2018 IL App (4th) 180538-U

NO. 4-18-0538

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 28, 2018
Carla Bender
4th District Appellate
Court, IL

In re D.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 18JD5
v.	)	
D.S.,	)	Honorable
Respondent-Appellant).	)	Thomas M. O'Shaughnessy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence was sufficient to prove respondent was the shooter; the court's oral sentence pronouncement controls and did not violate the one-act, one-crime rule; and this court declines to address respondent's moot argument related to the detention hearing.

¶ 2 In January 2018, the State filed a petition for an adjudication of wardship, alleging respondent, D.S. (born in 2002), was a delinquent minor because he committed two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2016)), one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(2), (a)(3)(C) (West Supp. 2017)), one count of unlawful possession of firearms (720 ILCS 5/24-3.1(a)(1) (West 2016)), one count of reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2016)), and one count of aggravated assault (720 ILCS 5/12-2(c)(1) (West 2016)). After a February 2018 detention hearing, the Vermilion County circuit court found respondent should be detained because (1) he

was likely to flee the jurisdiction and (2) it was necessary for respondent's protection or the protection of the person or property of the public. At the May 2018 adjudicatory hearing, the court found respondent was guilty beyond a reasonable doubt of all six offenses. In July 2018, the court committed respondent for aggravated discharge of a firearm to the Department of Juvenile Justice for an indeterminate term, not to exceed the period for which an adult could be committed for a Class 1 felony or his twenty-first birthday, whichever occurs first. The written commitment order listed all six offenses. Respondent filed a motion to reconsider his sentence, which the court denied.

¶ 3 Respondent appeals, asserting (1) the State's evidence was insufficient to prove him guilty of all six charges; (2) if the State's evidence was sufficient, the written commitment order should be amended to reflect he is being committed based on only the most serious offense because the one-act, one-crime rule applies to the other offenses; and (3) the circuit court failed to make the necessary findings to support its detention order. We affirm and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 The allegations in the State's wardship petition arose from a January 6, 2018, shooting of a vehicle that was parked somewhere in the area in front of 706 and 708 Commercial Street in Danville, Illinois. Cheyenne S. was sitting inside the vehicle at the time of the shooting.

¶ 6 In February 2018, the circuit court admonished respondent and held a detention hearing. After admonishing respondent, the State indicated it sought to detain respondent. The court asked for a proffer, and the State described the testimony Danville police officer Jacob Troglia would provide about the shooting incident. Defense counsel did not make a proffer. The court found probable cause existed to believe respondent was delinquent. The court further

found an immediate and urgent necessity existed for respondent's protection and the protection of the person and property of the public. Upon the court's questioning, the State indicated respondent had been arrested in Champaign County. The court then found respondent was likely to leave the jurisdiction of the court and concluded respondent should be detained pending adjudication. After an April 26, 2018, hearing, the court released respondent from detention over the State's objections.

¶ 7 In May 2018, the circuit court held the adjudicatory hearing. The State presented the testimony of (1) Cheyenne S., the victim; (2) Beth Chowning, Cheyenne S.'s probation officer; (3) Troy Nipper, Danville police officer; (4) Officer Troglia; (5) Dawn Hartshorn, Danville police detective; (6) Danielle Lewallen, Danville police detective; and (7) Deanara Washington, who resided at 709 Commercial Street. Respondent did not call any witnesses. He did present an aerial photograph of the 700 block of Commercial Street. On the photograph is a line, which was drawn to depict the distance from shell casings to the front of Cheyenne S.'s car. The line purportedly shows a distance of 59 feet.

¶ 8 Cheyenne S. testified that, in January 2018, she lived at her grandmother's house, which was located at 708 Commercial Street. Between 8 p.m. and 9 p.m. that night, Cheyenne S. was sitting in a car parked somewhere in the area in front of 706 and 708 Commercial Street. Cheyenne S. was playing on her cellular telephone and smoking. She observed around a dozen people on respondent's porch, which was located at 709 Commercial Street. Cheyenne S. recognized respondent and his friend Marcus J. in the group of people on the porch. At that time, Cheyenne S. had lived across the street from respondent for a few months, and respondent and Marcus J. attended the same school that Cheyenne S. attended.

