2018 IL App (5th) 170469-U

NO. 5-17-0469

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re L.R., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Hamilton County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 17-JD-01
	)	
L.R.,	)	Honorable
	)	Barry L. Vaughan,
Defendant-Appellant).	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: Order committing defendant to the Illinois Department of Juvenile Justice affirmed where evidence was sufficient to sustain the defendant's hate crime convictions and the commitment order complies with mandates of the Juvenile Court Act. Defendant's conviction for criminal damage to property vacated for violation of the one-act, one-crime doctrine.

¶ 2 The defendant, L.R., appeals the September 7, 2017, order of the circuit court of Hamilton County that adjudicated him a ward of the court after finding him guilty of two counts of hate crime and one count of criminal damage to property.[1] He also appeals the

[1]The record contains no written order reflecting these findings. Rather, the trial court made the

amended December 4, 2017, order that committed him to the Illinois Department of Juvenile Justice (DOJJ) until his twenty-first birthday. For the following reasons, we affirm the portions of the September 7, 2017, order of adjudication that found the defendant guilty of two counts of hate crime, we vacate the portion of the September 7, 2017, order that found the defendant guilty of criminal damage to property, and we affirm the amended December 4, 2017, order of commitment.

¶ 3 FACTS

¶ 4 On March 28, 2017, the State filed a petition for adjudication of wardship of the defendant.[2] The petition alleged that on or about March 10, 2017, the defendant (1) committed the offense of criminal damage to property, in violation of section 21-1(a)(1) of the Criminal Code of 2012 (Code) (720 ILCS 5/21-1(a)(1) (West 2016)), by spray painting graffiti on the Old Knights Prairie Church (the church), said damage not being in excess of $300, a Class A misdemeanor; (2) committed the offense of hate crime, by reason of the actual or perceived race or religion of a group of individuals, in violation of section 12-7.1(b-5)(5) of the Code (*id.* § 12-7.1(b-5)(5)), by spray painting the words "Fuck Niggers" on the church, a Class 3 felony; and (3) committed the offense of hate crime, by reason of the actual or perceived race or religion of a group of individuals, in violation of section 12-7.1(a) of the Code (*id.* § 12-7.1(a)), by spray

findings on the record at the conclusion of the adjudicatory hearing.

[2]Although the petition is not file-stamped, a docket entry reflects that the petition was filed on this date, as do additional documents in the record.

painting a swastika symbol on the property of one David Wolf located at 8606 Ten Mile Road, McLeansboro, Hamilton County, Illinois (the barn), a Class 4 felony.

¶ 5 An adjudicatory hearing was conducted on September 7, 2017. There, Clayton Cross testified that he is 17 years old and a senior in high school. Cross indicated that on March 10, 2017, he left work at 9 p.m. and went to Felicity Hammond's house. Cross and Hammond decided to spend some time with the defendant, so they picked the defendant up at his house. Cross testified that the three went to Walmart, where Cross purchased one can of red spray paint and one can of blue spray paint so he could work on an art project with old wine bottles.

¶ 6 Cross testified that after leaving Walmart, the three went to the church, which was rumored to be haunted. Cross stated that he had been to the church once before. He believed that Hammond had also been there before, but he did not know if the defendant had been there before. When they arrived, Cross noticed the barn, which was located approximately 15 to 20 feet across the road from the church and which he assumed at the time to be a storage building belonging to the church.

¶ 7 Cross testified that after arriving at the church, the three got out of the car and walked around the cemetery because "that's where, you know, they say people usually go see ghosts." He reported that there were no ghosts, no fog, and no eerie sounds. Cross explained that "after that [the defendant] had gone off, and it was me and Felicity for a couple minutes." He testified that as he and Hammond headed back to the church from the cemetery, they noticed that the defendant had retrieved the spray paint from the car and was spray painting. Cross stated that they asked the defendant what was going on

and he replied, "Well, I'm spray painting." Cross admitted that he and Hammond each spray painted "one thing." He testified that he spray painted "CRC"—his initials—on the west wall of the church and that Hammond spray painted her nickname, "Facility," but he did not know where on the church she spray painted it. He believed that "CRC" was painted in red and "Facility" was painted in blue. When asked if they shared a can, Cross responded, "I don't think so."

