2017 IL App (1st) 162916-U
No. 1-16-2916

THIRD DIVISION
May 31, 2017



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* DUMARREAH T., a Minor, | ) | Appeal from the Circuit Court |
| | ) | of Cook County. |
| (THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | |
| Petitioner-Appellee, | ) | No. 16 JD 201 |
| | ) | |
| v. | ) | |
| | ) | The Honorable |
| DUMARREAH T., a Minor, | ) | Terrence V. Sharkey, |
| | ) | Judge Presiding. |
| Respondent-Appellant). | ) | |

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JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* minor respondent's delinquency adjudication affirmed where: the circuit court's error in admonishing jurors about the principles of law applicable to respondent's trial did not amount to plain error; and the violent juvenile offender statute was constitutional. Respondent's commitment order corrected to reflect 290 days of predisposition detention credit.

¶ 2 Following a jury trial, minor respondent Dumarreah T. was adjudicated delinquent of the offense of robbery. Because of respondent's criminal history, he was prosecuted as a violent juvenile offender in accordance with section 5-820 of the Juvenile Court Act of 1987 (Juvenile

Court Act or Act) (705 ILCS 405/5-820 (West 2014)). Pursuant to the mandatory dispositional requirement of the violent juvenile offender statute, respondent was committed to the Department of Juvenile Justice until his 21st birthday. Respondent appeals his delinquency adjudication, arguing: (1) the circuit court erred in failing to properly advise and ensure that the jurors understood and accepted the fundamental legal principles set forth in Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)); (2) the Juvenile Court Act's violent juvenile offender statute is unconstitutional; and (3) his disposition order should be corrected to reflect 290 days of predisposition detention credit. For the reasons explained herein, we affirm respondent's robbery adjudication and uphold the constitutionality of the violent juvenile offender statute. We do, however, order the clerk of the circuit court to correct respondent's dispositional commitment order in accordance with the instructions set forth in this disposition.

¶ 3 BACKGROUND

¶ 4 On January 24, 2016, Kailin Liang's cell phone was stolen as he was waiting for a CTA train. Respondent, who was 15 years old at the time of the offense, was subsequently arrested in connection with the crime and the State filed a petition for adjudication of wardship against respondent. In the filing, the State alleged that respondent was "delinquent by reason of the following facts: On or about January 24, 2016, in violation of SECTION 1-18 of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, [RESPONDENT] committed the offense of ROBBERY, in that the above-named minor knowingly took property, to wit: a cell phone, from the person or presence of Kailin Liang, by the use of force or threatening the imminent use of force."[1] The State also notified respondent of its intent to prosecute him as a

[1] The petition also alleged that respondent also committed other offenses including theft from a person, theft, aggravated battery, and battery; however, the cause only proceeded to trial on the aforementioned robbery offense.

"violent juvenile offender" pursuant to section 5-820 of the Juvenile Court Act (705 ILCS 405/5-820 (West 2012)). In support, the State alleged as follows:

(1) "The Minor is presently charged in Petition Number 16JD201 with Robbery ***.

(2) In order to be eligible under the Violent Juvenile Offender statute, 705 ILCS 405/5-820, the minor must have been previously adjudicated a delinquent minor for an offense, which had he or she been prosecuted as an adult, would have been a Class 2 or greater felony involving the use or threat of physical force or violence against an individual or a Class 2 or greater felony for which an element of the offense is possession or use of a firearm, and who is thereafter adjudicated a delinquent minor for a second time for any of those offenses if the second adjudication is for an offense occurring after adjudication on the first and the second offense occurred on or after January 1, 1995. In this case, the minor is eligible because:

a. The minor was adjudicated a delinquent minor, under case number 15JD1806, for the offense of Robbery, a Class 2 felony whether committed by an adult or juvenile, and involved the use or threat of force. The adjudication of this case occurred on July 1, 2015.

b. The second adjudication in this instant petition would be for Robbery, a Class 2 felony whether committed by an adult or juvenile, and involves the use of force. Moreover, it is for an offense occurring after adjudication of the first, as the instant petition, which would be the minor's second adjudication, alleges that the minor committed the offense of Robbery on or about January 24, 2016.

c. The offense alleged in the second petition occurred on or about January 24, 2016, which is after January 1, 1995."

¶ 5 Respondent elected to proceed by way of a jury trial. The trial judge presided over the jury selection process and commenced the *voir dire* by swearing in the venire and advising the potential jurors of the rules of law applicable to the trial, including the principles enumerated in Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Specifically, in accordance with Rule 431(b), the trial judge informed the group of prospective jurors that: respondent was presumed innocent of the charges against him; the State bore the burden of proving respondent guilty of the robbery offense beyond a reasonable doubt; respondent was not required to prove his innocence and was not required to testify or present evidence on his behalf; and respondent's decision not to testify could not be considered evidence against him. The judge then inquired, in pertinent part, whether any of the prospective jurors "disagree[d] with" the principles. After the jury was selected, the State proceeded with its case-in-chief.

