2017 IL App (1st) 170081-U

FIFTH DIVISION
December 1, 2017

No. 1-17-0081

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re JACARI J., a minor,	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 16 JD 2608
v.	)	
	)	
JACARI J., a minor,	)	Honorable
	)	Stuart F. Lubin,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where (1) the evidence was sufficient to prove respondent guilty of aggravated unlawful use of a weapon beyond a reasonable doubt and (2) the trial court properly considered less restrictive alternatives prior to committing respondent to the DOJJ in compliance with the Act.

¶ 2 Following a bench trial respondent Jacari J., a 17-year-old minor, was found guilty of two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1)(3)(C),

(a)(1)(3)(I) (West 2016)) and adjudicated a delinquent minor pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5 *et seq.* (West 2016)). Respondent was sentenced to an indeterminate term of commitment in the Illinois Department of Juvenile Justice (DOJJ). On appeal, respondent contends: (1) the State failed to prove him guilty beyond a reasonable doubt of AUUW where the evidence demonstrated he did not constructively possess the weapon; and (2) that the matter should be remanded for resentencing because the trial court failed to comply with the statutory requirements of section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2016)). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On November 21, 2016, the State filed a petition for the adjudication of wardship of respondent, alleging that, on November 20, 2016, he committed two counts of AUUW based on his possession of a firearm in a vehicle while under 21 and not engaged in a lawful wildlife activity (720 ILCS 5/24-1.6 (a)(1)(3)(I) (West 2016)) as well as not having a valid firearm owner's identification (FOID) card (720 ILCS 5/24-1.6(a)(1)(3)(C) (West 2016)). The matter proceeded to a bench trial.

¶ 5 At trial, Officer Deleon testified that on November 20, 2016, at 11:35 a.m. he, along with Officer Dorsch,[1] were on routine patrol in the area of the 1400 block of North Long Avenue in an unmarked vehicle. While on patrol, Officer Deleon observed a 2008 Saturn with inoperable brake lights. There were four occupants inside the vehicle: a driver, a front passenger, and two rear passengers seated directly behind the driver and the front passenger. Officer Deleon ran the vehicle's license plates through the law enforcement database, which indicated that the vehicle was stolen. Officer Deleon radioed for assistance and followed the vehicle, which shortly

[1] The full names of both officers do not appear in the record.

thereafter abruptly pulled into a parking spot. Officer Dorsch and Officer Deleon activated their emergency lights and approached the vehicle. As Officer Deleon approached the passenger side of the automobile, he observed the front and rear passenger-side occupants attempting to exit the vehicle. He also observed the respondent, who was seated behind the driver in the rear passenger seat, "moving his shoulders up and down and bobbing his head a little bit." Officer Deleon warned the passengers to stay in the vehicle, but despite his order, the driver exited the vehicle. Officer Dorsch immediately detained the driver and handcuffed him. Officer Deleon then handcuffed the passengers on the passenger-side of the vehicle to each other.

¶ 6 Officer Deleon further testified that upon arriving at the police station, he learned that respondent was born August 12, 1999, and did not have a valid FOID card. In addition, Officer Deleon testified he did not observe respondent conducting any activities that were lawful under the Wildlife Code at the time of his arrest.

¶ 7 On cross-examination, Officer Deleon conceded that the arrest report does not indicate respondent was making any movements. In addition, he admitted that he never noticed respondent holding a firearm. He also testified that he did not observe anything in respondent's hand, including an iPhone, nor did he hear any music as he approached the vehicle.

¶ 8 Officer Young testified that on the day in question he was also on routine patrol when he responded to a call for assistance in the 1400 block of North Long Avenue. When he arrived at the scene, he approached an automobile parked in front of an unmarked police vehicle. As he was approaching the automobile from the driver's side, Officer Young observed that the driver was handcuffed and that the two passengers seated on the right side of the vehicle were handcuffed to each other as well. He opened the driver's side rear door, where respondent was seated, and yelled "where is the gun, where is the gun?" He observed respondent raise his hands,

which were initially at his thighs, into the air. After handcuffing respondent and removing him from the vehicle, Officer Young noticed a handgun was on the seat where respondent's right thigh had been. Officer Young testified that the recovered firearm was about five-and-half to six inches long, and was loaded.