¶ 9 Cheyenne S. had gone into her grandmother's home and got back into the car.

The car was running, and Cheyenne S. had turned the headlights off. After about five minutes, Cheyenne S. looked up to turn her dash light off and saw respondent and a friend standing in front of her car. Respondent was about five or six feet away from Cheyenne S. The friend was either John T. or Marcus J. Cheyenne S. did not see respondent come off the porch. Respondent had a gun in his hand, and he "just showed it." Cheyenne S. identified respondent in the courtroom. Cheyenne S. further testified that, when she saw the gun, she ducked down in her seat. She did see respondent move toward his house, which was the direction of the driver's side of the car. After about three or four seconds, Cheyenne S. heard bullets hit her car, and then the car's window busted. Besides respondent and his friend, everyone else stayed on the porch. After the gunshots stopped, Cheyenne S. remained in her car until her cousin came and got her. Cheyenne S. then went inside her grandmother's house.

¶ 10 When the police arrived and asked her who did it, Cheyenne S. showed the officers photographs of respondent and his friend John on Facebook. Cheyenne S. identified respondent as the shooter. Cheyenne S. told Officer Troglia she saw respondent and another male run between 709 and 707 Commercial Street after the gunshots were fired. She later testified she was not sure if they ran between 709 and 707 because she ducked down in the car. Because she was ducked down, Cheyenne S. did not see respondent shoot the gun. Cheyenne S. told Detective Hartshorn that, if respondent did not shoot the gun, then respondent's friend did. Moreover, Cheyenne S. told Detective Hartshorn she was "high as hell" the night of the shooting and was not paying attention because she was scrolling through Facebook.

¶ 11 Cheyenne S. testified she smoked cannabis when she returned to her car five minutes before the shooting. Cheyenne S. testified she was thinking clearly the night of the shooting and was able to clearly view her surroundings. Cheyenne S. had no doubt in her mind

respondent was the person with the gun on January 6, 2018. Additionally, Cheyenne S. testified respondent and Cheyenne S.'s boyfriend, Deontae B., were feuding at the time of the shootings. Respondent "was gang," and her boyfriend was squad. The two groups were "beefing" over some dead people. Moreover, Cheyenne S. had been recently arrested for theft involving lying to the victim. The State did not make a deal with Cheyenne S. in exchange for her testimony.

¶ 12 Officer Nipper testified that, around 8:45 p.m. on January 6, 2018, he was dispatched to the area of 708 Commercial Street for shots fired. He spoke with Cheyenne S., who directed him to the area where she saw the suspects run, which was between 709 and 707 Commercial Street. Officer Nipper entered the residence at 709 Commercial Street and spoke with Washington. He observed "Marco" J. was also inside the residence.

¶ 13 Officer Nipper returned to 708 Commercial Street and again spoke with Cheyenne S. Cheyenne S. identified the shooter by noting his nickname was "Demoe" and pointing him out in photographs on Facebook. Cheyenne S. also told Officer Nipper her boyfriend and respondent were "beefing" over gang stuff. Additionally, Officer Nipper testified Cheyenne S. did not appear to be under the influence of drugs when he spoke with her.

¶ 14 Officer Troglia also testified he was dispatched to the 700 block of Commercial Street for shots fired. When he arrived on the scene, Officer Troglia observed a Chevrolet Impala parked in front of 708 Commercial Street with multiple bullet holes. The vehicle was still running. Cheyenne S. came out onto the front porch of 708 Commercial Street. Officer Troglia observed Cheyenne S. had glass embedded in her right arm. Cheyenne S. identified "Demoe" and "Moo Moo" as being present during the shooting. Cheyenne S. said "Demoe" was the shooter. Moreover, Cheyenne S. told Officer Troglia the two suspects ran northbound between 707 and 709 Commercial Street. Officer Troglia observed footprints between 707 and

709 Commercial Street going through the backyard to the alley directly behind 709 Commercial Street and then westbound behind 707 Commercial Street to the west side of the house. On the air conditioning unit behind 707 Commercial Street, Officer Troglia observed an imprint that appeared to be in the shape of a gun. Officer Troglia acknowledged the backyard of one of the residences had multiple tracks of footprints. Additionally, he testified Cheyenne S. did not appear to be under the influence of any drugs or alcohol that night but Officer Nipper did smell it in her car.

