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January 23, 2018
Carla Bender
4th District Appellate Court, IL

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NOS. 4-17-0615, 4-17-0616, 4-17-0617, 4-17-0636 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re N.B., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0636) N.B., Respondent-Appellant).	)	Appeal from Circuit Court of McLean County No. 15JD27
In re N.B., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0616) N.B., Respondent-Appellant).	)	No. 15JD44
In re N.B., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0615) N.B., Respondent-Appellant).	)	No. 16JD142
In re N.B., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0617) N.B., Respondent-Appellant).	)	No. 17JD77 Honorable Brian J. Goldrick, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the judgment of the trial court in this juvenile delinquency case, finding (1) defense counsel was not ineffective, (2) the State's evidence proved respondent committed the offense of reckless discharge of a firearm, (3) the penalty for unlawful possession of a firearm did not violate the Illinois Constitution, and (4) the trial court did not err in committing respondent to the Department of Juvenile Justice.

¶ 2 In April and May 2017, the State filed petitions for adjudication of wardship in case No. 17-JD-77 with respect to respondent N.B., born in 2001, alleging he was a delinquent minor. In July 2017, the trial court adjudicated him delinquent for possession of a firearm, reckless discharge of a firearm, and felony escape and committed him to the Department of Juvenile Justice (DOJJ). The court also revoked respondent's probation in three other cases and committed him to the DOJJ.

¶ 3 On appeal, respondent argues (1) defense counsel was ineffective, (2) the State failed to prove beyond a reasonable doubt that he committed the offense of reckless discharge of a firearm, (3) the penalty for unlawful possession of a firearm violates the Illinois Constitution, and (4) the trial court erred in committing him to the DOJJ. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In case No. 15-JD-44, the trial court adjudicated respondent delinquent in February 2015 based on his commission of the offense of unlawful possession of a stolen vehicle (625 ILCS 5/4-103.2(a)(7)(A) (West 2014)). In May 2015, the court placed respondent on probation. The State filed its seventh supplemental petition to revoke respondent's probation in April 2017.

¶ 6 In case No. 15-JD-27, the trial court adjudicated respondent delinquent in February 2015 based on his commission of the offenses of burglary (720 ILCS 5/19-1(a) (West 2014)) and criminal trespass to a vehicle (720 ILCS 5/21-2(a) (West 2014)). In May 2015, the court placed respondent on probation. The State filed its seventh supplemental petition to revoke respondent's probation in April 2017.

¶ 7 In case No. 16-JD-142, the trial court adjudicated respondent delinquent in August 2016 based on his commission of the offenses of attempt (aggravated battery of a peace officer) (720 ILCS 5/8-4, 12-3.05(d)(4)(i) (West 2016)), criminal damage to government supported property (720 ILCS 5/21-1.01(a)(1) (West 2016)), and criminal trespass to a building (720 ILCS 5/21-3(a)(1) (West 2016)). The court placed him on probation. In April 2017, the State filed its first supplemental petition to revoke respondent's probation.

¶ 8 In April 2017, the State filed a petition for adjudication of wardship in case No. 17-JD-77, alleging respondent was a delinquent minor pursuant to section 5-520 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-520 (West 2016)). The petition alleged respondent committed the offenses of (1) use of a stolen firearm in the commission of an offense (720 ILCS 5/24-3.7(a) (West 2016)); (2) possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2016)); (3) firearm/firearm owner's identification (FOID) invalid/not eligible (430 ILCS 65/2(a)(1) (West 2016)); (4) and (5) reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2016)); (6) unlawful possession of a handgun, under 18 years of age (720 ILCS 5/24-3.1(a)(1) (West 2016)); and (7) unlawful possession of a handgun, under 21 years of age and having been previously adjudicated delinquent for the offense of burglary (720 ILCS 5/24-3.1(a)(2) (West 2016)). In May 2017, the State filed a first supplemental petition for adjudication of wardship,

alleging respondent was a delinquent minor because he committed the offense of felony escape (720 ILCS 5/31-6(c) (West 2016)). Respondent pleaded not guilty.

¶ 9 On June 26, 2017, the trial court conducted a bench trial, but respondent failed to appear. The State indicated respondent fled from custody on June 20, 2017. The court denied defense counsel's request for a continuance, noting respondent had been admonished regarding a trial *in absentia*.

¶ 10 Bloomington police officer Jared Johnson testified he was working as a member of the street crimes unit on April 7, 2017. At approximately 4:45 p.m., Johnson was driving an unmarked vehicle when his attention was drawn to a subject known from "numerous" police contacts sitting in the backseat of a silver Lincoln Navigator located in a parking lot across from the Red & Blue Food Mart. After Johnson placed his car behind the Navigator, the driver proceeded across the street and into the parking lot of the food mart. Johnson saw "numerous subjects" exit the vehicle, including an individual with the hood of a sweatshirt over his face. The individual also "appeared to be pressing something against the lower-right portion of their *** waistband area, which is a common indicator of carrying a gun or other contraband."