¶ 6 At trial, Liang, a 26-year old Chinese national present in the United States on a student visa, testified that on the evening of January 24, 2016, he attended a dinner party with classmates at a restaurant located in Chinatown. He left the restaurant at approximately 11 p.m. and walked to the Cermak CTA station. As he waited in the station's vestibule for the next red line train to arrive, Liang sat on the ground and "play[ed]" with his Google smart phone. Respondent and two other young men subsequently entered the vestibule. Respondent was wearing a "black hoodie jacket." The second individual was wearing a red jacket and the third young man was "pretty chubby" and had a backpack. After the three young men spoke to each other for a "bit," respondent approached Liang and initiated a conversation. Respondent initially inquired whether Liang "kn[ew] karate." He then told Liang that he had a YouTube channel and suggested that Liang "check that out." During this conversation, respondent seemed to be interested in Liang's phone and used his index finger to point to the phone as Liang held it in his right hand. After

initially pointing at Liang's phone, respondent "suddenly" slapped Liang's phone to the ground. Respondent then "immediately" grabbed the phone and put it in his pants pocket. Liang testified that he immediately rose from the ground and tried to reach his phone, but respondent used his left hand to "grab [Liang's shirt] and push" him away. At the same time, respondent used his right hand to guard the phone in his pocket.

¶ 7 As respondent was attempting to keep Liang from his phone, the young man wearing the red jacket walked over to help respondent. Liang testified that second young man used his hand to push Liang's left shoulder back in order to "help the minor respondent push [him] away." The third young man, who was wearing the backpack, subsequently approached Liang and grabbed his jacket to pull him away from respondent. During this struggle, the male in the red jacket took the phone from respondent and "ran straight out from the vestibule." Liang testified that he initially began to chase the young man to try to get his phone back, but that he lost sight of him when he crossed the street. As a result, Liang returned to the CTA vestibule and spoke to respondent who was still "hang[ing] around in that area" and asked for his phone. Respondent did not respond to Liang. Instead, respondent left the vestibule and began walking toward Wentworth Avenue. Liang, in turn, followed respondent and continued "begging for [his] phone back." In response, respondent ordered Liang to stop following him and informed Liang that he had a knife. Liang testified that he "hesitated a bit" after hearing that respondent had a knife, but decided to continue following respondent because his phone contained a lot of "valuable information" and he "desperately" needed it back. Respondent then asked Liang if he had any "cash" on him and instructed Liang to "show [his] wallet." Liang complied and showed respondent his wallet, which only contained bank cards and a transportation card.

¶ 8 After respondent saw that Liang was not carrying any money on his person, respondent took off running. Liang testified that he lost sight of respondent for "a bit" but that he caught up with him "at the corner of Cermak and Wentworth." At that point, respondent had reunited with the other two young men and the three of them were standing together at the corner "hav[ing] a little discussion." Thereafter, the young men began walking and headed into another CTA vestibule. Liang followed them and observed respondent conversing with a security guard. Liang decided he could not trust the security guard after observing that conversation and elected not to inform the guard that respondent had stolen his cellular phone.

¶ 9 Respondent and the two other boys then left that CTA vestibule and began walking down Cermak Road. Liang continued following them and the three young men ultimately led him to an ATM and "surround[ed]" him. Liang testified that there was a "discussion" about him receiving his phone back in "exchang[e]" for money. As a result, Liang used his bank card to withdraw $40 from the ATM, which was all the money he had in that account. After Liang inserted his bank card into the machine, the young man with the red jacket "reach[ed] his hand [in]to the ATM machine and took the [$40] out." Liang then "snapped" his phone back from the young man's hands and turned around and began walking back to the Cermak CTA station. After he walked a "few steps," Liang observed a "police car just parked in the middle of that Cermak Road." He immediately approached the squad car and spoke to the two officers occupying the vehicle. Upon hearing what had occurred, the officers exited the vehicle and approached the three young men.

¶ 10 On cross-examination, Liang admitted that respondent never actually showed him a knife; rather, respondent simply told Liang that he was in possession of a knife.

¶ 11 James Higgens, a security manager for the Chicago Transit Authority, testified that train vestibules and stations are equipped with security cameras. He explained: "Any station has an entrance where they get in where there's turnstiles and an exit to get out where there's turnstiles and we affix cameras throughout the station every so many feet so we can kind of have an idea what takes place in that station. So there [are] cameras throughout the station." Higgens further explained that the cameras are "electric" and that the images captured by the cameras are sent to "one central location in the city where [CTA personnel] can access all the cameras in the city and can look and see what the camera is seeing." Higgens acknowledged that there are instances in which a crime occurs and is captured by CTA cameras. He explained that when CTA personnel learn that a crime has been committed on the premises of one its stations or properties, they will review video footage recorded at the specific site where the crime occurred and "see if [they] find anything that matches what was reported as being a crime at that location." If they find footage depicting a crime, CTA personnel will then "lock in that video" so they "have it for all time" and turn the footage over to law enforcement personnel investigating the crime.