¶ 15 Detective Hartshorn testified she interviewed Cheyenne S. on January 8, 2018. During the interview, Cheyenne S. identified respondent as the shooter. Cheyenne S. also identified Marcus J. as being present. Detective Hartshorn also conducted two photograph lineups. In the first lineup, Cheyenne S. identified Marco J. by the nickname of "Moo Moo." Cheyenne S. explained a tan or white Chevrolet Malibu full of people was in front of 709 Commercial Street and she recognized Marcus J. when he got out of the vehicle. She also identified a second black male who exited the vehicle as John. In the second photograph lineup, Cheyenne S. identified respondent and noted he had the gun and shot it. Moreover, during the interview, Cheyenne S. stated that, after shooting, respondent and John ran to the back of respondent's house. Cheyenne S. did not indicate which way they ran.

¶ 16 On January 10, 2018, after the snow had melted, Detectives Hartshorn and Lewallen went back out to the scene. They found eight shell casings in the driveway between 705 and 707 Commercial Street. The shell casings were all in the same vicinity. Detective Hartshorn was unaware of any other reports of shots fired in the area between January 6 and January 10, 2018. After locating the shell casings, Detective Hartshorn again interviewed Cheyenne S. to obtain more information. During that interview, Cheyenne S. seemed a little

confused and had trouble following Detective Hartshorn's line of questioning. Cheyenne S. clarified her vehicle was partially blocking the driveway for 708 Commercial Street. Cheyenne S. also noted she did not actually see where John T. and respondent ran but presumed they ran to the back of respondent's house. Cheyenne S. also indicated that it may not have been respondent who shot at her car because of the location of the shell casings.

¶ 17 Detective Lewallen testified she went to the scene of the shooting at around 11 a.m. on January 10, 2018, with Detective Hartshorn to look for evidence related to the shooting. At the scene, Detective Lewallen located eight 9mm shell casings in the yard between 705 and 707 Commercial Street. The shell casings were in a general area together. She explained a shell casing is the part of the bullet that is ejected out of the firearm once it is fired. The presence of shell casings indicate a gun was fired in that area. Based upon her training and experience, the ejection portion could be within quite a few feet. In this case, a gun was shot at least eight times, but Detective Lewallen could not determine how many people fired from that location. Detective Lewallen had been advised the victim's car was somewhere in the area in front of 706 and 708 Commercial Street. On the day she collected the shell casings, nothing was obstructing her view from the location of the shell casings to where the victim's car was located. Detective Lewallen did not take measurements that day.

¶ 18 Washington testified she lived at 709 Commercial Street on January 6, 2018. She initially denied being home between 8 p.m. and 9 p.m. that night. Washington did testify she heard gunshots that night and the police came to her house. However, Washington denied telling the police respondent was at her home but left before the police arrived.

¶ 19 In rebuttal, Officer Nipper testified he spoke with Washington at 709 Commercial Street on the night at issue. Washington told Officer Nipper respondent was at her home briefly

and had left just prior to the officers responding.

¶ 20 After hearing the evidence and the parties' arguments, the circuit court found respondent guilty of all six counts in the wardship petition. In finding respondent guilty, the court noted the 59-foot distance between the shell casings and the purported front of Cheyenne S.'s car was the furthest possible distance between the two based on the evidence presented.