¶ 11 Johnson stated the individual "cut through the parking lot of Pop's Grocery Store" and walked toward the Boost Mobile store. The individual then entered an alley behind Rosie's Grill before Johnson lost sight of that person. A few seconds later, Johnson heard shots fired from the alley. Johnson eventually stopped respondent and handcuffed him. Respondent was not wearing a hooded sweatshirt at the time, but Johnson stated respondent's physical appearance matched that of the individual he saw at the food mart. Johnson stated his investigation revealed Ditrice King was the driver of the Navigator. On cross-examination, Johnson testified officers placed paper bags over respondent's hands to preserve any potential gunshot residue evidence.

¶ 12 Cassandra Stokes testified she was sitting on her porch when she heard five gunshots. From the side of her house, she heard an individual saying, " 'Hey, brother. Hey, brother. Open the door, bro. Open the door.' " A "young man" then ran around to the front and came up her stairs. Stokes told the man to get away, but he said, " 'Ma'am, ma'am, I don't have a gun.' " The man raised up his shirt to indicate he was not carrying a gun. Stokes told him to "get away from here." The man ran away but was apprehended by police.

¶ 13 Kaylee Contreras testified she was watching TV when she heard four or five "bangs or fireworks." She looked out her window and saw "a guy with a hoodie covering his face" who was "putting something behind a tree." The man then ran off. Contreras later saw a gun hidden near the tree.

¶ 14 Heidy Contreras, Kaylee's sister, heard "five gunshots," which she thought were fireworks, outside of her window. After Kaylee told her someone was in their backyard, Heidy saw an individual with a black hooded sweatshirt running away.

¶ 15 Marc Olsen testified he was sitting in his house when he heard four or five gunshots. Olsen walked outside and saw an individual wearing a blue- or red-hooded sweatshirt over his head come out from between two houses.

¶ 16 Bloomington police officer Pedro Diaz testified he found three spent cartridges in the alley. Bloomington police officer Brock Merritt testified a witness led him to her backyard, where he found a gun between a fence and a tree. Jason List, a forensic scientist with the Illinois State Police, testified as an expert in firearms identification. He examined three .40-caliber cartridge cases and opined they were fired from the recovered firearm.

¶ 17 Bloomington police detective Matthew Dick testified he advised respondent at the police station interview room that he was facing charges of reckless discharge of a firearm

and unlawful possession of a firearm. Dick and another officer took respondent to have his fingerprints taken. Respondent then stated he needed to use the restroom, and Dick escorted him to a restroom near the parking bay. As they stepped into the parking bay, respondent "took off running for the open gate." He was apprehended approximately 30 minutes later. Dick's investigation revealed the recovered firearm had been stolen.

¶ 18 Ditrice King testified she was 17 years old. On April 7, 2017, she, along with her friend Yetana, picked up her friend Sophia, who asked that King also pick up "Exodus," "Steve," "D-Baby," and N.B. and give them a ride for gas money. King then picked up "Scotty" and stopped at Pop's Grocery, where Steve exited the vehicle and walked to the Red & Blue Food Mart. Steve returned, and King drove to the nearby MetroPCS parking lot. Five individuals, including "Stevie, Scott, [N.B.], Exodus and D-Baby," exited the vehicle. King observed Scotty drop a bullet and a gun and N.B. pick them up. Everyone reentered the vehicle, and King drove to the food mart's parking lot. Several individuals exited, leaving King, Yetana, "D-Baby, Exodus, and Sophia" in the vehicle. Steve and Scotty "got in another car," and N.B. walked toward the food mart. King left and dropped off Exodus, D-Baby, and Sophia.

¶ 19 On cross-examination, King testified she did not give a statement to officers on April 7, 2017. Instead, she gave a statement to an officer when she was pulled over on April 26, 2017. King stated she received a warning, which she agreed gave her a break because she faced thousands of dollars in fees for not having a valid license or insurance. King later met with Detective Dick in Peoria, and the interview was audio-recorded. On redirect examination, King testified she received a message from respondent on Facebook that said, "You snitched about everything."

¶ 20 On re-cross-examination, defense counsel moved to admit, as substantive evidence and for impeachment purposes, recordings involving King, including a recording made at the traffic stop and her interview with Detective Dick, based on inconsistencies in her testimony. The State objected, arguing King indicated she did not recall certain things and had not testified inconsistently. The trial court found the statements were not inconsistent and did not admit them as substantive evidence.

