Article § 5-133(d)(1) with one count of possession of a regulated firearm while under the age of twenty-one, and under Criminal Law §4-203 with one count of wearing, carrying, or transporting a handgun on his person; one count of wearing, carrying, or transporting a handgun in a vehicle; and one count of wearing, carrying, or transporting a loaded handgun on his person.[2]

The case against T.C. was filed in the Juvenile Division of the Circuit Court for Baltimore City. The delinquency petition stated that T.C. was fifteen years old. A magistrate presided over the adjudication hearing, which took place on December 5, 2019.

"trying to hide something from somebody." Officer Rivas testified that one of the main characteristics of an armed person is blading his body.

[2] T.C. was also charged with three other counts, two of which were dismissed prior to the adjudication hearing, and the other the court found not sustained following the adjudication hearing.

The evidence the State presented included testimony from Officer Rivas and firearms expert, David Lamont. Officer Rivas testified that he first saw T.C. on October 17, 2019, around 6:24 p.m. at a convenience store. After recovering the handgun, Officer Rivas removed the magazine, cleared the handgun, and transported the gun to the Evidence Control Unit. During this process, Officer Rivas took two photographs of the handgun, which were admitted into evidence at the adjudication hearing as State's Exhibits One and Two. Officer Rivas confirmed that he had submitted the evidence for this case to the Evidence Control Unit on October 18, 2019. The state moved to admit the evidence report,[3] and the magistrate admitted it as State's Exhibit Three. Exhibit Three showed that Officer Rivas submitted the evidence to the Evidence Control Unit at approximately 1:00 a.m. on October 18, 2019.

During the testimony of Lamont, the State introduced Exhibit Four. Exhibit Four consisted of six pages: (1) an operability report, concluding that the gun submitted to Lamont was test fired and found to be operable, (2) a request for firearm examination, (3) an evidence control unit property sheet, (4) a chain of custody form, (5) a technical and administrative review form, and (6) a firearms operability worksheet.

At the conclusion of the State's case-in-chief, T.C. moved for judgment of acquittal on Count One: possession of a regulated firearm while under the age of twenty-one. Because the State produced no evidence of T.C.'s age during its case-in-chief, T.C. argued

[3] Defense counsel objected, noting that the exhibit listed several items that had not been recovered from T.C. The magistrate admitted the exhibit for the purpose of establishing the time of evidence submission and explained that the items listed would not be considered. We likewise do not consider the additional items listed in State's Exhibit Three.

that the State failed to prove that he was under the age of twenty-one at the time of the offense. The State responded that the juvenile court would not have jurisdiction over T.C. if he was over the age of eighteen at the time of the offense. The Court inquired as to whether the State was requesting judicial notice of T.C.'s age, and the State responded in the affirmative. The magistrate acknowledged that T.C. was before the juvenile court. On that basis, the magistrate took judicial notice that T.C. was under the age of twenty-one at the time of the offense. The magistrate found T.C. involved in counts one through four and placed T.C. on probation for one year.

T.C. filed exceptions in circuit court and claimed that the magistrate erred in numerous respects, three of which are relevant on appeal before this Court. First, T.C. argued that the evidence was insufficient for Count One: possession of a regulated firearm while under the age of twenty-one. T.C. contended that the magistrate erred by taking judicial notice of his age, and thus the state failed to prove an element of the offense. The court rejected this argument.

Second, T.C. claimed that the magistrate erred by admitting Exhibit Four because it contained unauthenticated hearsay. The court noted that Lamont had authored the reports on pages one and six, and that T.C.'s counsel did not object to the admissibility of pages one and six in the prior proceeding. However, the court also noted that the State never authenticated pages two through five. Accordingly, the court ruled that the magistrate erred by admitting into evidence pages two through five, but not one and six.

Third, and related to his second argument, T.C. argued that there was insufficient evidence for Counts Two through Four, which all charged handgun possession under Maryland Code, § 4-203 of the Criminal Law Article ("CR"). T.C. claimed that because Exhibit Four should have been excluded, there was insufficient evidence to find that the gun that Lamont test fired was the same gun that Officer Rivas had recovered. The court ruled that although pages two through five should not have been admitted, the evidence was sufficient to establish the required nexus and thus sufficient to find the gun was operable for violations of the Criminal Law Article.[4] The court affirmed on all counts. T.C. filed a timely notice of appeal. Additional facts will be provided herein as they become relevant to the issues.

ISSUES PRESENTED FOR REVIEW

T.C. presents the following two issues for our review:

I. Did the State fail to prove in its case-in-chief all of the elements of Public Safety Article § 5-133(d)(1), such that the evidence was insufficient to sustain T.C.'s finding of involvement with respect to Count One?

