

No. 1-16-0614

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE INTEREST OF TOMASZ Z., a Minor,)	Appeal from the
)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Cook County
)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 15 JD 02811
)	
TOMASZ Z., a Minor)	Honorable
)	Stuart Lubin,
Respondent-Appellant.))	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Respondent was not denied his right to cross-examination.
- ¶ 2 Respondent, Tomasz Z., was found to be in violation of his probation on January 9, 2016, after he attempted to burglarize Darras Miller's apartment. The juvenile court entered an order committing respondent to the Department of Juvenile Justice (DJJ) with an order to transfer him to Maryville Academy, once a bed became available. He later was removed from DJJ and placed on five years' probation. Respondent now appeals and argues he was denied his

constitutional right to cross-examination; the court had no authority to enter an order requiring the DJJ to transfer him to a residential facility; the order of commitment violated section 5-570 of the Juvenile Court Act (Act) (705 ILCS 405/5-570(West 2012)); and defense counsel was ineffective for proposing a legally invalid DJJ commitment order instead of seeking to commit respondent. Respondent filed a reply brief wherein he withdrew his claims that the order of commitment violated the Juvenile Court Act. For the following reasons, we affirm the judgment of the juvenile court.

¶ 3 BACKGROUND

¶ 4 Respondent entered a plea of guilty to two counts of residential burglary on November 5, 2015, in exchange for a sentence of five years of probation. The State informed the juvenile court that respondent entered the garden apartment of his building and removed the tenant's locks. Respondent told detectives that he believed he could enter the apartment because his mother was a building manager. Respondent entered the same tenant's apartment a second time and took some coins from the table, opened the fridge and damaged the handle.

¶ 5 The court entered a finding of delinquency for residential burglary. Respondent's mother expressed to the court that she was scared to take respondent home because he "is sick." A few days later she agreed to take him home and he was placed on electronic monitoring. At sentencing, the social investigation reports indicated that respondent is on the autism spectrum and would be "best off in his home with mental health services." Respondent was ordered to serve five years' probation with conditions.

¶ 6 On January 5, 2016, the State filed a petition alleging that respondent had violated his

probation by attempting to burglarize the apartment of another tenant in his building, Darras Miller.

¶ 7 At the hearing on the violation of probation, Miller testified that on December 24, 2015, at about 11:30 p.m., he left his second floor apartment and went to the basement to do laundry. He encountered respondent in the laundry room and told him to leave him alone and to go upstairs. After he finished his laundry, he returned to his apartment with his clean clothes. Miller then left the apartment, locking both the front and back doors. He estimated that from the time he saw respondent in the laundry room until he left his apartment was about 10 or 15 minutes.

¶ 8 Miller got to the front door of the building and realized that he forgot his wallet. He returned to his apartment and entered through the front door. As he did so, he heard metal scraping noises on his back door. As he got closer to the back door, it opened so he grabbed the handle and pulled it all the way open. Respondent was standing in front of the open door with a metal object in his hands. Miller asked respondent what he was doing and then respondent pushed Miller and fled down the stairs. Miller grabbed a pair of handcuffs that he had in his apartment and followed respondent down the stairs to the basement. There, he detained respondent and handcuffed respondent's hands behind his back. Respondent's mother came down to the basement and was upset. She called the police.

¶ 9 Miller brought respondent back upstairs and had him sit on the steps near Miller's door. Miller then contacted the police. Miller testified that he inspected his back door once the police arrived and saw that the door frame was bent in where the two locks went into the other side of the door. Photographs of the door frame were entered into evidence. Miller testified that the

marks on the back door were not there prior to hearing the scraping noises and finding respondent on the other side of the open door. Miller never gave respondent permission to make those marks on his door or to enter his apartment.

¶ 10 Respondent's counsel then cross-examined Miller. The following exchange took place:

“[Respondent's counsel]: [y]ou don't like [respondent's] mother, do you?”

[State]: Objection. Relevance.

[Court]: Sustained.