¶ 9 On cross-examination, Officer Young testified he did not observe respondent holding anything in his hands. Officer Young also testified that the other rear passenger was not sitting immediately next to where the weapon was found. Officer Young denied pointing his firearm at respondent at any time during the arrest. Following this testimony, the State rested.

¶ 10 Respondent testified that on November 20, 2016, at 11:20 a.m. a friend picked him up at his residence to drive him to his girlfriend's house. While in the vehicle, he was listening to music, which he was playing from his iPhone through the automobile's stereo system. He testified the music was loud when the vehicle he was riding in was pulled over. According to respondent, he was holding his iPhone in one hand, and raised both of his hands up into the air when four officers approached the vehicle with their weapons drawn. Then, one of the officers snatched the iPhone out of his hand and handcuffed him. Respondent testified that he was the first to be handcuffed. Respondent denied having or holding the weapon at any time during the ride and testified the first time he noticed the weapon was at the police station.

¶ 11 On cross-examination, respondent reiterated that he was holding his iPhone in his right hand, and his left hand was by the door. He denied that he ever held the weapon in his hand while in the vehicle. He also denied that it was only two officers who originally approached the vehicle and reiterated that four officers approached the vehicle in concert and he was the first to be handcuffed. He acknowledged that during the entire ride he remained in the rear passenger seat and was the only passenger who occupied that seat.

¶ 12 After the trial court considered the testimony of the witnesses, it found respondent guilty of two counts of AUUW and adjudicated him a delinquent minor. In so ruling, the trial court specifically determined that the police officers were credible and respondent was not. The trial court held respondent in custody pending a dispositional hearing and assigned respondent to probation officer Jones. The trial court also referred the case to intensive probation supervision (IPS) for an evaluation.

¶ 13 At respondent's dispositional hearing, the trial court heard from Officer Kowal[2] of IPS who determined respondent was ineligible for intensive probation due to a previous weapon-related offense. Officer Kowal also testified regarding respondent's active gang membership and the photographs respondent had posted on social media of himself smoking marijuana while holding a weapon. These images were included in the gang information report presented to the court. While acknowledging that respondent has a supportive family and that he had successfully completed his previous probation for a prior firearm-related offense, Officer Kowal stressed that this was respondent's second adjudication for a firearm offense, which occurred within two months after respondent's completion of probation.

¶ 14 After hearing Officer Kowal's testimony, Officer Jones testified that, "as the IPS officer just stated, based on the new information, I stand behind the recommendation of IPS" without further comment. Reiterating the IPS officer's comment on respondent's second adjudication for a firearm offense, the State requested the trial court commit respondent to the DOJJ.

¶ 15 Respondent countered the weight of the gang information report by explaining that he posted those specific photographs in reference to song lyrics. He also produced a letter from his

[2] Officer Kowal's full name does not appear in the record. In addition, while the record of proceedings spells his name as "Cowall," the IPS report submitted to the trial court indicates his name is spelled "Kowal." Accordingly, we will refer to him as "Officer Kowal."

high school, which stated that he was a student in good standing. Respondent also pointed out that on the intake sentencing report, Officer Kowal indicated that respondent was marginally appropriate for IPS but for his prior weapon-related offense. Emphasizing that he has just one prior conviction and maintaining his claim of innocence with respect to the current case, respondent requested IPS or in the alternative, a three-month bring-back pending IPS.

¶ 16 Emphasizing respondent's second adjudication for a firearm offense, the trial court ultimately committed respondent to the DOJJ. In doing so, the trial court did not specifically state the commitment was the least restrictive alternative, but marked the box on the commitment form order indicating that there was no less restrictive option. Respondent did not raise any objections to the trial court's sentencing nor did he file a postsentencing motion. This appeal follows.

¶ 17 ANALYSIS

¶ 18 On appeal, respondent raises two contentions: (1) the State failed to prove him guilty beyond a reasonable doubt of AUUW where the evidence demonstrated he did not constructively possess the weapon; and (2) that the matter should be remanded for resentencing because the trial court failed to comply with the statutory requirements of section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2016)). We address each contention in turn.