¶ 12 Higgens testified that on January 25, 2016, he "learned that somebody reported a crime occurring at the Red Line station, specifically the Cermak station at the Archer entrance." The crime reportedly occurred on the evening of January 24, 2016, at approximately 11:30 p.m. After learning this information, Higgens searched through video footage and was able to locate the footage of the crime. He then "burn[ed]" the footage onto a DVD and "made it available" to law enforcement personnel.

¶ 13 The video footage was published to the jury. The footage corroborated Liang's description of the crime. Specifically, the surveillance images show Liang sitting on the ground of the CTA vestibule and looking at his phone. Respondent and two other young men then enter

the CTA vestibule and respondent subsequently approaches Liang, talks to him, and then slaps the phone to the ground. Respondent then recovers the phone and physically prevents Liang from retrieving his property. When Liang continues to struggle with respondent for his phone, the other two young men surround him and physically prevent Liang from getting his phone back from respondent. At the conclusion of the video, the young man in the red jacket takes the phone from respondent and runs out of the station.

¶ 14 Chicago Police Officer Gerado Calderon, a patrolman in the 9th District, testified that on the evening of January 24, 2016, he and his partner, Officer Adolfo Garcia, were on patrol in a marked squad car. At approximately 11:30 p.m., as they were driving through the area of 209 West Cermak, they observed Liang "surrounded by three males" at an ATM machine. Although it was dark outside, Officer Calderon testified that his visibility was "pretty good due to the streetlights and the business lights in the area." He identified respondent as one of the males that he observed surrounding Liang. After making these initial observations, Liang, who appeared to be "frantic" and "panicked," "made eye contact with [Officer Calderon and his partner], snatched his phone back from [another] individual and proceeded to yell and waive at [them] to get [their] attention, at which time [his] partner rolled the vehicle up onto the curb and [they] jumped out." As Officer Calderon and his partner approached Liang, he informed them that the three young men had just taken his phone and that he wanted them arrested. The three young men then began running. Officer Calderon's partner apprehended respondent. Officer Calderon, in turn, was able to detain the other two individuals. The three young men were then all placed into custody and transported to the 9th District Police Station.

¶ 15 On cross-examination, Officer Calderon acknowledged that no phone, knife or money was recovered from respondent's person. Moreover, Liang never mentioned anything about a

knife when he provided his statement about the crime. Officer Calderon testified that after respondent had been taken into custody, he learned that respondent was residing at the Nellum Center, a DCFS residential placement center.

¶ 16 After presenting the aforementioned evidence, the State rested its case. Thereafter, respondent's attorney moved for a directed finding, which the circuit court denied. Respondent elected not to testify and his attorney rested without presenting any evidence. The parties then delivered closing arguments. At the conclusion of those arguments, the circuit court provided the jury with a series of relevant instructions. Following deliberations, the jury returned with a verdict finding respondent delinquent of the offense of robbery.

¶ 17 Respondent subsequently filed a motion for a judgment notwithstanding the verdict, which the circuit court denied. The cause then proceeded to a disposition hearing. At the hearing, the State entered into evidence, respondent's prior delinquency adjudication and requested the court to commit him to the DOJ until his 21st birthday as required by the terms of the Juvenile Court Act's violent juvenile offender statute's mandatory disposition requirement. Respondent's attorney, in turn, acknowledged that the court's "hands [were] tied in this matter by statute." In accordance with the statute's disposition requirement, the circuit court committed respondent to the Illinois Department of Juvenile Justice until his 21st birthday. In doing so, the court stated that "the [commitment] is mandated; and there's no—there's absolutely, in my mind, there's absolutely no way wiggle room on it."

¶ 18 This appeal followed.

¶ 19 ANALYSIS

¶ 20 Rule 431(b) Admonishments

¶ 21 On appeal, respondent first argues that the circuit court failed to abide by the requirements of Illinois Supreme Court Rule 431(b) and ensure that potential jurors understood the four principles delineated therein during the *voir dire* process. He acknowledges that he failed to properly preserve this claim, but he argues that the court's error constituted plain error under the first prong of plain error review because the evidence against him was so "closely balanced."

¶ 22 The State concedes that the trial court erred in admonishing the prospective jurors about the principles enumerated in Supreme Court Rule 431(b), but maintains that the error did not constitute plain error or warrant reversal because the evidence against defendant was not closely balanced.