¶ 21 Ellen Chapman, a forensic scientist with the Illinois State Police, testified as an expert in trace evidence examination. She opined gunshot residue tests on respondent's right and left hands indicated he "may not have discharged a firearm." If he did, "then the particles were removed by activity, not deposited or not detected by our procedure."

¶ 22 The trial court took judicial notice of case No. 15-JD-27, in which respondent was adjudicated delinquent for the offense of burglary. The court also admitted evidence indicating respondent lacked a FOID card.

¶ 23 On June 27, 2017, the trial continued, and respondent appeared in custody with his attorney. Chris Jacobson, a forensic scientist with the Illinois State Police, testified as an expert in latent fingerprint examination. He stated two latent impressions on an ammunition magazine did not belong to respondent.

¶ 24 Robin Wilt, a specialized caseworker with The Baby Fold, testified she had been respondent's caseworker for 3 1/2 years. She took custody of respondent on June 20, 2017, in Du Page County to return him to Normal. During the drive, respondent told her he intended to run because he was guilty and he wanted his freedom before he was "locked up."

¶ 25 Respondent did not testify. On July 5, 2017, the trial court issued its ruling. The court stated the case hinged "in large part" on King's testimony and her identification of the

individuals in a video taken from a pole camera. While there may have been a basis for impeachment of her testimony, the court found her credible. Based on the testimony, the exhibits, and the circumstantial evidence, the court believed respondent possessed a weapon, it was the weapon that was recovered, and he had discharged that weapon. The court found respondent guilty of three counts of possession of a firearm, two counts of reckless discharge of a firearm, and one count of felony escape. The court found respondent not guilty of the use of a stolen firearm in the commission of an offense and possession of a stolen firearm. The court adjudicated respondent a delinquent minor.

¶ 26 In August 2017, the trial court conducted the sentencing hearing. In case No. 15-JD-27, the court revoked respondent's probation (burglary) and sentenced him to the DOJJ for a period not to exceed his twenty-first birthday, with credit for 184 days in custody. In case No. 15-JD-44, the court revoked respondent's probation (possession of a stolen vehicle) and sentenced him to the DOJJ for a period not to exceed his twenty-first birthday, with credit for 318 days in custody. In case No. 16-JD-142, the court revoked respondent's probation (attempt (aggravated battery of a peace officer)) and sentenced him to the DOJJ for a period not to exceed five years, with credit for 149 days in custody. In case No. 17-JD-77, the court sentenced respondent to the DOJJ for three years for the reckless discharge of a firearm, 5 years for possession of a firearm without a valid FOID card, and a period not to exceed his twenty-first birthday for felony escape. This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 A. Assistance of Counsel

¶ 29 Respondent argues defense counsel was ineffective for failing to properly move to admit two police recordings containing King's prior statements as substantive evidence and to

impeach her credibility. We disagree.

¶ 30 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29. To prevail on such a claim, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show "counsel's performance 'fell below an objective standard of reasonableness.' " *People v. Valdez*, 2016 IL 119860, ¶ 14, 67 N.E.3d 233 (quoting *Strickland*, 466 U.S. at 688). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Evans*, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 694). A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 31 At trial, the State questioned King about when she spoke with Officer Johnson during a traffic stop on April 26, 2017, a video of which was contained in respondent's exhibit No. 1. King thought she had been pulled over because of a broken taillight, although Johnson stated he stopped her because she rolled through a stop sign. Johnson asked her about the April 7, 2017, incident. King did not receive a ticket for the traffic violation.

¶ 32 In the video contained in respondent's exhibit No. 1, Johnson mentioned King talking to a detective. He reminded her a ticket could cost her "two grand in court cost[s]" and he could still issue it. Thereafter, Johnson stated as follows:

> "And then, on a side note, outside of that, if you know of anybody moving guns around or asking for rides or you—you give somebody a ride and—'cause this happens a lot *** somebody asks you for a ride *** and they go shoot up some shit, call me, because you need to get out ahead of it before you get arrested for some stupid shit these dudes are doing. And B, if it happens, or if you know some shit like that."

He also told her he had "the capability of getting [King] some money on the side." King indicated she understood and said she would wait for a detective's call.

¶ 33 During cross-examination, defense counsel questioned King about the traffic stop and whether she recalled the officer telling her the stop was being recorded. She answered in the negative. When asked, "He didn't tell you that?" King again answered "No." In the video, Johnson informed her the stop was being audio- and video-recorded.

¶ 34 Defense counsel also asked King about the identity of the individual who dropped the gun and whether she told the officer that Steven dropped it. King did not recall and stated she was "bad on memory." In the video, King told Johnson she thought Steve picked up the gun and "gave the gun to [N.B.]."