¶ 19 Sufficiency of the Evidence

¶ 20 Respondent first argues that he should not have been adjudicated a delinquent minor for AUUW because the State failed to establish he constructively possessed the weapon. Respondent maintains that the State failed to prove his intent to exercise control over the weapon because: (1) three other individuals were in the vehicle where the firearm was recovered; (2) no physical evidence connected him to the firearm; and (3) he had no ownership interest in the

location where the firearm was discovered. Respondent concludes merely sitting on a firearm does not support an inference beyond a reasonable doubt that he intended to exercise control over the handgun. Accordingly, respondent requests this court reverse his guilty conviction and adjudication of delinquency.

¶ 21 In response, the State argues that respondent had knowledge of the presence of the weapon because: (1) the handgun was five-and-half to six inches long; (2) the weapon was discovered on the seat where respondent's right thigh had been; (3) respondent voluntarily occupied the seat where the weapon was found for at least fifteen minutes; and (4) respondent made gestures or movements that suggested an effort to retrieve or hide the weapon. In addition to knowledge, the State argues it proved respondent had immediate and exclusive control of the weapon as he was sitting on the weapon. Having satisfied the two requirements for constructive possession, the State concludes respondent was properly found guilty of AUUW and adjudicated delinquent.

¶ 22 To withstand a challenge based on the sufficiency of the evidence on appeal, the State must prove the elements of the substantive offense charged beyond a reasonable doubt. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). Thus, "[a] reviewing court will not overturn a trial court's delinquency finding 'unless, after viewing the evidence in the light most favorable to the State, no rational fact finder could have found the offenses proved beyond a reasonable doubt.' " *In re T.W.*, 381 Ill. App. 3d 603, 608 (2008) (quoting *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005)). When considering the sufficiency of the evidence, it is not the function of the reviewing court to retry the respondent, and we will reverse a conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt. *Id.* (citing *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). It is the responsibility of the trier of fact

to determine the weight to be given the testimony, witnesses' credibility, resolution of inconsistencies and conflicts in the evidence, and the reasonable inferences to be drawn from the testimony. *People v. Austin M.*, 2012 IL 111194, ¶ 107.

¶ 23 For AUUW, the State needed to establish that a principal offender knowingly carried a firearm while under the age of 21 and not engaged in a lawful wildlife activity and that respondent was not issued a FOID card and knowingly carried a firearm when he was not on his own land, home, or place of business. 720 ILCS 5/24-1.6(a)(1)(3)(I), (a)(1)(3)(C) (West 2016). Here, neither party disputes respondent was under 21, he was not engaged in a lawful wildlife activity, and that he was not issued a FOID card.

¶ 24 Accordingly, in order for the State to demonstrate respondent committed AUUW, it must establish respondent possessed the firearm. 720 ILCS 5/24-1.6 (West 2016). The element of possession may be satisfied by either actual or constructive possession of the weapon. *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009). "Actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material." *People v. Givens*, 237 Ill. 2d 311, 335 (2010). On the other hand, constructive possession arises when the defendant has the intent and capability to maintain control and dominion over the contraband. *People v. Eghan*, 344 Ill. App. 3d 301, 307 (2003). In order to establish constructive possession, the State must prove beyond a reasonable doubt that respondent: (1) had knowledge of the presence of the weapon; and (2) that he exercised exclusive and immediate control over the area where the weapon was found. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10; *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25.

¶ 25 Constructive possession is typically established entirely through circumstantial evidence.

People v. Besz, 345 Ill. App. 3d 50, 59 (2003); *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). The State may prove the knowledge element by offering evidence regarding the defendant's acts, statements or conduct from which a fact finder may infer that the defendant knew of the weapon's presence. *People v. Smith*, 2015 IL App (1st) 132176, ¶ 26. In addition to the knowledge element, the State must also prove respondent had exclusive and immediate control over the weapon. The State establishes this element by demonstrating that respondent had the intent and capability to maintain control and dominion over an item, even if he or she lacks personal present dominion over it. *Id.*

¶ 26 Defendant contends the State failed to prove the knowledge element of constructive possession where (1) he did now own the vehicle, (2) the handgun was not visible prior to his exiting the vehicle, and (3) his movements were not made in an effort to conceal the weapon, but due to bobbing his head to the rhythm of the music emitting from his iPhone.