¶ 23 As a threshold matter, we note that respondent acknowledges that he failed to properly preserve this issue for appeal because he did not object to the purported error at trial or include the issue in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a posttrial motion and that his failure to satisfy both requirements results in forfeiture of appellate review of his claim); see also *People v. Wilmington*, 2013 IL 112938, ¶ 31 (recognizing that the defendant did not properly preserve his argument that the circuit court failed to provide proper Rule 431(b) admonishments where he failed to object to the court's questioning during *voir dire* and failed to raise the issue in a posttrial motion). In an effort to avoid forfeiture, however, respondent invokes the plain error doctrine, which provides a limited exception to the forfeiture rule and allows for review of forfeited issues on appeal if the evidence is closely balanced or if the claimed error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R.

615(a) (eff. Jan. 1, 1967); *People v. Belknap*, 2014 IL 117094, ¶ 48; *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). Here, respondent relies on the first prong of plain error review and argues that the court's purported error prejudiced him because the evidence was closely balanced. The first step in any plain error analysis is to determine whether any error actually occurred. *Piatkowski*, 225 Ill. 2d at 565; *People v. Rinehart*, 2012 IL 111719, ¶ 15. If an error is discovered, respondent then bears the burden of persuasion to show that the error prejudiced him. *Sargent*, 239 Ill. 2d at 189-90. Keeping this standard in mind, we turn now to evaluate the merit of respondent's claim.

¶ 24 Respondent's claim of error concerns the circuit court's compliance with a supreme court rule, which is subject to *de novo* review. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007); *People v. Haynes*, 399 Ill. App. 3d 903 (2010). To determine whether an error occurred in this case, we examine Rule 431(b), the rule at issue, which provides as follows:

> "The court *shall* ask each potential juror, individually or in a group, whether that juror *understands and accepts* the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.
>
> The court's method of inquiry *shall* provide each juror an opportunity to respond to the specific questions concerning the principles set out in this section." (Emphasis added.) Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 25 The plain language of Rule 431(b) is "clear and unambiguous" (*People v. Thompson*, 238 Ill. 2d 598, 607 (2010)) and "mandat[es] a 'specific question and response process.' " *Wilmington*, 2013 IL 112938, ¶ 32 (quoting *Thompson*, 238 Ill. 2d at 607); see also *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 39. That is, the rule requires the circuit court to address the jury, delineate the four principles essential for a fair trial, and ensure that the jurors both understand *and* accept each principle. *Belknap*, 2014 IL 117094, ¶¶ 44-46; *Wilmington*, 2013 IL 112938, ¶ 32; *Thompson*, 238 Ill. 2d at 607. Although the "questioning may be performed either individually or in a group," the rule ultimately "requires an opportunity for a response from each prospective juror on his or her understanding of those principles." *Thompson*, 238 Ill. 2d at 607. Keeping these principles in mind, we examine the procedure employed by the circuit court in this case.

¶ 26 Prior to commencing *voir dire*, the circuit court admonished the venire about "some basic principles of law which apply in the minor respondent's case," and stated as follows:

> "Under the law the minor respondent is presumed to be innocent of the charges against him. This presumption remains with the minor respondent at every stage of this trial and during your deliberations on the verdict. It is not overcome unless and until the jury is convinced beyond a reasonable doubt that the minor respondent is guilty.
>
> The State has the burden of proving the minor respondent guilty beyond a reasonable doubt. The State carries that burden throughout this case.
>
> The minor respondent is not required to prove his innocence. The minor respondent need not present any evidence. And the minor respondent may rely on his presumption of innocence."

¶ 27 Shortly thereafter, the circuit court again addressed the venire and asked the following questions:

> "A minor respondent in this case *** is presumed to be innocent until a jury determines after deliberation that the person is guilty beyond a reasonable doubt.
>
> Does anyone disagree with this rule of law? The record should reflect there is nobody raising their hand to disagree.
>
> The next question is the State has the burden of proving the minor respondent guilty beyond a reasonable doubt. Does anyone disagree with this law? Again, the record will reflect there is nobody to raise their hand.
>
> A minor respondent does not have to testify, and that fact that he doesn't testify can[not] be held against him. Would any of you hold the fact that the minor respondent did not testify at trial against that individual? Please raise your hand. Again, the record should reflect nobody is raising their hand."

¶ 28 Upon review, we find that the court's methodology failed to comport with the requirements set forth in Rule 431(b). Notably, the court repeatedly inquired whether any potential jurors "disagree[d] with" the relevant principles. As our supreme court has recognized, "[w]hile it may be arguable that the court's asking for disagreement, and getting none, is equivalent to juror acceptance of the principles, the trial court's failure to ask jurors if they understood the court Rule 431(b) principles is error in and of itself." *Wilmington*, 2013 IL 112938, ¶ 32; see also *Belknap*, 2014 IL 117094, ¶ 46 (concluding that the circuit court did not comply with Rule 431(b)'s requirements where the court "did not explicitly ask the potential jurors whether they accepted the principles; rather, the court asked if they had any disagreement

or quarrel with the principles"). Here, the court's failure to ensure that the jury understood the principles delineated in Rule 431(b) constituted error.

