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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A06-1736

In the Matter of the Welfare of: Y.K.D.

Filed January 8, 2008

Reversed

Peterson, Judge

Hennepin County District Court

File No. 27-JV-06-5748

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an adjudication of delinquency for illegal possession of a pistol by a minor, appellant argues that the adjudication must be reversed because it is based solely on appellant's statement that he had handled a gun three days before a gun was discovered in a car in which appellant was a passenger. Because the presence of the gun in the car was not evidence that appellant had possessed a pistol three days earlier, appellant's statement is not sufficient to warrant conviction under Minn. Stat. § 634.03 (2006), and we reverse.

FACTS

Minneapolis Police Officer David Lee Stichter and his partner stopped a car for a traffic violation. There were four people in the car, two in the front seat and two in the rear seat. Appellant Y.K.D. was riding in the rear seat on the driver's side. During a search of the car, Stichter found a .22-caliber revolver under the front passenger seat.

Appellant was transported to the juvenile detention center, where he was questioned by Minneapolis Police Sergeant David Floyd Burbank. After telling appellant that the gun that was found in the car was being processed for fingerprints and that he needed to know if appellant's fingerprints would be found on the gun, Burbank continued questioning appellant as follows:

Q. Because, I'm telling you now, the gun is getting fingerprinted, okay? And if you're lying to me, it looks bad when you're in court. If you're being straight up, you're going to thank me for trying.

A. All right.

Q. So I'm giving you an out here, did you handle that gun at all in the car?

A. Not that night, no, I didn't touch no pistol that night in the car.

Q. Not that night?

A. No.

Q. But you handled that gun before?

A. I have seen it, I touched it, but after that, I don't even really roll with them like that. I mean, I know them. We all worked together before.

Q. But you knew the gun was in the car?

A. No, I didn't know it was in the car that night.

Q. What kind of gun did they find in the car?

A. I have no clue that it even got pulled out.

Q. Then how do you know if you handled that gun or not?

A. What do you mean?

Q. You said you didn't handle it that night.

A. No, that gun, he says a finds a pistol in the car. As far as I know, one of the – one of the dudes who I was in the car with, because I was with them, you know, a few days earlier, you know that's why – I mean, it probably is the same gun, I have no clue. He didn't show me no pistol, only thing he pulled out, as far as I know, was the shell, was the casing.

Q. Okay. Well, you need to explain how your fingerprints might be on that gun.

A. How they might be on that gun? Because I had – I mean, I guess they had – I don't know where they grabbed it from, or whatever. I was looking at it, or whatever, and I had touched it, and I set it back down.

....

Q. Today?

A. No.

Q. You didn't put the gun under the seat, then?

A. No.

Q. How long ago did you handle the gun?

A. How long did I handle the gun, it was probably . . . a few days before, I mean, I guess you would say three days before the 17th.

....

Q. What kind of gun were you holding?

A. It was a revolver.

Q. Big one, little one?

A. I held a big one, I think.

Q. Was it a .22, a .357?

A. No.

Q. Was it about six inches, then, seven inches?

A. Yeah.

A delinquency petition was filed alleging illegal possession of a pistol by a minor and fifth-degree possession of a controlled substance. The district court denied appellant's motion to suppress evidence discovered during a pat search and the search of the car. The state dismissed the controlled-substance charge, and the district court found appellant guilty of possessing a pistol in violation of Minn. Stat. § 624.713, subd. 1(a) (2004). The court adjudicated appellant delinquent and imposed a disposition of a stayed out-of-home placement. This appeal followed.

DECISION

On appeal from a determination that each of the elements of a delinquency petition has been proved beyond a reasonable doubt, “an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a factfinder could reasonably make that determination.” *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). We review the record in the light most favorable to the findings. *Id.* And we must assume that the district court “believed the prosecution’s witnesses and disbelieved any contradictory evidence.” *In re Welfare of L.B.*, 404 N.W.2d 341, 345 (Minn. App. 1987).