¶ 27 In assessing the knowledge element, we find the fact finder could reasonably infer respondent's knowledge of the weapon from the fact that respondent was sitting on the weapon. Although respondent might not have been able to view the firearm as he was sitting on it, respondent's other sensory perceptions provided an inference of knowledge of the weapon. See *People v. Love*, 404 Ill. App. 3d 784, 790-91 (2010) (affirming the trial court's revocation of the defendant's probation where the court found the defendant could not sit on a bag, which contained a steel gun and cannabis, without knowing on what he was sitting). Moreover, the weapon was not hidden or contained in a separate compartment in the vehicle, but was situated underneath respondent's thigh. See *cf. People v. Hampton*, 358 Ill. App. 3d 1029, 1033 (2005) (holding evidence was insufficient to establish the defendant's knowledge of a weapon because it was not in plain view, but in a glove compartment of the vehicle, which he had been driving for

only a few minutes before he was arrested).

¶ 28 Furthermore, a rational trier of fact could infer that respondent's shoulder movements and head bobbing indicated an effort to retrieve or conceal the weapon. In *People v. Grant*, 339 Ill. App. 3d 792 (2003), this court held that the State presented sufficient evidence to establish that the defendant had constructive possession of the weapon despite the fact that the arresting officer could not see the defendant's hands while he was seated in the passenger seat of the vehicle and therefore could not testify to any shoulder movements made by the defendant. *Id.* at 798-799. The *Grant* court found the officer's observation of the defendant reaching back and placing something on the seat where the weapon was discovered was sufficient to conclude that the defendant constructively possessed the weapon. *Id*.

¶ 29 In this case, while respondent argues that he was merely bobbing his head to the rhythm of the music playing on his iPhone, Officer Deleon testified that he did not hear any music in the vehicle and Officers Deleon and Young both testified that respondent did not have anything in his hands. The officers' testimony thus supports the reasonable inference that respondent's movements were made in an effort to either retrieve or conceal the weapon. Moreover, the trial court made a specific finding that the officers' testimonies were credible while respondent's was not. As a court of review, we may not substitute our judgment for that of the fact finder regarding the credibility of witnesses. See *Smith*, 2015 IL App (1st) 132176, ¶ 29.

¶ 30 Regarding the exclusive and immediate control element, we conclude a rational fact finder could have found respondent had exclusive and immediate control of the weapon. The evidence, as discussed previously, established respondent had been sitting on the firearm when he was ordered out of the vehicle. See *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (a defendant's control over the location where a weapon is found gives rise to an inference that he

possesses that weapon); *People v. O'Neal*, 35 Ill. App. 3d 89, 91 (1975) (weapon may be considered under the defendant's immediate control if it is within his easy reach). Likewise, the presence of other passengers in the vehicle when the weapon was recovered by the officers does not defeat respondent's constructive possession of the weapon. See *Ingram*, 389 Ill. App. 3d at 901 (stating defendant constructively possessed a weapon despite the fact that "the backseat passenger also had access to the gun does not defeat a finding that defendant possessed the gun."). Furthermore, the officers' testimony established that by the time respondent was removed from the vehicle and the weapon was discovered, the driver had exited the vehicle and the other passengers were handcuffed to each other, indicating respondent was the only one with access to the weapon. More importantly, respondent admitted that he alone had been occupying the seat where the weapon was discovered the entire time he was in the vehicle. This evidence, in conjunction with the fact that the weapon was not concealed or hidden in a separate compartment, leads us to conclude that a reasonable fact finder could infer that respondent had immediate and sole access to the weapon.