¶ 29 Having found error, we must now determine whether the error amounts to plain error. As stated above, respondent relies on the first prong of plain error review and argues that the evidence against him was closely balanced. To establish first prong plain error, respondent must demonstrate that "the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him." *Herron*, 215 Ill. 2d at 187. "A reviewing court must undertake a commonsense analysis of all the evidence in context when reviewing a claim under the first prong of the plain error doctrine." *Belknap*, 2014 IL 117094, ¶ 50. In this case, respondent suggests that "the evidence was closely balanced as to [his] robbery conviction because [he] did not use force or the threat of imminent force in obtaining the phone, which he merely knocked to the ground and picked up without making physical contact or any threat to Liang."

¶ 30 Section 19-1(a) of the Criminal Code of 2012 sets forth the offense of robbery and provides: "A person commits robbery when he or she knowingly takes property *** from the person or presence of another *by the use of force or by threatening the imminent use of force*." (Emphasis added.) 720 ILCS 5/18-1(a) (West 2012). The gravamen of the offense of robbery is a defendant's use of force or threatening the imminent use of force and it is this element that differentiates robbery from theft. *People v. Hay*, 362 Ill. App. 3d 459, 365 (2005); *People v. Saxon*, 226 Ill. App. 3d 610, 618 (1992). " '[T]he degree of force necessary to constitute robbery must be such that the power of the owner to retain his property is overcome, either by actual violence physically applied, or by putting him in such fear as to overpower his will.' " *People v. Bowel*, 111 Ill. 2d 58, 63 (1986) (quoting *People v. Williams*, 23 Ill. 2d 295, 301 (1961)); see

also *People v. Merchant*, 361 Ill. App. 3d 69, 72 (2005). Although the mere act of quickly taking property from a victim's hands does not itself constitute a robbery, "if the "slightest degree of force is used the act may constitute robbery." *Hay*, 362 Ill. App. 3d at 466. Moreover, even if the initial taking is accomplished without force, the offense may still amount to robbery where the offender uses force to effectuate his departure or escape (*Hay*, 362 Ill. App. 3d at 366; *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999)) or where " 'the felonious possession of a perpetrator is challenged immediately' " upon the taking and where the possession is subsequently defended by the perpetrator (*Merchant*, 361 Ill. App. 3d at 74, quoting *People v. Houston*, 151 Ill. App. 3d 718, 721 (1986)). Indeed, " '[t]he force or threatened force need not transpire before or during the time the property is taken; the force may be used as part of a series of events constituting a single incident.' " *Merchant*, 361 Ill. App. 3d at 74 (quoting *People v. Brooks*, 202 Ill. App. 3d 164, 170 (1990)).

¶ 31 Keeping the aforementioned legal principles in mind, we are unable to agree with respondent's characterization of the evidence against him as being "closely balanced." Liang's testimony, which was corroborated by the CTA surveillance footage, established that respondent forcefully slapped Liang's cell phone from his hands and immediately grabbed the phone off of the floor. Although respondent suggests that the slapping of Liang's cell phone did not constitute force necessary to sustain a robbery conviction, he does not provide any legal authority to support his argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (requiring appellants to support their arguments with citations to relevant authority). Moreover, it is clear from the testimonial and demonstrative evidence that respondent employed at least a modicum amount of force when he slapped Liang's phone to the ground. That is, respondent did not engage in a sleight of hand and unobtrusively remove Liang's cell phone from his possession;

rather, he clearly employed force to slap Liang's phone to the ground. *Cf. People v. Patton*, 76 Ill. 3d 45, 48-49 (1979) (finding that the defendant's removal of the victim's purse from her person did not constitute robbery where the defendant did not employ force to take the purse from the victim, who "did not realize what was happening"). Moreover, even if the initial act of slapping the phone to the ground was not sufficient to constitute the force necessary to sustain a robbery conviction, respondent clearly employed force to effectuate his departure. Liang's testimony and the surveillance video footage established that respondent pushed Liang when he attempted to impede respondent's efforts to escape with the phone. Liang was also grabbed at and pushed by respondent's friends, who aided respondent in his effort to escape with Liang's cell phone. The struggle that ensued after respondent took possession of Liang's phone constituted force. See, *e.g.*, *Hay*, 362 Ill. App. 3d at 466 (affirming the defendant's robbery conviction even though he did not use force to remove two rings shown to him by a jewelry clerk because he "did use force in effectuating his escape."); *Merchant*, 361 Ill. App. 3d at 75 (finding that although the defendant did not use force to take a $20 bill from the victim's hands, the "mutual struggle" that ensued when the defendant attempted to make his escape amounted to force and "elevate[d] what would have been mere theft to robbery."); *Houston*, 151 Ill. App. 3d at 721 (concluding that "the defendant's act of pushing against the [victim] when she resisted his attempt to escape with her wallet was force sufficient to support the robbery conviction"). Ultimately, given the testimonial and demonstrative evidence in the record, which we view in a "commonsense manner in the context of the totality of the circumstances" (*Belknap*, 2014 IL 117094, ¶ 62), we are unable to agree with respondent that the evidence against him was closely balanced. Because respondent has failed to meet his burden of showing that the evidence against

him was closely, balanced, the first prong of plain error review does not provide a basis to excuse respondent's procedural default.