¶ 21 In May 2018, respondent filed a motion for a judgment notwithstanding the verdict or a new trial, asserting, *inter alia*, the State failed to prove respondent guilty beyond a reasonable doubt of all six charges. As to the aggravated discharge of a firearm counts, respondent asserted the State failed to prove beyond a reasonable doubt he was the one who fired the weapon at Cheyenne S. and her vehicle. At a June 25, 2018 hearing, the circuit court denied respondent's posttrial motion.

¶ 22 On July 17, 2018, the circuit court held the dispositional hearing. The court stated that, "having considered the offenses of which the respondent minor was found guilty, notes that for purposes of this order, they would merge, the most serious of which is aggravated discharge of a firearm, vehicle, a Class 1 felony." For that crime, the court sentenced respondent to the Department of Juvenile Justice for an indeterminate term, not to exceed the period for which an adult could be committed for a Class 1 felony or his twenty-first birthday, whichever occurs first. Respondent filed a motion to reconsider his sentence. After an August 3, 2018, hearing, the court denied respondent's motion to reconsider his sentence.

¶ 23 On August 7, 2018, respondent filed a timely notice of appeal under Illinois Supreme Court Rule 606 (eff. July 1, 2017). See Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001) (providing the rules applicable to criminal cases govern appeals from final judgments in delinquent-minor proceedings, unless specifically provided otherwise). A sentencing order in a

juvenile-delinquency proceeding is a final order. See *In re Justin L.V.*, 377 Ill. App. 3d 1073, 1079, 882 N.E.2d 621, 626 (2007). Thus, we have jurisdiction over this appeal under Illinois Supreme Court Rule 660(a) (eff. Oct. 1, 2001).

¶ 24 II. ANALYSIS

¶ 25 A. Sufficiency of the Evidence

¶ 26 To convict any person of a criminal offense, due process requires proof beyond a reasonable doubt. *In re O.S.*, 2018 IL App (1st) 171765, ¶ 34. That standard applies to juvenile-delinquency proceedings. *O.S.*, 2018 IL App (1st) 171765, ¶ 34. In reviewing a respondent's challenge to the sufficiency of the evidence, the reviewing court does not retry the respondent; "rather, 'in delinquency proceedings, as in criminal cases, a reviewing court must decide whether, [after] viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Internal quotation marks omitted.) *O.S.*, 2018 IL App (1st) 171765, ¶ 34 (quoting *In re Q.P.*, 2015 IL 118569, ¶ 24, 40 N.E.3d 9). The reviewing court may not substitute its judgment for that of the trier of fact because the trier of fact has the best position to evaluate the witnesses' credibility, draw reasonable inferences from the evidence, and resolve any inconsistencies in the evidence. *O.S.*, 2018 IL App (1st) 171765, ¶ 34. This court "will not reverse a respondent's delinquency adjudication unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt." *O.S.*, 2018 IL App (1st) 171765, ¶ 34.

¶ 27 The most serious crime of which the circuit court found respondent guilty was aggravated discharge of a firearm. "A person commits aggravated discharge of a firearm when he or she knowingly or intentionally *** [d]ischarges a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a

person." 720 ILCS 5/24-1.2(a)(2) (West 2016). In this case, the State alleged respondent discharged a firearm in the direction of both (1) another person and (2) a vehicle occupied by a person. Respondent contends the State did not prove beyond a reasonable doubt respondent was the person who discharged the firearm.

¶ 28 Specifically, respondent argues Cheyenne S.'s testimony lacks credibility, resulting in a reasonable doubt of respondent's guilt. He notes the inconsistency in Cheyenne S.'s testimony about respondent's movement after the shooting and the fact she did not see respondent shoot the gun. Respondent also contends Cheyenne S. had a motive to name him as the shooter because Cheyenne S.'s boyfriend Deontae B. and respondent were feuding at the time of the shooting. Moreover, respondent contends the location of the shell casings was inconsistent with Cheyenne S.'s testimony.