¶ 31 We again observe that the trial court's determination of respondent's guilt was primarily based on the officers' version of the events and their credibility. Faced with two versions of events that are inconsistent, one by the officers, and the other by respondent, the trial court found the former was credible while the latter was not. As a court of review, we may not substitute our judgment for that of the fact finder regarding the credibility of witnesses because it is the trier of fact's responsibility to fairly resolve conflicts in testimony. *Austin M.*, 2012 IL 111194, ¶ 107; *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 53. Consequently, we find no reason to substitute our judgment for the trial court's determination of the witnesses' credibility, especially because the record reveals that the trial court was aware of and considered the inconsistencies in the

witnesses' testimony. See *Smith*, 2015 IL App (1st) 132176, ¶ 29. Considering all of the evidence in the light most favorable to the State, a rational trier of fact could have found the elements of AUUW beyond a reasonable doubt. Thus, we affirm respondent's adjudication of delinquency because the evidence was not so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of his guilt.

¶ 32 In reaching this conclusion, we find *Wright*, cited by respondent, distinguishable from the case at bar. In *Wright*, officers were executing a search warrant inside a residence when the defendant ran down the basement steps away from the officers, fell over another individual, and landed at the bottom of the stairs on his stomach. *Wright*, 2013 IL App (1st) 111803, ¶ 7. It was then that officers observed a handgun protruding from underneath the defendant's torso. *Id.* ¶ 10. No testimony was elicited from the officers that they observed the defendant "make any motion that would indicate or suggest that defendant discarded a weapon." *Id.* ¶¶ 9, 12. The defendant testified that he did not have a firearm. *Id.* ¶ 14. Despite this evidence, the trial court found defendant guilty of AUUW. *Id.* ¶ 18.

¶ 33 On appeal, the defendant maintained that the State failed to prove that he constructively possessed a firearm. *Id.* ¶¶ 20, 25. The reviewing court in *Wright* agreed, noting that of the State's three witnesses, none testified that they observed a weapon in the defendant's hands or "noticed him make any actions that would indicate that he was discarding a gun." *Id.* ¶ 26. The reviewing court further acknowledged that there was no testimony that defendant "made any movements to indicate knowledge of a weapon." *Id.* In support of its holding, the reviewing court concluded that, "The 'mere presence' of a weapon is not sufficient to prove defendant had knowledge of the weapon." *Id.* (quoting *Bailey*, 333 Ill. App. 3d at 891). The *Wright* court went on to find that even if the State could prove that the defendant had knowledge of the

presence of the weapon, it would have been unable to prove that the defendant exercised immediate and exclusive control over the basement area where the weapon was discovered. *Id.*

¶ 34 Unlike *Wright*, the weapon in question here was recovered in the seat where respondent had been sitting the entire time he was riding in the vehicle. In addition, whereas in *Wright* the officers observed the defendant fall down the basement stairs during the foot pursuit and then immediately recovered a weapon from underneath him, respondent here had been in the vehicle with the weapon for at least fifteen minutes. While in *Wright* the events leading up to the discovery of the weapon transpired quickly, the events here occurred over a period of time. Furthermore, in *Wright*, none of the officers observed the defendant make any type of motion that would suggest he was discarding a weapon, whereas here Officer Young testified that he observed respondent making a motion where his "shoulders were going up and down" and his head was "bobbing." As previously discussed, a rational trier of fact could infer from these movements that respondent was attempting to conceal the weapon and thus had immediate and exclusive control over it. Lastly, in *Wright*, the reviewing court found the defendant did not exercise immediate and exclusive control over the basement area where he fell and the weapon was discovered because three other unidentified individuals were already in the basement when the defendant fell down the stairs. *Id*. ¶ 26. Conversely, respondent here testified he was present in the vehicle for fifteen minutes prior to his arrest and admitted he was the only one who occupied the seat where the weapon was recovered. Accordingly, *Wright* is distinguishable from the case at bar.