¶ 32 Constitutionality of the Violent Juvenile Offender Statute

¶ 33 Respondent next challenges the constitutionality of the Illinois violent juvenile offender statute. He argues, in pertinent part, that the statute's requirement that anyone who is adjudicated a violent juvenile offender be committed to the Department of Juvenile Justice until his or her 21st birthday violates the constitutional protections afforded by the eighth amendment, the Illinois proportionate penalties clause, the equal protection clause and the tenets of substantive due process. We will address each of his arguments in turn.

¶ 34 The constitutionality of a statute is an issue of law that is subject to *de novo* review. *People v. Patterson*, 2014 IL 115102, ¶ 90; *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005); *People v. Johnson*, 2015 IL App (1st) 133663, ¶ 25. Because statues carry a "strong presumption" of constitutionality, it is the burden of the party challenging the constitutionality of a given statute to "clearly establish" that the statute violates constitutional protections. *Sharpe*, 216 Ill. 2d at 487. A reviewing court has a duty to uphold a statute's constitutionality whenever it is reasonably possible to do so. *Patterson*, 2014 IL 115102, ¶ 90; *People v. Johnson*, 2015 IL App (1st) 133663, ¶ 25. Accordingly, all doubts must be construed in favor of a statute's validity and constitutionality. *Patterson*, 2014 IL 115102, ¶ 90; *People v. Fulton*, 2016 IL App (1st) 141765, ¶ 20.

¶ 35 The violent juvenile offender statute provides, in pertinent part, as follows:

"§5-820 Violent Juvenile Offender

(a) Definition. A minor having been previously adjudicated a delinquent minor for an offense, which had he or she been prosecuted as an adult, would have been a Class 2

> or greater felony involving the use or threat of physical force or violence against an individual or a Class 2 or greater felony for which an element of the offense is possession or use of a firearm, and who is thereafter adjudicated a delinquent minor for a second time for any of those offenses shall be adjudicated a Violent Juvenile Offender if:
>
> (1) The second adjudication is for an offense occurring after the adjudication on the first; and
>
> (2) The second offense occurred on or after January 1, 1995. ***
>
> (d) Disposition. If the court finds that the prerequisites established in subsection (a) of this Section have been proven, it *shall* adjudicate the minor a Violent Juvenile Offender and commit the minor to the Department of Juvenile Justice until his or her 21st birthday, without possibility of aftercare release, furlough, or non-emergency authorized absence. However, the minor shall be entitled to earn one day of good conduct credit for each day served as reductions against the period of his or her confinement. The good conduct credits shall be earned or revoked according to the procedures applicable to the allowance and revocation of good conduct credit for adult prisoners serving determinate sentences for felonies." (Emphasis added.) 705 ILCS 405/5-820 (West 2012).

¶ 36 This statutory provision has the "purpose of protecting society from an individual who has committed two serious violent offenses involving the use or threat of physical force or violence against an individual or possession or use of a firearm." *In re M.G.*, 301 Ill. App. 3d 401, 409 (1998).

¶ 37 Eighth Amendment and Proportionate Penalties Clause Challenge

¶ 38 The eighth amendment of the federal constitution prohibits the imposition of "cruel and unusual punishments." U.S. Const. amend VIII. The proportionate penalties clause of the

Illinois constitution, in turn, mandates that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. Courts have recognized that our proportionate penalties clause is "coextensive with" the eighth amendment's cruel and unusual punishment clause. *Patterson*, 2014 IL 115102, ¶ 106. To succeed in a proportionate penalties challenge, a defendant must establish that the punishment is " 'cruel, degrading or so wholly disproportionate to the offense committed so as to shock the moral sense of the community.' " *Sharpe*, 216 Ill. 2d at 487 (quoting *People v. Moss*, 503, 522 (2003)).

¶ 39 In this case, respondent argues that the violent juvenile offender statute and its mandatory dispositional commitment requirement does not withstand constitutional scrutiny in light of a series of United States Supreme Court cases that have "recognized expansive [e]ighth [a]mendment protections for minors found guilty of crimes." The specific cases relied upon by respondent include *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). In *Roper*, the United States Supreme Court held that the eighth amendment forbids the imposition of the death penalty on offenders who were under 18 years of age when they committed their crimes. Thereafter, in *Graham*, the Court held that the imposition of a life sentence without the possibility of parole on a juvenile offender who does not commit a murder, violates the tenets of the eighth amendment. Finally, in *Miller*, the Court concluded that any sentencing scheme calling for the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of their offense violates the eighth amendment's prohibition against cruel and unusual punishment.