¶ 29 At the adjudicatory hearing, Cheyenne S. testified that, on January 6, 2018, she was living at her grandmother's house, which was located at 708 Commercial Street in Danville, Illinois. Sometime between 8 p.m. and 9 p.m., Cheyenne S. was sitting in her car in front of her grandmother's home. While in the car, Cheyenne S. was smoking marijuana and playing on her cellular telephone. Cheyenne S. observed about a dozen people on respondent's porch. At that time, respondent was living at 709 Commercial Street, which was "right across the street" from Cheyenne S.'s grandmother's home. Cheyenne S. recognized respondent and his friend Marcus J.

¶ 30 While playing on her phone, Cheyenne S. looked up to turn off her dash light and saw respondent standing in front of her car. Respondent was five or six feet away from her. Respondent had a gun in his hand that he showed to Cheyenne S. Cheyenne S. ducked down in her seat. Cheyenne S. saw respondent going toward his house. About three or four seconds after

she ducked down, Cheyenne S. heard gunshots. She heard bullets hit her car, and one bullet hit the car window causing it to shatter. Cheyenne S. identified pictures showing the damage to her car. Cheyenne S. had no doubt in her mind as to who she saw with the gun that night. However, Cheyenne S. did admit she did not see respondent shoot the gun.

¶ 31 Although Cheyenne S. initially stated she saw respondent and his friend run between 707 and 709 Commercial Street, she later stated she was ducked down in the car when the shots were fired. During her second interview with Detective Hartshorn, Cheyenne S. admitted she presumed respondent and his friend ran to the back of respondent's house after the shots were fired but did not see them run away. Cheyenne S. was consistent in stating respondent was the person she saw holding the gun before the shots were fired. She did not see respondent's friend with a gun, and the others remained on respondent's porch. While Cheyenne S. did not see the shots fired, Cheyenne S. assumed respondent was the shooter since he was holding the gun and the shots were fired three or four seconds after he showed her the gun. Thus, the fact the shelling casings were found between 705 and 707 Commercial Street and not around 709 Commercial Street was consistent with Cheyenne S.'s testimony she ducked down and did not see where respondent and his friend ran.

¶ 32 This case is distinguishable from *People v. Smith,* 185 Ill. 2d 532, 546, 708 N.E.2d 365, 371 (1999), where our supreme court concluded the State failed to meet its burden of proof the defendant was the person who committed the murder. The *Smith* court concluded no reasonable trier of fact could have found credible the testimony of Debrah Caraway, the State's only eyewitness linking the defendant to the murder. *Smith*, 185 Ill. 2d at 545, 708 N.E.2d at 371. It noted the serious inconsistencies in Debrah's testimony, as well as the repeated impeachment of Debrah's testimony. *Smith*, 185 Ill. 2d at 545, 708 N.E.2d at 371. Debrah also

had a motive to falsely implicate the defendant because a possible alternative suspect was the boyfriend of Debrah's sister Ronda Caraway and Ronda was under suspicion for supplying the gun to the gunman. *Smith*, 185 Ill. 2d at 544, 708 N.E.2d at 371. Moreover, in that case, the circumstantial evidence tending to link the defendant to the murder only narrowed the class of individuals who could have killed the victim without specifically pointing to the defendant. *Smith*, 185 Ill. 2d at 545, 708 N.E.2d at 371.

¶ 33 In this case, Cheyenne S.'s alleged motive to lie was also the motive as to why respondent would have shot at Cheyenne S. At this point in the proceedings, we review the evidence in the light most favorable to the prosecution. Moreover, a review of the entire report of proceedings does not show glaring inconsistencies in Cheyenne S.'s testimony. Cheyenne S. testified she saw respondent move in a direction toward his house, which was also the driver's side of the vehicle. She told Detective Hartshorn she assumed respondent was running toward the back of his home, which was 709 Commercial Street. Her assumption explains why she told the officers at the scene she saw respondent and his friend run between 707 and 709 Commercial Street. We note 707 and 705 Commercial Street would have been in the same general direction as 709 Commercial Street. Cheyenne S. explained she did not see where respondent ran because she was ducked down in her car. Moreover, it is not physically impossible respondent ran to the area of 707 and 705 Commercial Street, stopped, and shot at Cheyenne S.'s vehicle within a few seconds. As the circuit court pointed out, the 59-foot distance on the exhibit between the shell casings and the front of Cheyenne S.'s car was the longest possible distance between the two points, not the shortest. Moreover, despite the fact he lived at 709 Commercial Street, respondent was gone from the area before the police arrived to investigate the shooting. " 'A trier of fact may infer consciousness of guilt from evidence of a defendant's flight [from] the