¶ 35 In sum, we conclude the trier of fact did not err in finding that respondent constructively possessed the weapon. Respondent's knowledge of the presence of the firearm may be inferred from the evidence that was presented at trial which included (1) respondent's movements as the

police approached the vehicle indicating he was concealing or handling a firearm, (2) the weapon was recovered from the seat where his right thigh had been, and (3) no other passengers occupied the seat where the weapon was found. Respondent's movements combined with the fact the weapon was recovered from the seat where only respondent was sitting created a reasonable inference that respondent was, in fact, in possession of the firearm such that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *Smith*, 2015 IL App (1st) 132176, ¶ 32. Viewing the evidence in the light most favorable to the State, we conclude that the evidence in this case was sufficient to support the trial court's finding that respondent was guilty of AUUW.

¶ 36 Sentencing

¶ 37 Respondent next contends that the sentencing hearing did not meet the explicit requirements under the Act. Respondent argues that the trial court failed to explain why no alternative to commitment existed and that merely marking the box on the commitment order form that such a finding was rendered is not sufficient to meet the statutory requirements. Therefore, respondent concludes the trial court erred as a matter of law in committing him to the DOJJ.

¶ 38 In response, the State argues that the trial court properly considered less restrictive alternatives prior to committing respondent to the DOJJ and made a sufficient written finding in satisfaction of the Act.

¶ 39 Typically, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (citing *People v. Bannister*, 232 Ill. 2d 52, 76 (2008) and 730 ILCS 5/5-8-1(c) (West 2006) ("[a] defendant's challenge to the correctness of a sentence or to any aspect of the

sentencing hearing shall be made by a written motion filed within 30 days following the imposition of sentence")). Minors, however, are not required to file postadjudication motions, but must object at trial to preserve a claimed error for review. *In re Samantha V.*, 234 Ill. 2d 359, 368 (2009); see also *In re M.W.*, 232 Ill. 2d 408, 430 (2009) (forfeiture principles encouraging a respondent to raise issues before the trial court applies in proceedings under the Act). As respondent here failed to object during the adjudication proceedings, we consequently may review this claim of error only if he has established plain error. See *id.* at 430-31 (applying plain-error rule in juvenile proceedings); Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 40 Although respondent did not properly preserve this error, we will nonetheless review his contention. See *People v. Scott*, 401 Ill. App. 3d 585, 599 (2010) (forfeiture presents a limitation on the parties, not the reviewing courts). The plain-error doctrine is a narrow and limited exception. *Bannister*, 232 Ill. 2d at 65. To obtain relief under this rule, a defendant must first demonstrate that a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). In the sentencing context, a defendant must then establish either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hall*, 195 Ill. 2d 1, 18 (2000). Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008); *People v. Herron*, 215 Ill. 2d 167, 187 (2005). If the defendant fails to meet his burden, the procedural default will be honored. *Naylor*, 229 Ill. 2d at 593.

¶ 41 Generally, a trial court's decision to commit a minor to the DOJJ is reviewed for an abuse of discretion. *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22. However, because respondent's argument presents an issue of statutory construction, we review the trial court's ruling *de novo.* *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 25; *In re Raheem M.*, 2013 IL App (4th) 130585,

¶ 45. The Act provides, in pertinent part:

> "[W]hen any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the Department of Juvenile Justice, if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under Section 5-740, or it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; *and (b) commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement.*" (Emphasis added.) 705 ILCS 405/5-750(1) (West 2016).

The language of the statute provides that a trial court may commit a juvenile defendant to the DOJJ after it first determines commitment to the DOJJ is the least restrictive alternative. *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 45 (citing 705 ILCS 405/5-750(1)(b) (West 2014)). Such requirements "ensure trial courts are treating the DOJJ sentences as a last resort." *Id.* ¶ 45. Section 5-750(1)(b), however, does not require a trial court to "enumerate all possible alternatives when making a disposition and the remarks of the trial judge can illustrate a consideration of alternatives." *In re J.C.*, 163 Ill. App. 3d 877, 888 (1987).