¶ 40 Respondent, relying on the *Roper-Graham-Miller* trilogy of cases, argues that the violent juvenile offender statute's "removal of discretion [when imposing a commitment term], violates [e]ighth [a]mendment precedent, which requires a sentencing court to follow a certain process—considering and offender's youth and attendant characteristics—before imposing a particular penalty." He further contends that the "elimination of discretion also violates the proportionate penalties clause of the Illinois Constitution, which requires a court to consider rehabilitation in imposing a sentence."

¶ 41 As a threshold matter, we note that the protections set forth in the eighth amendment and the Illinois proportionate penalties clause do not apply to juvenile proceedings that are initiated by a petition for adjudication of wardship because those adjudications are not criminal in nature and do not impose "punishment" within the meaning of the eighth amendment and the proportionate penalties clause. *In re Isaiah D.*, 2015 IL App (1st) 143507, ¶ 52, (citing *In re Rodney H.*, 223 Ill. 2d 510, 520-21 (2006)); see also *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶ 52. Even if those provisions did apply, we note that this court has already previously rejected these same constitutional challenges to the violent juvenile offender statute. See, *e.g.*, *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶¶ 47-56; *In re Isaiah D.*, 2015 IL App (1st) 143507, ¶¶ 54-61. In doing so, we noted that our supreme court, in *People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67 (1980), previously upheld the constitutionality of the habitual juvenile offender statute, a related statutory provision in the Juvenile Court Act that requires juveniles who commit three criminal offenses and are adjudicated habitual juvenile offenders, to be committed to the Illinois Department of Juvenile Justice until their 21st birthdays.[2] See *In re Deshawn G.*, 2015 IL App

[2] Courts have found the reasoning employed by the *Chrastka* court when evaluating the constitutionality of the habitual juvenile offender statute equally applicable to constitutional challenges made against the violent juvenile offender statute because both provisions mandate a disposition after a juvenile has engaged in a repeated pattern of criminal conduct. See, *e.g.*, *M.G.*, 301 Ill. App. 3d at 407-08 (recognizing that the habitual juvenile offender statute

(1st) 143316, ¶¶ 38-40 (discussing *Chrastka*, 83 Ill. 2d 67); *In re Isaiah D.*, 2015 IL App (1st) 143057, ¶¶ 55-58 (same). In *Chrastka*, our supreme court, in rejecting the constitutional challenge to the related habitual juvenile offender statute, noted that "[s]tate legislatures have traditionally been allowed wide latitude in setting penalties for State crimes" and concluded that the mandatory dispositional requirement applicable to habitual juvenile offenders did not "rise[] to the level of cruel and unusual punishment by any stretch of the imagination." *Chrastka*, 83 Ill. 2d at 81-82. Although *Chrastka* was decided before the United States Supreme Court issued its decisions in *Roper*, *Graham*, and *Miller*, this court has previously concluded those decisions did not compel a different result and that our supreme court's reasoning and holding in *Chrastka* remained binding. See *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶ 40; *In re Isaiah D.*, 2015 IL App (1st) 143507, ¶ 56; see also *In re Shermaine S.*, 2015 IL App (1st) 142421,¶ 55 (relying on *Chrastka* to reject a recent constitutional challenge to the related habitual juvenile offender statute). In doing so, we have emphasized that contrary to juveniles adjudicated violent juvenile offenders under the Illinois Juvenile Court Act, the juveniles in *Roper*, *Miller* and *Graham* were charged and convicted in adult courts and were subject to adult sentencing provisions. We further emphasized that the *Miller* decision did not hold that all mandatory penalties imposed on juveniles are unconstitutional; rather, it was limited to mandatory natural life sentences without the possibility of parole. See *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶ 53; *In re Isaiah D.*, 2015 IL App (1st) 143507, ¶ 56. Upon review, we find no reason to depart from our prior decisions in *In re Deshawn G.* and *In re Isaiah D.* and conclude that the violent juvenile offender statute and its mandatory disposition requirement do not violate the eighth amendment's prohibition against cruel and unusual punishment or the Illinois proportionate penalties clause.

"mandates a disposition after there has been a pattern of conduct, that is, after two prior offenses. The Violent Juvenile Offender Act, on the other hand, imposes disposition after only one prior offense").

Neither the eighth amendment nor the Illinois proportionate penalties clause prohibits the legislature from fixing such mandatory minimum disposition requirements on minors who commit repeated violent criminal offenses.

¶ 42 Equal Protection and Substantive Due Process Challenges

¶ 43 Respondent also argues that the violent juvenile offender statute fails to accord with the tenets of equal protection and substantive due process.