¶ 35 King agreed Officer Johnson gave her a break by giving her a warning. When asked whether Johnson mentioned "other funding," King responded "No." On redirect examination, King did not recall Johnson talking about her becoming a confidential source, she did not sign up to become a confidential source, and the police never paid her for talking.

¶ 36 Detective Dick also questioned King during an interview, an audio version of which was contained in respondent's exhibit No. 2. During the interview, Dick showed her a

video taken from the pole camera. Defense counsel asked whether King made a mistake during the course of the interview as to where the gun was first dropped. King stated she had made a mistake. On redirect examination, King stated she had thought the gun was first dropped at the Red & Blue Food Mart, but the video refreshed her memory.

¶ 37 In the audio recording, King initially told Dick that "Scotty dropped the gun outside the car, picked it up, and gave it to [N.B.]" outside the food mart. After King watched the pole camera video and Dick pointed out that "somebody goes down to the ground," King stated she "never noticed that," as she had "thought they dropped it over there" at the food mart.

¶ 38 King also stated in the audio recording that Scotty and N.B. "got into another car with a whole bunch of other people" and "everyone else disappeared." After Dick pointed out that "in just a second someone will come around the corner," King identified respondent walking by the food mart. When Dick asked if respondent had been given the gun at that point, King answered, "most likely, yeah."

¶ 39 Defense counsel moved to admit respondent's exhibit Nos. 1 and 2 as impeachment and as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2016)) based on the inconsistencies in King's testimony. The State objected, arguing defense counsel had not confronted King with the inconsistent statements. Defense counsel stated he asked her about the inconsistencies on cross-examination. The trial court denied defense counsel's motion, stating as follows:

> "The issue before the Court is whether Ms. King has testified inconsistently with two prior statements that she has made from the past. From the testimony that I have heard on both direct and cross with respect to her being offered anything, the Court does not

> believe that questions have been asked of her in a specific sense that would lead this court to believe that she has testified inconsistently here today with statements that she has made previously to either Officer Johnson or [Detective] Dick.
>
> I have a blanket statement, and I've heard some specific question with respect to, again, citations for no valid, operating uninsured and a warning for the cracked taillight, but I haven't heard any other specific questions about anything that she was offered that she has denied here today that would then allow you to present those statements that would show an inconsistency before the Court. I have a blanket statement. I have general statements. There's no inconsistency that's been presented at this point in time."

¶ 40 Now, on appeal, respondent argues defense counsel's representation was deficient because he failed to identify to the trial court which of King's statements at trial were inconsistent with her prior statements to Officer Johnson and Detective Dick and failed to prove the prior statements were accurately video- and audio-recorded. Respondent claims counsel's representation fell below an objective standard of reasonableness when he (1) failed to properly impeach King's incorrect testimony about two of Johnson's statements by recalling Johnson to question him about the statements and (2) did not question King about her inconsistent testimony as to respondent's movements after he exited the vehicle, even though the inconsistencies were apparent from the audio-recorded interview with Detective Dick.

¶ 41 Even assuming counsel's efforts to present exhibit Nos. 1 and 2 were deficient,

we find respondent cannot satisfy the prejudice prong of the *Strickland* standard. At trial, King testified she saw a gun and respondent possessed it. Exhibit Nos. 1 and 2 substantially corroborated her trial testimony. In respondent's exhibit No. 1, King initially stated Steve gave the gun to respondent. Later, she identified Scott as the man who gave respondent the gun. While she may have been inconsistent as to who gave it to him, she consistently placed the gun in respondent's possession. In respondent's exhibit No. 2, King repeatedly stated respondent obtained the gun from Scott and then walked off with it. Thus, both exhibits would have strengthened the State's case.

¶ 42 It should be noted defense counsel impeached King with portions of her taped statements. The court was made aware that King was inconsistent in her second statement as to where the exchange of the gun between Scott and respondent occurred. Moreover, defense counsel elicited testimony from King that Johnson's decision to give her a warning saved her several thousand dollars. With that in mind, the successful admission of exhibit Nos. 1 and 2 would not have caused a different result in this case. Accordingly, as respondent cannot establish any prejudice from defense counsel's unsuccessful attempt to present the exhibits as impeachment and/or substantive evidence, respondent's claim of ineffective assistance of counsel is without merit.

¶ 43 B. Sufficiency of the Evidence

¶ 44 Respondent argues the State failed to prove beyond a reasonable doubt that he committed the offense of reckless discharge of a firearm. We disagree.

¶ 45 It is well accepted that no person, adult or juvenile, may be convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). "The reasonable doubt

standard applies in all criminal cases, whether the evidence is direct or circumstantial." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47, 958 N.E.2d 227. "Circumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000); see also *In re Nasie M.*, 2015 IL App (1st) 151678, ¶ 24, 45 N.E.3d 347. The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81, 903 N.E.2d 388, 406 (2009).