II. Was the evidence sufficient to sustain T.C.'s findings of involvement with respect to Counts Two, Three, and Four, all of which alleged violations of Criminal Law Article § 4-203?

Embedded in T.C.'s first issue presented is a related issue: whether the court improperly took judicial notice of T.C.'s age. We address this issue under the first section. As we shall explain, the evidence was sufficient to sustain all convictions.

[4] The court correctly noted that operability is not required for violations of the Public Safety Article.

STANDARD OF REVIEW

A "'[d]elinquent act' means an act which would be a crime if committed by an adult." Md. Code, Cts. & Jud. Proc. ("CJP") § 3-8A-01(l). For juvenile delinquency and criminal cases, the standard for reviewing evidentiary sufficiency is the same: "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." *In re James R.*, 220 Md. App. 132, 137 (2014) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When reviewing bench trials, we will not set aside the trial court's judgment on the evidence unless it is clearly erroneous. Md. Rule 8-131(c).

Similarly, when a court takes judicial notice, we review that decision for clear error. *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 413 (2014) (citation omitted). We are mindful "that there is a legitimate range within which notice may be taken or declined and that there is efficacy in taking it, when appropriate." *Smith v. Hearst Corp.*, 48 Md. App. 135, 141 (1981).

DISCUSSION

I. THE COURT DID NOT ERR IN TAKING JUDICIAL NOTICE OF T.C.'S AGE, RENDERING THE EVIDENCE SUFFICIENT TO FIND T.C. INVOLVED UNDER SECTION 5-133(D)(1) OF THE PUBLIC SAFETY ARTICLE.

T.C.'s initial contention that the evidence was insufficient to sustain his conviction is two-fold: first, that the state failed to introduce evidence as to his age, an essential

element of the charge;[5] and second, that the court erred in taking judicial notice of that element as a substitution for formal proof. Such error, he maintains, warrants reversal. The State concedes that it did not introduce evidence in its case-in-chief as to T.C.'s age but argues that it was unnecessary to do so because judicial notice was appropriate. According to the State, age is a fact that is undisputed given both the allegations in the petition and the juvenile court's uncontested jurisdiction over T.C.

We have explained that "[t]he doctrine of judicial notice substitutes for formal proof of a fact 'when formal proof is clearly unnecessary to enhance the accuracy of the fact-finding process.'" *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (quoting *Smith*, 48 Md. App. at 136). Maryland Rule 5-201(b) describes two categories of judicially noticed facts: "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court," or, relevant to this appeal, "(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." [6] Md. Rule 5-201(b). "Included among the categories of things of which judicial notice may be taken are 'facts related to the . . . records of the court.'" *Lerner*, 132 Md. App. at 40 (quoting *Smith*, 48 Md. App. at 136 n.1). Finally, Maryland law specifically provides that a court may take judicial notice at any stage of the proceeding. Md. Rule 5-201(f).

[5] Under Md. Code, Public Safety § 5-133(d), "a person who is under the age of 21 years may not possess a regulated firearm." This offense is comprised of two elements: (1) the respondent possessed a regulated firearm, and (2) the respondent was under the age of twenty-one at the time of the offense. *Id.*

[6] The parties generally agree that only the second category is at issue here.

We are satisfied that T.C.'s age is among the category of facts that is not capable of dispute because it is capable of ready verification via both the petition and the trial court's jurisdiction. To be sure, a circuit court, sitting as a juvenile court, has exclusive original jurisdiction over a child who is alleged to be delinquent, CJP § 3-8A-03(a)(1), which is determined at the time the delinquent act was committed, CJP § 8A-05(a). By definition, a "child" is an individual under the age of eighteen. CJP § 3-8A-01(d). For some offenses, the juvenile court has jurisdiction only if the child is under the age of sixteen at the time of the alleged offense, or if a court transfers the case to juvenile court. CJP §§ 3-8A-03(a)(1), 8A-03(d)(4), 8A-05(a). The State charged T.C. in juvenile court with several of those offenses and in fact filed the delinquency petition in juvenile court. Thus, T.C. was necessarily under the age of sixteen at the time of the offense for the juvenile court to have subject matter jurisdiction.

Moreover, this Court has explained that "once the State set forth [the respondent's] age in the delinquency petition and the juvenile court exercised jurisdiction over the case, there [is] a presumption that jurisdiction [is] proper." *In re Nahif A.*, 123 Md. App. 193, 212–13 (1998), *overruled on other grounds by In re Antoine M.*, 394 Md. 491 (2006). Here, the State filed a delinquency petition containing T.C.'s birthdate, and the juvenile court subsequently exercised jurisdiction over the case. The presumption in favor of subject matter jurisdiction therefore exists.