¶ 44 The right to equal protection under the law is provided for in both the federal and Illinois State constitutions and statutory enactment must comply with those guarantees. U.S. Const. amend. XIV; Ill. Const. 1971, art. I., § 2. To state a cause of action for an equal protection clause violation, a party must allege that there are other individuals who are similarly situated to him who are treated differently than him and that there is no rational basis for the differential treatment. *In re Vincent K.*, 2013 IL App (1st) 112915, ¶ 53. Although the tenets of equal protection require the government to treat similarly situated persons in a similar manner, the equal protection clause does not wholly preclude legislatures from drawing distinctions between different classes of people; rather, it simply precludes the government from making classifications on the basis of criteria that are wholly unrelated to a statute's purpose. *In re Johnathon C.B.*, 2011 IL 107750, ¶ 116; *In re A.A.*, 181 Ill. 2d 32, 37 (1998).

¶ 45 The due process clauses of the federal and Illinois State constitutions, in turn, prohibit the government from depriving any individual of "life, liberty or property without due process of law." U.S. Const., amends V, XIV; Ill. Const., art. I, § 2. Due process encompasses both procedural and substantive elements. "Whereas procedural due process governs the procedures employed to deny a person's life, liberty or property interest, substantive due process limits the state's ability to act, irrespective of the procedural protections provided." *In re Marriage of*

*Miller*, 227 Ill. 2d 185, 197 (2007). To satisfy the requirements of substantive due process, the statute, as written, must be reasonably designed to address the evils which the legislature has determined to be a threat to the public's health, safety and general welfare. *People v. P.H.*, 145 Ill. 2d 209, 223 (1991).

¶ 46 Respondent argues that the violent juvenile offender statute fails to accord with equal protection principles because the dispositional requirement mandating commitment until the age of 21 punishes younger offenders more harshly than older offenders for no legitimate reason. He further argues that the violent juvenile offender statute's mandatory disposition requirement bears no rational relationship to the express stated purposes of the Juvenile Court Act, which include protecting the general public and allowing for individualized assessments of juvenile offenders (705 ILCS 505/5-101(a) (West 2012)), and thus violates the principles of substantive due process.

¶ 47 This court, however, has also previously rejected equal protection and due process challenges to the violent juvenile offender statute. See, *e.g.*, *In re Deshawn G.*, 2015 IL App (1st) 143316; *In re M.G.*, 301 Ill. App. 3d 401 (1998). In finding that the violent juvenile offender statute did not violate equal protection principles, we reasoned that the statute " 'has the apparent purpose of protecting society from an individual who has committed two serious violent offenses involving the use or threat of physical force or violence against an individual or possession or use of a firearm. To further its purpose, the legislature determined that a violent juvenile offender should be confined until the age of 21. *** [T]he interest in protecting society is compelling in cases involving such juvenile offenders and we do not find the disparity resulting from the mandatory disposition to invalidate the statute." *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶ 44 (quoting *In re M.G.*, 301 Ill. App. 3d at 409). Moreover, with respect to

due process, we noted in our prior decisions that " 'the legislature could legitimately conclude that an individual who has committed two serious violent offenses has benefitted little from the rehabilitative measures of the juvenile court system and exhibits little prospect for restoration to meaningful citizenship within that system. The rehabilitative purposes of the system are not forsaken but, after the commission of a second serious offense, the interest of society's protection receives additional consideration. We hold it constitutionally permissible for the legislature to authorize the disposition specified in the Violent Juvenile Offender Act.' " *Id.* ¶ 38 (quoting *In re M.G.*, 301 Ill. App. 3d at 408).

¶ 48 We continue to adhere to our prior holdings and conclude that respondent's constitutional challenge to the violent juvenile offender statute lacks merit. The statute comports with the constitutional requirements of equal protection and substantive due process.

¶ 49 Predisposition Detention Credit

¶ 50 Lastly, respondent argues and the State concedes that he is entitled to 290 days of predisposition credit. We agree with the parties.

¶ 51 Juveniles adjudicated delinquent and committed to the Department of Juvenile Justice pursuant to the Act are entitled to predisposition detention credit for the time spent in custody before their dispositional hearing. See, *e.g.*, *In re J.T.*, 221 Ill. 2d 338, 353 (2006); *In re Jabari C.*, IL App (4th) 100295, ¶¶ 24-35. Here, respondent was arrested on January 24, 2016, and was held in custody until November 9, 2016, when the circuit court, following a dispositional hearing, sentenced him to commitment in the Department of Juvenile Justice until his 21st birthday. He is thus entitled to 290 days of predisposition detention credit. Accordingly, we direct the clerk of the circuit court to correct respondent's commitment order to reflect 290 days of predisposition detention credit.

¶ 52 CONCLUSION

¶ 53 For the reasons stated, we affirm respondent's delinquency adjudication. In addition, we direct the clerk of the circuit court to issue a corrected commitment order in accordance with our instructions.

¶ 54 Affirmed in part; commitment order corrected.