¶ 42 In support of his argument that the trial court erred as a matter of law in sentencing him to the DOJJ, respondent relies on the cases of *In re Henry P.*, 2014 IL App (1st) 130241, and *In re Raheem M.*, 2013 IL App (4th) 130585. We find both are distinguishable from the case at bar. In *Henry P.*, the trial court interpreted section 5-750(1) to require that the trial court make an

express finding that commitment to the DOJJ was the least restrictive alternative available for the minor. *In re Henry P.*, 2014 IL App (1st) 130241, ¶ 57. The trial court there did not make the required finding. *Id.* ¶ 58. The State argued that section 5-750(1) did not actually mandate the trial court to make a written finding or to check a box on a form order indicating that it made the finding. The *In re Henry P.* court rejected that argument, noting that "the plain language of section 5-750(1)(b) states that the trial [court] must find that commitment is the least-restrictive alternative." *Id.* ¶ 60. The reviewing court also distinguished between a requirement that a trial court consider lesser alternatives, which applied in the cases cited by the State, and a requirement that a trial court make a finding. *Id.* Here, while the trial court did not expressly state on the record that there were no less restrictive alternatives to commitment, it rendered the express statutorily required finding when it so indicated on the sentencing order. See *In re Justin F.*, 2016 IL App (1st) 153257, ¶¶ 13, 26. Thus, this is not a situation similar to that of *In re Henry P.* where the trial court "made the statutorily required finding based solely on its statement that it considered the issue." *In re Henry P.*, 2014 IL App (1st) 130241, ¶ 62. Moreover, respondent here is not arguing that the trial court failed to make the required finding, but that the trial court failed to adequately explain its reasoning for its commitment of respondent to the DOJJ.

¶ 43 Respondent also relies on *In re Raheem M.* for its proposition that, "[p]rior to committing a juvenile to the DOJJ, a trial court must have before it evidence of efforts made to locate less restrictive alternatives to secure confinement and the court must state the reasons why said efforts were unsuccessful." (Emphasis added.) *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 50. A subsequent case interpreting section 5-750, *In re H.L.*, 2016 IL App (2d) 140486-B, construed the statute differently. In that case, the trial court failed to make any finding, whether verbal or written, that it determined commitment to the DOJJ was the least restrictive alternative

available to the respondent. *Id.* ¶ 46. The *In re H.L.* court declined to adopt the State's argument that the record supported the required finding, concluding that such a finding must be express to comply with the statute. *Id.* ¶ 52. Importantly, when addressing the remainder of the State's arguments, the *In re H.L.* court construed section 5-750 differently than the *In re Raheem M.* court:

> "The State also argues that the trial court properly considered alternatives before deciding on the least restrictive alternative, but was not required to enumerate all of the alternatives considered before making its disposition. This argument conflates the proof presented during the relevant hearing with the trial court's responsibility to make an express finding. The record might support such a finding, but, pursuant to *Henry P.* and the plain and unambiguous language of section 5-750(1)(b), the presence of evidence that would support a finding does not stand in for the trial court actually and expressly making the finding." (Emphasis added.) *Id.* ¶ 54.

¶ 44 Thus, the *In re H.L.* court interpreted section 5-750, not as requiring that the trial court "state the reasons why said efforts were unsuccessful" (*In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 50), but as evidentiary support for its finding. We agree with this statutory construction and conclude that section 5-750 does not require the trial court to select the alternative for a juvenile respondent, if such an alternative is presented; rather, the trial court must be presented with evidence on the efforts made to find a less restrictive alternative to secure confinement and the reason why efforts were unsuccessful. 705 ILCS 405/5-750(1)(b) (West 2016). Thus, where, as here, the trial court was presented with evidence and an explanation as to why the less restrictive alternative of IPS would be unsuccessful, respondent's argument that the trial court erred as a matter of law because it did not explain why the less restrictive alternative

of IPS would be unsuccessful fails. See *cf. In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 47 (the trial court had no evidence before it of any efforts to identify a less restrictive alternative to secure confinement); see also *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 40 (noting no such evidence was presented in *In re Raheem M.*).

¶ 45 In sum, the trial court considered whether there were alternatives to the DOJJ as required by section 5-750 of the Act, and the record reflects the reasons why the efforts to locate alternatives to confinement were unsuccessful. Having found no error, we conclude that the trial court's dispositional hearing complied with section 5-750 of the Act.

¶ 46 CONCLUSION

¶ 47 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 48 Affirmed.