police.' " *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 33, 24 N.E.3d 80 (quoting *People v. Williams*, 266 Ill. App. 3d 752, 760, 640 N.E.2d 1275, 1281 (1994)).

¶ 34 Accordingly, given the fact respondent was the only person seen with a gun that night, the shots were fired shortly after respondent was seen with a gun, respondent had a motive to shoot at Cheyenne S., and fled the scene before the police arrived, the State's evidence was sufficient for the circuit court to find respondent guilty of aggravated discharge of a firearm beyond a reasonable doubt. Since we have found the State's evidence was sufficient as to the sole crime for which the circuit court adjudicated respondent delinquent (as explained in the next section), we do not address respondent's arguments related to the sufficiency of the evidence as to the other crimes alleged by the State in the wardship petition.

¶ 35 B. Commitment Order

¶ 36 Respondent next asserts several of his adjudications must be vacated under the one-act, one-crime rule because those convictions were based on the possession of a firearm or on the discharge of a firearm. The State agrees and notes the circuit court stated, "having considered the offenses of which the respondent minor was found guilty, notes that for purposes of this order, they would merge, the most serious of which is aggravated discharge of a firearm, vehicle, a Class 1 felony."

¶ 37 While a circuit court's written order is evidence of its judgment, the trial judge's oral pronouncement constitutes the court's judgment. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 87, 35 N.E.3d 649. Thus, when the circuit court's oral pronouncement conflicts with its written order, the oral pronouncement controls. *Carlisle*, 2015 IL App (1st) 131144, ¶ 87. In this case, a review of the report of proceedings for the dispositional hearing shows the only offense for which the circuit court adjudicated respondent delinquent and sentenced him for was

one count of aggravated discharge of a firearm (count II). We remand the cause to the circuit court for an amended commitment order that is consistent with its oral pronouncement.

¶ 38 C. Detention Order

¶ 39 Last, respondent asserts that, at the February 2018 detention hearing, the circuit court failed to consider all of the requisite factors listed in section 5-501(2) of the Juvenile Court Act of 1987 (705 ILCS 405/5-501(2) (West 2016)). Respondent recognizes his claim is now moot but urges this court to review the issue under the public-interest exception to the mootness doctrine. The State disagrees the public-interest exception applies. We agree with the State.

¶ 40 The public-interest exception to the mootness doctrine "permits review of an otherwise moot question where the 'magnitude or immediacy of the interests involved warrant[s] action by the court.' " (Internal quotation marks omitted.) *In re Shelby R.*, 2013 IL 114994, ¶ 16, 995 N.E.2d 990 (quoting *Felzak v. Hruby*, 226 Ill. 2d 382, 392, 876 N.E.2d 650, 657 (2007)). That exception, which is narrowly construed, applies only when each of the following criteria are clearly shown: "(1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *Shelby R.*, 2013 IL 114994, ¶ 16.

¶ 41 In asserting the public-interest exception applies, respondent contends the circuit courts need a directive that all of the requisite factors listed in section 5-501(2) must be considered. He claims that, in his case, the circuit court did not consider two of the four factors listed in section 5-501(2) because the court did not specifically mention them in explaining its reasoning for detaining respondent. After reviewing the record, we agree with the State respondent is really raising a factual inquiry unique to his case and not a legal issue applicable to other cases. Accordingly, we find respondent has failed to clearly show the three elements

necessary to review an issue under the public-interest exception to the mootness doctrine.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the Vermilion County circuit court's judgment but remand the cause to that court for an amended commitment order consistent with this court's order.

¶ 44 Affirmed; cause remanded with directions.