¶ 46 Illinois Supreme Court Rule 660(a) (eff. Oct. 1, 2001) explicitly provides that adjudication appeals shall be governed by the "rules applicable to criminal cases." Thus, when a minor respondent challenges the sufficiency of the evidence to sustain an adjudication of delinquency, a court of review must "determine whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *In re Malcolm H.*, 373 Ill. App. 3d 891, 893-94, 869 N.E.2d 916, 918 (2007). "A delinquency finding will only be reversed when the proof was so improbable, implausible, or unsatisfactory that reasonable doubt exists as to the respondent's guilt." *Nasie M.*, 2015 IL App (1st) 151678, ¶ 23, 45 N.E.3d 347.

¶ 47 In the case *sub judice*, the State alleged respondent committed the offense of reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2016)). Section 24-1.5(a) of the Criminal Code of 2012 (Criminal Code) states "[a] person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety of an individual." 720 ILCS 5/24-1.5(a) (West 2016). Thus, to sustain the conviction of reckless discharge of a firearm, the State had to prove the defendant (1) discharged a firearm in a reckless

manner and (2) endangered the bodily safety of an individual. *People v. Collins*, 214 Ill. 2d 206, 212, 824 N.E.2d 262, 265 (2005).

¶ 48 As to the "reckless" element, "[t]he State need not prove that the defendant shot a gun knowing that he may injure a particular person to show the defendant's reckless state of mind." *People v. Watkins*, 361 Ill. App. 3d 498, 501, 837 N.E.2d 943, 946 (2005). Section 4-6 of the Criminal Code (720 ILCS 5/4-6 (West 2016)) defines "recklessness," in part, as follows:

> "A person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in that situation."

The defendant's "reckless state of mind may be inferred from all of the facts and circumstances in the record." *Watkins*, 361 Ill. App. 3d at 501, 837 N.E.2d at 945.

¶ 49 To satisfy the "endangerment" element, our supreme court has determined the plain meaning of "endanger" referred "to a potential or possibility of injury." *Collins*, 214 Ill. 2d at 215, 824 N.E.2d at 266. "The term does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm." *Collins*, 214 Ill. 2d at 215, 824 N.E.2d at 266. The State need not prove a defendant aimed and discharged a firearm in the direction of a particular person. *Collins*, 214 Ill. 2d at 215-16, 824 N.E.2d at 267. "[T]he State must establish that a defendant's reckless conduct created a dangerous situation—such that an individual was in peril of probable harm or loss." *Collins*, 214 Ill. 2d at 215, 824 N.E.2d at 266.

¶ 50 In *Collins*, 214 Ill. 2d at 210-11, 824 N.E.2d at 264, the defendant was charged

with reckless discharge of a firearm after police officers observed him firing a handgun in the air in his backyard. The defendant argued the State failed to prove he endangered the bodily safety of an individual where there was no evidence (1) the area was populated, (2) bullets fell near or around the officers, or (3) bullets were recovered from the backyard or surrounding area. *Collins*, 214 Ill. 2d at 217, 824 N.E.2d at 268. The appellate court found the State needed to present evidence of the area around the shooting, the proximity of falling bullets to people in the area, or the angle and direction the defendant discharged the firearm. *Collins*, 214 Ill. 2d at 217, 824 N.E.2d at 268.

¶ 51 The supreme court rejected the defendant's argument and the appellate court's reasoning, concluding "The inherent danger caused by the reckless discharge of a firearm into the air, and the obvious ricochet effect that may occur when bullets fall to the ground, are matters of common sense. In this case, what inevitably came down endangered, placed individuals in peril of probable harm or loss, those in the vicinity of the discharge." *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268. The court then "examine[d] whether the record demonstrate[d] that an individual was in the vicinity of the discharge." *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268. One of the officers testified she heard at least 15 gunshots when she approached the backyard, and the court determined this alone was sufficient evidence to establish the defendant endangered an individual. *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268. However, the court noted there was additional evidence that other individuals were placed in danger—when the defendant discharged the firearm, two women were inside his house and his two codefendants and two police officers were standing 25 to 30 feet away. *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268. The evidence also showed the shooting occurred in a residential area with at least four homes in proximity to the location of the shooting. *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at

268. The court concluded this was sufficient evidence to show the defendant's reckless discharge of a firearm endangered an individual. *Collins*, 214 Ill. 2d at 218-19, 824 N.E.2d at 268.