Finally, we have stated that "the burden is on the party challenging subject matter jurisdiction to rebut that presumption." *In re John F.*, 169 Md. App. 171, 181 (2006)

(citation omitted). Though lack of subject matter jurisdiction may be raised at any time, *see Cnty. Council of Prince George's Cnty. v. Dutcher*, 365 Md. 399, 405 n.4 (2001), we note that T.C. has never challenged subject matter jurisdiction. Rather, the basis of his claim of error is that his presence in court alone is insufficient to prove the elements of the offense, and that facts alleged in a pleading are not before the court as facts. However, T.C. has not rebutted the presumption in favor of the juvenile court's subject matter jurisdiction. Accordingly, the juvenile court's uncontested subject matter jurisdiction over T.C., in connection with offenses committed under the age of 16, comes within the purview of adjudicative facts capable of being judicially noticed.

T.C. argues that this case is analogous to *Abrishamian*, 216 Md. App. 386. There, the trial court denied Abrishamian's requests to take judicial notice of medical bills. *Id*. at 415. We affirmed that decision, noting that the medical bills lacked medical facts subject to judicial notice. *Id*. We also agreed with the trial court's refusal to take judicial notice of pleadings that were not in the record. *Id*. Importantly, we observed that Abrishamian "wasn't simply asking the court to notice judicially the *existence* of the pleadings—he wanted the court to assume the truth of the assertions within those pleadings." *Id*. at 416.

We are unpersuaded that *Abrishamian* is comparable to this case. Here, the magistrate took judicial notice of T.C.'s age because T.C. was in juvenile court. Unlike *Abrishamian*, the fact that the pleadings exist in juvenile court is the subject of judicial notice, and the content of those pleadings is of no import to the appropriateness of such notice.

T.C.'s reliance on an out-of-state case, *In re S.M.*, is also unavailing. 26 N.E.3d 956 (Ill. App. Ct. 2015). In that case, the State charged S.M. in juvenile court with possession of a concealable handgun while under the age of eighteen. *Id*. at 958–59. At trial, the State produced no evidence of S.M.'s age at the time of the offense. *Id*. at 959. After the close of all evidence, including S.M.'s case, S.M. argued that the State had failed to establish his age—an essential element of the offense. *Id*. The State then asked the court to take judicial notice that S.M. was under the age of eighteen. *Id*. The court found S.M. delinquent, taking judicial notice that S.M. was under the age of eighteen at the time of the offense. *Id*.

The Illinois appellate court agreed "with the general premise that a trial court may take judicial notice of the status of the pleadings in a juvenile proceeding." *Id*. at 961. However, the court concluded that the timing of the judicial notice was "too late" because it occurred after the close of all evidence, and thereby could not be rebutted by S.M. *Id*. at 964. The court also noted that even if the timing of judicial notice were proper, "the status of the pleadings . . . did not support the trial court's finding" as to S.M.'s age. *Id*. at 962.

By contrast, the court here took judicial notice of T.C.'s age before the close of all evidence. The State asked for judicial notice during defense counsel's motion for judgment of acquittal. Even so, the Illinois court's reasoning is not binding in Maryland. Because judicial notice is appropriate at any stage of the proceeding "when formal proof is clearly unnecessary," and as we have explained, formal proof was in fact unnecessary to establish that T.C. was under the age of twenty-one at the time of the offense, we discern no error in

the court's taking notice of T.C.'s age.[7] Because the court properly took notice of T.C.'s age per request of the State, we hold that the evidence was sufficient to find T.C. involved under § 5-133(d) of the Public Safety Article.

II. THE EVIDENCE WAS SUFFICIENT TO FIND T.C. INVOLVED UNDER SECTION 4-203 OF THE CRIMINAL LAW ARTICLE.

T.C. next contends that the evidence was insufficient to find him involved in the remaining handgun offenses under CR § 4-203 because the State failed to prove the operability of the gun. Specifically, he claims that there was insufficient evidence to find that the gun Lamont test fired was the same gun that Officer Rivas recovered following the court's exclusion of pages two through five of Exhibit Four. The State responds that there was sufficient evidence, in the form of both direct and circumstantial evidence, to demonstrate that the gun recovered by Officer Rivas was the same gun test fired by Lamont. We agree with the State.

CR § 4-203 prohibits wearing, carrying, or transporting a handgun. The device at issue "must be a firearm or it must be readily or easily convertible into a firearm," meaning

[7] T.C. also argues that the court abused its discretion by allowing the State to reopen its case. However, we are unpersuaded from the record that the court allowed the State to do so. Rather, the court took judicial notice of T.C.'s age pursuant to Maryland Rule 5-201(f), and we decline to hold that such notice taken after the State's conclusion of its case-in-chief allowed the State to reopen its case.