[Respondent's counsel]: Your lease expired on December 31, 2015, didn't it?

[State]: Objection. Relevance.

[Court]: Sustained.

[Respondent's counsel]: Judge, this goes to his bias or motive.

[Court]: No. This happened before that. Objection sustained.

[Respondent's counsel]: Well, you didn't pay your December rent prior to this incident, did you?

[Miller]: Yes, I did.

[Respondent's counsel]: You know - - how did you pay it?

[Miller]: By check.

[Respondent's counsel]: And you know that that check did not have sufficient funds, correct?

[State]: Objection. Relevance.

[Court]: Sustained.

[Respondent's counsel]: Judge, I believe it goes to his bias or motive.

[Court]: No it doesn't. Move on, please.

[Respondent's counsel]: It absolutely does.

[Court]: Counsel, move on. I've ruled. Don't argue with me.

[Respondent's counsel]: One more question in that regard, Judge?

[Court]: No. Ask something else.

Respondent's counsel then continued his questioning on other topics.

¶ 11 Respondent then presented the testimony of his mother, Renata and Chicago police officer Charles Wood. Renata testified that her parents own the building that she and respondent live in and that she is the building manager. Renata testified that Miller was a tenant of the building and lived on the second floor. The following exchange took place:

“[Respondent's counsel]: Did [Miller] pay his December rent?”

[State]: Objection. Relevance.

[Court]: What's the relevance of this?

[Respondent's counsel]: He has a motive to come in and testify falsely, Judge.

[Court]: Against her son?

[Respondent's counsel]: Yes.

[Court]: Sustained.

[Respondent's counsel]: Have you filed eviction proceedings against Darras Miller?

[State]: Objection. Relevance.

[Court]: Unless you can tell me when they were filed, the objection will be sustained.

[Respondent's counsel]: They were filed in January.

[Court]: Sustained.”

¶ 12 Renata went on to explain that on the evening of December 24, 2015, after they arrived home at 10:30 p.m., she observed respondent leave their apartment and go to the basement using the back staircase. Respondent returned with a padlock from the laundry machine and showed it to her because she had asked him to open it. When respondent went back into the basement, she followed him. There was no one down there and she and respondent returned to their apartment. Respondent returned to the basement again. She followed him down a little while later and when she arrived she saw respondent lying on the floor. He was handcuffed and Miller was sitting on him. Miller then brought respondent to the second floor and she followed. Miller stopped at his door and called police. She also called the police because Miller hit her and handcuffed her son for no reason.

¶ 13 Respondent's counsel entered photographs of respondent and respondent's mother with injuries to their faces that allegedly occurred that night. On cross-examination, Renata admitted that there was no injury to respondent's forehead in the photo. She also admitted that the photographs of her and respondent were taken after respondent was released from custody the following day.

¶ 14 After hearing all of the evidence, the court found that the State had proven that respondent violated his probation “beyond a reasonable doubt.” The court stated that because respondent was on probation for an identical offense, he would be held in custody and referred to intensive probation. After respondent's counsel reminded the court of respondent's autism, the

court decided that respondent would be able to stay at the Juvenile Temporary Detention Center (JTDC) until sentencing.

¶ 15 At the first sentencing date on February 2, 2016, Probation Officer (PO) Joyce informed the court that respondent had many mental health issues and although he was interviewed for intensive probation services, he appeared to be overwhelmed by all of the rules and she was unsure if he would be able to comply with all of them. PO Joyce indicated that respondent needed a residential placement for his mental health issues and was an inappropriate candidate for intensive probation services.

¶ 16 PO Michalides explained that respondent had seven referrals to juvenile court with two findings of delinquency and a finding of violation of probation. She noted that respondent has severe mental health issues that require services, was disruptive at home and required constant supervision. His mother works every evening away from home leaving respondent “at risk for harm to himself and the community.” PO Michalides recommended that respondent be committed to the Department of Children and Family Services (DCFS) where he could receive adequate services for his mental health issues. However, it was determined that because respondent is over the age of 18, he was unable to be committed to DCFS.