¶ 52 Here, the State's evidence indicated respondent was carrying a gun and wearing a hooded sweatshirt when he entered an alley behind Rosie's Grill and the Boost Mobile store. Officer Johnson lost sight of him, but he heard shots from the alley a few seconds later. Johnson eventually stopped respondent. While respondent was not wearing a hooded sweatshirt, Johnson stated his physical appearance matched that of the individual he had previously seen. Cassandra Stokes heard five gunshots while she sat on her porch, and soon thereafter, she was approached by a "young man" who said he did not have a gun and raised his shirt in an attempt to prove it. Kaylee Contreras heard four or five "bangs or fireworks" and later saw "a guy with a hoodie" who was "putting something behind a tree." Officers found a gun hidden near the tree.

¶ 53 We find the circumstantial evidence establishes defendant committed the offense beyond a reasonable doubt. See *Nasie M.*, 2015 IL App (1st) 151678, ¶ 24, 45 N.E.3d 247 (stating "all the evidence as a whole must satisfy the trier of fact that the defendant is guilty beyond a reasonable doubt"). Johnson saw respondent with a gun, heard gunshots after respondent entered the alley, and then arrested him a short time later. The gunshots occurred in a residential/commercial area of Bloomington, and a number of individuals were in the immediate vicinity as several of them testified about hearing the gunshots and how close they seemed to be. We also note respondent's flight and escape from the jail, after he had been told he would be charged with reckless discharge of a firearm and unlawful possession of a firearm, is highly probative of his consciousness of guilt. *People v. Carter*, 2016 IL App (3d) 140196, ¶ 33, 62 N.E.3d 267; see also *People v. Lewis*, 2015 IL App (1st) 122411, ¶ 73, 28 N.E.3d 923 (stating

"[t]he inference of guilt which may be drawn from flight depends upon the knowledge of the suspect that the offense has been committed and that he is or may be suspected").

¶ 54 Relying on *People v. Moreno*, 2015 IL App (3d) 130119, 29 N.E.3d 660, respondent argues no one witnessed him discharge the firearm and the State's evidence failed to show where or in which direction he fired it. In that case, officers responded to a call of a male subject, who had shot a weapon off a back porch. *Moreno*, 2015 IL App (3d) 130119, ¶ 8, 29 N.E.3d 660. Officers arrived and positioned themselves approximately 50 to 75 feet away from the residence. *Moreno*, 2015 IL App (3d) 130119, ¶ 9, 29 N.E.3d 660. They observed a person at the south railing of a deck fire a gun at the ground, while people stood alongside the house and others stood along the railing of the deck. *Moreno*, 2015 IL App (3d) 130119, ¶ 9, 29 N.E.3d 660. The trial evidence showed the defendant fired his gun into a grassy dirt area and did not fire it into the air or in the direction of anyone. *Moreno*, 2015 IL App (3d) 130119, ¶ 13, 29 N.E.3d 660. The trial court found the defendant guilty, finding he shot a gun in a residential neighborhood, and the buried bricks, rocks, concrete, steel, and drainage tile could have caused a ricochet. *Moreno*, 2015 IL App (3d) 130119, ¶ 26, 29 N.E.3d 660.

¶ 55 On appeal, the Third District disagreed, with one justice dissenting, and found the defendant's discharge of a firearm into the dirt fell short of recklessness as defined by the statute. *Moreno*, 2015 IL App (3d) 130119, ¶ 34, 29 N.E.3d 660. The court found the defendant's discharge of the gun into the dirt was "inherently different than the repeated firing of a handgun into the air as was the case in *Collins* and *Watkins*." *Moreno*, 2015 IL App (3d) 130119, ¶ 41, 29 N.E.3d 660. Moreover, the court noted the bystanders were behind the defendant, thereby "reducing their chances of being hit by a potential ricochet to virtually zero." *Moreno*, 2015 IL App (3d) 130119, ¶ 44, 29 N.E.3d 660.

¶ 56 We find *Moreno* unpersuasive. The Third District did not meaningfully address *Collins* except to make the single conclusory statement that "No individual was in peril of probable harm or loss." *Moreno*, 2015 IL App (3d) 130119, ¶ 44, 29 N.E.3d 660. As noted, the supreme court determined the State was not required to introduce evidence of the angle or direction of the discharge, as the inherent danger of discharging a firearm in the air and the possibility of a ricochet were "matters of common sense." *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268. Moreover, "endangerment" refers "to conduct that could or might result in harm." *Collins*, 214 Ill. 2d at 215, 824 N.E.2d at 266. Given the area and the people in the vicinity, defendant's conduct was such that it could have resulted in harm. Based on the reasoning in *Collins*, and when viewed in the light most favorable to the State, we find the evidence in this case was sufficient to prove respondent committed the offense of reckless discharge of a firearm beyond a reasonable doubt.

¶ 57 C. Proportionate Penalties

¶ 58 Respondent argues the penalty for the Class 3 felony of unlawful possession of firearm under the FOID card statute, based on a minor's ineligibility for a FOID card due to a prior delinquency adjudication, violates the proportionate penalties clause of the Illinois Constitution. Ill. Const. 1970, art. I, § 11. We disagree.