In any event, allowing the State to reopen its case is within the sound discretion of the trial court, and the critical factor in considering whether such allowance was in error is the prejudice of the defendant. *See Smith v. State*, 225 Md. App. 516, 523 n.7 (2015) ("[T]he critical issue in determining whether a court abused its discretion in reopening the case is whether its doing so impaired the ability of the defendant to answer and otherwise receive a fair trial."). We see no abuse of discretion.

it must use gunpowder or a similar explosive to propel a missile. *Howell v. State*, 278 Md. 389, 396 (1976). The State must prove that the handgun was operable to sustain a conviction under this statute. *Braxton v. State*, 123 Md. App. 599, 652 (1998). Operability may be proven by both direct and circumstantial evidence. *See Magnum v. State*, 342 Md. 392, 398 (1996) ("Neither policy nor logic supports a special evidentiary distinction [between circumstantial and direct evidence] when the issue is operability of a firearm.").

We turn to the evidence admitted at trial concerning operability. Lamont testified that he conducted an operability test on October 23, 2019, for a handgun that Officer Rivas submitted on October 18, 2019. Officer Rivas testified that he observed T.C. with a handgun in the convenience store and recovered the gun from the passenger seat of the car, in which he observed T.C., and further confirmed that he submitted the recovered handgun to the Evidence Control Unit on October 18, 2019 for operability testing. State's Exhibit Three shows that Officer Rivas submitted evidence to the Evidence Control Unit around 1:00 a.m. on October 18, 2019.

Additionally, the description of the handgun on page one of Exhibit Four matched the description of the handgun that Officer Rivas recovered. Page one of Exhibit Four—the operability report—describes the handgun as "BLACK" with "ONE (1) MAGAZINE" and "CAPACITY 15 CARTRIDGES." Officer Rivas testified that the handgun he found in the car contained one magazine with fifteen bullets in the magazine. Page one of State's Exhibit Four also says that the gun "HAS RUBBER BANDS WRAPPED AROUND THE GRIP." Officer Rivas's photographs of the handgun—admitted as State's Exhibits One and

Two—depict what appear to be rubber bands wrapped around the grip. And, after the exceptions hearing, the juvenile court found that "the photograph admitted as [Exhibit One] depicts a black gun with rubber bands around the grip."[8] Finally, we note the clerical similarities between the exhibits submitted. Exhibit Three has a property number of 19034613, and Exhibit Four has a property number of 19034612. It logically follows that the items were submitted as evidence at the same time or one after the next due to the numeric order of their property numbers. As a result, a fact finder could rationally infer that Officer Rivas submitted the gun separately but at the same time as other evidence.[9] *See In re Lavar D.*, 189 Md. App. 526, 585 (2009) (observing that when we review evidentiary sufficiency, we give "due regard" to the fact finder's resolution of conflicting evidence and findings of fact) (quoting *Harrison v. State*, 382 Md. 477, 487–88 (2004)).

As to circumstantial evidence[10] of the handgun's operability, Officer Rivas testified that when he first encountered T.C. at the convenience store, he observed the barrel of a

[8] We note that the exhibits, including the photographs depicting the gun recovered, were not transmitted with the record on appeal. We granted T.C.'s counsel's unopposed motion to correct the record. Though that motion contains black and white copies of the exhibits attached, when ruling on T.C.'s exceptions, the juvenile court said that State's Exhibit One depicts a black handgun. We have no reason to question that.

[9] We also note that Exhibit Three has a Central Complaint Number of 119105886 and Page one of Exhibit Four has a Central Complaint Number of 1-191005886. To be sure, there is an extra zero in Exhibit Four. The magistrate noted that that discrepancy is more indicative of a minor typo than a different gun and "it's important for the Court to keep a perspective of reasonability" as to slight discrepancies such as this one. Despite this discrepancy, we nonetheless hold the evidence is sufficient to establish the link between the guns.

[10] The parties argue about whether there was sufficient circumstantial evidence of operability. However, because we hold that there was sufficient evidence of operability,

handgun in T.C.'s front jacket pocket. When Officer Rivas recovered the handgun, he recalled that it was loaded with fifteen bullets in the magazine and one round in the chamber. Officer Rivas further testified[11] that when a bullet is loaded in the chamber of a handgun, "that means that the gun is ready to fire," and, based on his training, knowledge, and experience, he believed that the recovered firearm was "ready to fire."

Given the totality of the evidence, we conclude a sufficient nexus was established between the gun recovered by Officer Rivas and the gun found to be operable by Lamont. Accordingly, a rational trier of fact could find beyond a reasonable doubt that T.C. possessed an operable handgun. The evidence was thus sufficient to find T.C. involved in Counts Two through Four.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

we need not decide whether the circumstantial evidence was sufficient by itself to prove the operability of the handgun.

[11] The magistrate accepted Officer Rivas as an expert in firearms.