¶ 17 Respondent's counsel also noted that the court could commit respondent to the Department of Human Services (DHS). He also stated that respondent's family was looking into residential treatment facilities in Poland.

¶ 18 The State informed the court that respondent's behavior has become increasingly more violent. Respondent had left bruises on his mother's arms and cut up his clothes. Respondent took his mother's cell phone and charger and broke them. The State noted that respondent had

been on probation for a week when he attempted to break into Miller's apartment. The State informed the court:

“[We don't] want to ask for DJJ in this case because there are serious mental health issues, but the minor respondent is unsupervised every single night. The mother works night shifts and all of these offenses have been committed at night. The electr[on]ic monitoring doesn't work because he is breaking into the home of the building he lives in. And so because there is a lack of alternative and because the minor respondent is a danger to himself, I just want to note for the record that unless there is a facility, an inpatient program that he can be put in, the State is recommending DJJ.”

The court found,

“I don't think the Department of Corrections is the best place for him, frankly; however, I'm not going to release him from custody until there's a suitable placement for him. So between his attorney and his mother and family, I will give you time to find some place that will satisfy his needs and my apprehension about him hurting himself or somebody else.

* * *

They had to move him to a pod with 13- and 14-year-olds because his behavior with the older people was not making – was being hazardous to his safety. He was antagonizing people just like he's antagonized every tenant that lived in his apartment building. I'm going to keep him here [in JTDC] based on his special needs until we can find a place for him.”

The case was continued.

¶ 19 On February 16, 2016, respondent's counsel indicated to the court that respondent had been evaluated by Maryville Academy and that they were willing to accept him but it had a waiting list. A continuance was granted to finalize the details and to determine how long the wait would be.

¶ 20 On March 1, 2016, respondent's counsel informed the court that in addition to waiting for a bed, the only other issue with Maryville was funding. He stated that there needed to be an order committing respondent to DJJ with an additional order that respondent be transferred to Maryville.

¶ 21 On March 8, 2016, PO Michalides explained that respondent was accepted for placement at Maryville. Maryville indicated that a bed would be ready for respondent in 30 to 60 days and that respondent was third on the list. Respondent's counsel indicated that: "[t]hey are asking for, if he were to be sent to [Maryville], a commitment order to the Department of Corrections with a special order additionally directing the Department of Corrections to send him to [Maryville] once a bed became available." The court explained that due to problems with respondent's behavior in JTDC, respondent would be committed to DJJ with an order that he be sent to Maryville when a bed was available. The court ordered a three-month bring back date of June 7, 2016, to ensure that respondent got into Maryville.

¶ 22 During the hearings in mid-March 2016, after respondent had been committed to DJJ and filed his notice of appeal, respondent's counsel informed the court that a bed had opened up at Maryville but that DJJ would not be sending respondent there because they did not want to pay for it. The court told the attorneys to try to convince the Director of DJJ to send respondent to

Maryville. The court said that if they were unsuccessful, he would decide what to do on the bring-back date of June 7, 2016. Respondent appealed.

¶ 23 According to respondent's reply brief, on June 7, 2016, respondent was removed from DJJ custody and sentenced to five years of probation. Accordingly, respondent withdrew his claims related to whether the order of commitment violated the Juvenile Court Act.

¶ 24 ANALYSIS

¶ 25 This appeal involves claims of erroneous evidentiary rulings made by the juvenile court during a violation of probation hearing. The standard of proof required to prove a violation of probation is a preponderance of the evidence: whether it is more likely than not that respondent violated the terms of his probation. *People v. Colon*, 225 Ill. 2d 125, 156-57 (2007).

¶ 26 Respondent argues that he was denied his constitutional right to cross-examine a witness and present a defense when the trial judge prevented him from eliciting evidence of the complainant's bias or motive. Respondent asserts that his defense theory was that his mother and Miller called the police on the same day at the same time and that Miller was biased and had a motive to lie because he had to cover himself after he handcuffed respondent and struck Renata in the face and had not paid his rent and was being evicted by Renata. However, the court refused to allow defense counsel to ask questions of Renata and Miller, specifically about Miller's bounced rent check and the timing of Renata's call to the police that would have exposed Miller's bias and motive.