¶ 59 Article I, section 11, of the Illinois Constitution (otherwise referred to as the proportionate penalties clause) provides 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. "A defendant can raise a proportionate penalties challenge on the basis that the penalty for a particular offense is too severe under the 'cruel or degrading' standard or that the penalty is harsher than the penalty for a different offense that

contains identical elements." *People v. Williams*, 2015 IL 117470, ¶ 9, 43 N.E.3d 941 (citing *People v. Sharpe*, 216 Ill. 2d 481, 521, 839 N.E.2d 492, 517 (2005)).

¶ 60 In the first instance, the challenger must establish the penalty would constitute cruel and unusual punishment under the eighth amendment of the United States Constitution (U.S. Const., amend. VIII), which our supreme court and this district have both noted is coextensive with the proportionate penalties clause of our constitution. See *In re Rodney H.*, 223 Ill. 2d 510, 518, 861 N.E.2d 623, 628 (2006); *In re Maurice D.*, 2015 IL App (4th) 130323, ¶ 25, 34 N.E.3d 590.

¶ 61 The second basis for a proportionate penalties attack is handled differently. "[U]nder the identical-elements test, if offenses with identical elements do not have identical penalties, the penalties are unconstitutionally disproportionate and the greater penalty cannot stand." *People v. Dunn*, 365 Ill. App. 3d 292, 294, 849 N.E.2d 148, 150 (2006).

¶ 62 The most serious flaw in respondent's argument lies in the fact our supreme court has determined the proportionate penalties clause and the eighth amendment's cruel and unusual punishment clause do not apply to juvenile proceedings initiated by a petition for adjudication of wardship. *Rodney H.*, 223 Ill. 2d at 520-21, 861 N.E.2d at 630; see also *In re Dave L.*, 2017 IL App (1st) 170152, ¶ 36, 80 N.E.2d 694; *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶ 52, 40 N.E.3d 762; *Maurice D.*, 2015 IL App (4th) 130323, ¶ 26, 34 N.E.2d 590; *In re A.P.*, 2014 IL App (1st) 140327, ¶ 13, 14 N.E.3d 689. Neither respondent nor the State raised this in their briefs.

¶ 63 Our supreme court has held " 'Section 11 is directed to the legislature in its function of declaring what conduct is criminal and the penalties for the conduct.' " *Rodney H.*, 223 Ill. 2d at 518, 861 N.E.2d at 628 (quoting *People v. Taylor*, 102 Ill. 2d 201, 206, 464 N.E.2d

1059, 1062 (1984)). Having found the proportionate penalties clause and the eighth amendment to be coextensive, the court went on to point out how both apply only to the criminal process or "direct actions by the government to inflict punishment." *Rodney H.*, 223 Ill. 2d at 518, 861 N.E.2d at 628. The court explained how delinquency proceedings are protective in nature and the overall goal of the Juvenile Court Act is to correct and rehabilitate minors, not punish them. *Rodney H.*, 223 Ill. 2d at 520, 861 N.E.2d at 630; see also *In re Destiny P.*, 2017 IL 120796, ¶ 18 (stating the overriding purpose of the Juvenile Court Act is one of rehabilitation). The court reasoned a petition for adjudication of wardship is neither criminal in nature nor a direct action by the State to inflict punishment upon a juvenile, and thus, neither the cruel and unusual punishment clause nor the proportionate penalties clause applies in such cases. *Rodney H.*, 223 Ill. 2d at 520-21, 861 N.E.2d at 630; see also *Deshawn G.*, 2015 IL App (1st) 143316, ¶ 52, 40 N.E.3d 762 (stating "neither the eighth amendment nor the proportionate penalties clause apply to juvenile proceedings initiated by a petition for adjudication of wardship because 'a juvenile adjudication of wardship was not criminal in nature and did not impose "punishment" within the meaning of the eighth amendment and proportionate penalties clause' " (quoting *In re Isaiah D.*, 2015 IL App (1st) 143507, ¶ 52, 35 N.E.3d 88).

¶ 64 Here, the proceedings were initiated by the State's filing of a petition for adjudication of wardship alleging respondent committed various gun-related offenses. He was tried in the juvenile court and adjudicated a delinquent rather than convicted of a criminal offense. Based on the supreme court's precedent in *Rodney H.*, we find the proportionate penalties clause does not apply to respondent's juvenile adjudication. This conclusion is consistent with the holdings of *Dave L.*, *Deshawn G.*, *Maurice D.*, and *A.P.*

¶ 65 D. Sentencing

¶ 66 Respondent argues the trial court erred when it failed to comply with section 5-750(1) of the Juvenile Court Act (705 ILCS 405/5-750(1) (West 2016)) before committing him to the DOJJ. We disagree.