When questioning appellant, Burbank said that the gun that was found in the car was being processed for fingerprints and suggested that if appellant was lying about not having anything to do with the gun, it would be worse for him if his fingerprints were actually found on the gun. This prompted appellant to admit that he had touched a gun

three days earlier. Based on this admission, the district court found that appellant had possessed a pistol in violation of Minn. Stat. § 624.713, subd. 1(a) (2004),¹ which prohibits a person under age 18 from possessing or carrying a pistol, subject to specified exceptions not applicable here.

“A confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed.” Minn. Stat. § 634.03 (2006). Under this statute, a confession is insufficient, by itself, to support a conviction and must be corroborated. *State v. Fader*, 358 N.W.2d 42, 45 (Minn. 1984).

The statute has a dual function. It discourages coercively acquired confessions and makes the admission reliable. Each element of an offense need not be independently corroborated to meet the statute’s standard. Instead, the elements should be sufficiently substantiated by independent evidence of attending facts or circumstances from which the jury may infer the trustworthiness of the confession. The practical relation between the confession and the government’s case, rather than the theoretical relation to the definition of the offense, is the crucial test.

State v. Brant, 436 N.W.2d 468, 470-71 (Minn. App. 1989) (quotations and citations omitted).

Even if we assume that appellant’s statement to Burbank is sufficient to prove that appellant possessed a pistol, the statement is a confession, which must be corroborated under Minn. Stat. § 634.03. The district court determined that appellant’s confession was

¹ The district court’s order states that appellant was “in possession of a pistol in violation of Minn. Stat. § 624.713 sub. 1a.” We assume that the reference to subdivision 1a is a typographical error because appellant was charged with violating Minn. Stat. § 624.713, subd. 1(a).

corroborated by other evidence that a crime was committed because “here, in fact, the gun was found.” We disagree that the gun found under the front passenger seat of a car in which appellant was riding in the rear seat on the driver’s side is independent evidence that sufficiently substantiates the attending facts or circumstances of appellant’s possession of a pistol three days earlier to permit the district court to infer the trustworthiness of appellant’s confession.

It appears that the district court concluded that the gun corroborated appellant’s confession because it was the gun that appellant admitted that he possessed three days earlier. But we have found nothing in the record that supports this conclusion. As we have already explained, appellant admitted touching a pistol three days earlier after Burbank told appellant that the gun found in the car was being processed for fingerprints. But appellant did not admit that the gun he touched was the gun that was found in the car. Appellant said that he was not shown the pistol that was found in the car, and he described the gun that he held three days earlier as a big revolver, about six or seven inches long, that was not a .22- or a .357-caliber revolver. There is no dispute that the gun found in the car was a .22-caliber revolver. Even if appellant was mistaken about the gun he handled not being a .22-caliber revolver, appellant’s general description of the gun that he held is not a basis for concluding that it was the gun found in the car.

The evidence in this case is similar to the evidence in *State v. Sellers*, 507 N.W.2d 235 (Minn. 1993), in which the supreme court reversed a conviction for keeping ferrets without a permit because there was no evidence to corroborate the appellant’s self-incriminating statements. In *Sellers*, there was disputed evidence as to whether appellant

made self-incriminating statements when animal-control officers asked him if he had ferrets in his house, and the only other evidence supporting the conviction was evidence that the appellant refused to consent to a search of his residence by the officers. *Id.* at 235-36. The supreme court concluded that the trial court was free to credit testimony that the appellant made the incriminating statements, but the appellant's refusal to consent to a search was not evidence that corroborated the incriminating statements because the refusal could simply have been a legitimate assertion of the appellant's constitutional rights. *Id.* at 236. In other words, although the trial court was free to conclude that the appellant made incriminating statements, the evidence did not support the conviction because the refusal to consent was not evidence that substantiated the appellant's self-incriminating statements.

Similarly, the district court was free to find appellant's statement to Burbank credible, but this credible statement was insufficient to support appellant's conviction because the gun discovered in the car was not independent evidence that substantiated appellant's statement that he held a gun three days earlier. Because there was insufficient evidence to satisfy the corroboration requirement under Minn. Stat. § 634.03, we reverse appellant's delinquency adjudication. In light of this conclusion, we need not address the additional issues raised by appellant.

Reversed.