¶ 27 A defendant has the right to cross-examination in a hearing on a petition for violation of probation. 730 ILCS 5/5-6-4(c) (West 2010)). Limiting a defendant's cross-examination of a witness' potential bias, motive or interest may violate a defendant's constitutional right to

confront the witnesses against him guaranteed by both the federal and state constitutions. *People v. Makiel*, 358 Ill. App. 3d 102, 114–15 (2005) (citing U.S. Const., amends. VI, XIV; Ill. Const.1970, art. 1, § 8). The right to cross-examination is not absolute; rather, a defendant has the opportunity for effective cross-examination, but not to a cross-examination that is effective in whatever way, and to whatever extent, that the defense may desire. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). In determining whether a defendant has been denied his right to cross-examination, the relevant analysis in assessing the constitutional sufficiency of a cross-examination is to determine what the defendant was allowed to do and not what he was prohibited from doing. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). A defendant's rights are not violated where the record demonstrates that the jury was made aware of adequate factors concerning the relevant areas of impeachment of a witness, but the defendant was prohibited from pursuing other areas of inquiry. *Id.* We will not reverse the circuit court's decision to limit cross-examination absent an abuse of discretion. *People v. Price*, 404 Ill. App. 3d 324, 330 (2010).

¶ 28 Respondent's defense in this case was that Miller was biased and lacked credibility due to a troubled landlord-tenant relationship and that Miller fabricated his story to the police as cover for handcuffing respondent and injuring respondent and Renata. Respondent argues that questions posed to Miller regarding whether his December rent check bounced, whether he liked Renata and whether he struck Renata, as well as questions posed to Renata about whether Miller had paid his December rent, whether she filed eviction proceedings against him, when she went to the police department to make a complaint against Miller for hitting her, what time she called

the police and what time the police arrived were important questions that the court precluded both witnesses from answering by sustaining the State's objections.

¶ 29 The court did not abuse its discretion in limiting the examination of Miller and Renata in this case. A review of the record in this case shows that respondent's counsel was afforded a sufficient opportunity to show, through cross-examination of Miller and direct examination of Renata, that Miller and Renata had a strained tenant-landlord relationship. In exploring this relationship, respondent's counsel was allowed to ask Miller if he disliked respondent, if he paid his December rent and by what method of payment. Respondent's counsel asked numerous questions about what happened in the basement laundry room, when Miller returned to his apartment with his laundry, when he left his apartment and when he returned to get his wallet. Respondent's counsel also asked numerous questions about when Miller called the police, how he and respondent got back down to the basement and when Renata came downstairs. Respondent's counsel asked about the alleged injuries respondent suffered at the hands of Miller. Through his cross-examination of Miller, respondent's counsel was able to adequately test Miller's credibility and to uncover any possible motive or bias. The fact that the court limited his cross-examination in some areas only foreclosed further questioning about events and topics that occurred after the incident in question here and that had been already covered. Respondent's counsel clearly conveyed and established testimony that inferred Miller's potential bias against respondent and his mother which we presume the juvenile court weighed in reaching its decision. Under these circumstances, we cannot find that the juvenile court abused its discretion in limiting cross-examination of Miller and examination of Renata.

¶ 30 Although respondent raised several issues in his opening brief with respect to the juvenile court's order committing him to the DJJ, respondent has withdrawn his claims as moot with respect to his DJJ commitment order in his reply brief due to the fact that after his opening brief was filed, he was removed from DJJ custody and sentenced to five years of probation. We therefore will not address any issues relating to respondent's commitment to the DJJ.

¶ 31 **CONCLUSION**

¶ 32 For the foregoing reasons, we affirm the judgment of the juvenile court.

¶ 33 Affirmed.