¶ 67 Before the trial court can commit a minor to the DOJJ, it must follow the mandates found in section 5-750 of the Juvenile Court Act (705 ILCS 405/5-750 (West 2016)). *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 50, 1 N.E.3d 86. To make a finding that secure confinement is necessary, section 5-750(1) requires the court to review the following individualized factors:

> "(A) Age of the minor.
>
> (B) Criminal background of the minor.
>
> (C) Review of results of any assessments of the minor, including child centered assessments such as the CANS [(Child and Adolescent Needs and Strengths)].
>
> (D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.
>
> (E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

> (F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.
>
> (G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor." 705 ILCS 405/5-750(1) (West 2016).

¶ 68 Respondent argues the trial court committed him to the DOJJ without evidence as to his educational background, "indicating whether [he] has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school." 705 ILCS 405/5-750(1)(D) (West 2016). The State notes respondent's counsel failed to object to the contents or sufficiency of the social investigatory report before the court at sentencing. By failing to raise any deficiencies in the trial court, respondent has forfeited the issue of noncompliance with subsection (D) and cannot raise it for the first time on appeal. *In re Ronald J.*, 2017 IL App (4th) 160855, ¶ 22, 74 N.E.3d 1178.

¶ 69 Respondent, however, argues this court should review the issue under the plain-error doctrine. The first step in a plain-error analysis is to determine whether error occurred. *In re M.W.*, 232 Ill. 2d 408, 431, 905 N.E.2d 757, 773 (2009). If a clear or obvious error occurred, the requested relief will be granted: "(1) if 'the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant,' or (2) if the error is 'so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). Under

both prongs, the respondent bears the burden of persuasion. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773.

¶ 70 The social investigation report filed prior to sentencing included a section on education, which stated as follows:

> "The minor was attending school at the Webster-Cantrell Emergency Shelter in Decatur from early October through December 2016. He began the 2nd semester at Eisenhower High School in Decatur as a sophomore. According to his attendance record, he was tardy to classes 13 times but had only one absence (excused) until he ran away on February 24, 2017. He earned no credits in the spring 2017.
>
> When he was attending, the minor was passing all classes with average to above average grades. He had no discipline problems at Eisenhower."

The trial court's form order of commitment to the DOJJ has boxes checked as to the court's findings. The order also set forth the individualized factors to be reviewed, and we will presume the court conducted such a review. See *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 44, 80 N.E.3d 636. Thereafter, the court concluded secure confinement was necessary because the less restrictive means were unsuccessful.

¶ 71 Compliance with section 5-750(1) will be shown if the record contains evidence pertaining to the statutorily required factors and the trial court's commitment order indicates the court considered those factors. *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 32, 5 N.E.3d 304. The statute does not require the court to explicitly evaluate on the record the individualized

factors required by the Juvenile Court Act. See 705 ILCS 405/5-750(1)(b) (West 2016) ("Before the court commits a minor to the [DOJJ], it shall make a finding that secure confinement is necessary, following a review of the following individualized factors[.]"). Thus, the only question is whether "the record contained sufficient information on these factors for the court to consider before sentencing respondent to DOJJ." *Javaun I.*, 2014 IL App (4th) 130189, ¶ 32, 5 N.E.3d 304.

¶ 72 In this case, the trial court was familiar with respondent, stating he came before the court on an almost monthly basis over a 2 1/2-year period. The court had presided over multiple cases involving respondent and was provided with several social investigatory reports regarding his educational history. See *In re A.B.*, 308 Ill. App. 3d 227, 237, 719 N.E.2d 348, 356-57 (1999) (stating the trial court may take judicial notice of matters of record in its own proceedings). That evidence indicated respondent had been in nine schools following kindergarten; had a history of absences, tardiness, aggression, defiance, and misbehavior; and had attended a regional alternative school due to his behavior and disciplinary issues. The reports documented respondent's attendance and behavior in classes he attended while in juvenile detention. The reports also stated respondent had been diagnosed with attention deficit hyperactivity disorder and was a special education student with a "504 Plan" (*i.e.*, section 504 of the federal Rehabilitation Act of 1973), which Bloomington schools determined him to be eligible for in April 2014. Since January 2015, respondent had been enrolled as a regular education student in the regional alternative school. The reports noted respondent's defiance, impassivity, and poor organizational skills impacted his ability to learn, but despite his behavioral issues, respondent was "otherwise believed to be capable of earning above average grades." The record indicates the court had ample evidence pertaining to respondent's

educational background when considering whether to commit him to the DOJJ. As no clear or obvious error occurred here, we hold respondent to his forfeiture of this issue.

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated, we affirm the trial court's judgment.

¶ 75 Affirmed.