¶ 8 The State introduced People's Exhibit 1, which Cross described as depicting two photographs. Cross indicated that the photograph at the bottom of the exhibit depicts his initials that he painted and underneath his initials are an "A" and an "R," neither of which he painted. Cross further testified that the photograph at the top of the exhibit depicts the words "Fuck Niggers" which were spray painted on the church. Cross denied painting those words and he did not see who did paint them.

¶ 9 The State then introduced People's Exhibit 2, which portrays the same photograph as the one at the top of People's Exhibit 1, the only difference being the photograph in People's Exhibit 2 is in color and the photograph in People's Exhibit 1 is in black and white. Cross testified that People's Exhibit 2 illustrates that "Fuck Niggers" was spray painted in blue. When asked if anyone else used the blue spray paint, Cross assumed that because the defendant had both colors of spray paint "he probably used both." Cross testified that the barn was also spray painted but neither he nor Hammond spray painted it, nor did he actually see anybody spray paint it. He indicated, however, that neither the church nor the barn had any spray paint on them when they arrived at the scene on the night in question.

¶ 10 The State next introduced People's Exhibit 3, which Cross identified as a photograph of the barn. He testified that the barn was sprayed with both blue and red paint. Cross testified that the words "Bitch" and "ASS" were painted on the barn and that another word was covered up by the word "CunT." Cross also noted that a swastika was painted on the barn. He reiterated that he did not paint the barn, he did not see who painted the barn, and he did not notice if the defendant went to the barn, but he knew that the swastika was not on the barn when the three arrived at the scene.

¶ 11 The State then presented People's Exhibit 4b, which Cross identified as a photograph of the church. He testified that the photograph depicted a pentagram painted on the church, as well as an upside-down cross, neither of which he or Hammond painted. He testified that the exhibit also depicted the words "GooD ViBes" and "#Ballsack" which were painted on the church doors, neither of which he painted.

¶ 12 People's Exhibit 4a was introduced next, which Cross identified as a photograph of the church with the word "Facility" painted on it, which, as Cross noted earlier, was painted by Hammond because it is her nickname. Cross added that the letters "L" plus or times a "j" and a "T" were also painted and depicted on People's Exhibit 4a, but he had no idea what those letters meant. He further noted the words "This is Illegal" and "I GAY" were depicted on the exhibit, none of which he painted. He reiterated that—as far as he knew—Hammond painted nothing more than the word "Facility." Cross testified that he, Hammond, and the defendant were in the same general area when he spray painted the letters "CRC" and they were at the scene a total of approximately 30 minutes before leaving.

¶ 13 Cross testified that he and Hammond were close friends and had never spent time with the defendant until the night in question. However, he and Hammond decided to give the defendant a chance because they had heard that he did not have many friends, did not go out much, "and a lot of people don't have a very positive view of him." Cross testified that the night after they spray painted, he and Hammond met the defendant again to discuss what had happened the night before and explore whether they may get in trouble for what they did. Cross denied talking to anyone else about the spray painting other than Hammond and the defendant. He noted that, during the conversation, the defendant acknowledged that he had spray painted, but told them that he did not want to talk about it and did not specify what he had spray painted.

¶ 14 Cross testified that a day or two after they spray painted, the police came to him, showed him a photograph, and asked if he recognized it. He replied that he did recognize the photograph and gave the police a written statement about what had occurred. After reviewing his statement on the stand, Cross acknowledged that the statement was roughly the same as his testimony, other than the statement indicated that Hammond went with the defendant to the trunk of the car to retrieve the spray paint.

¶ 15 On cross-examination, Cross acknowledged that his written statement to the police indicated that he had painted the "C" and the defendant finished by painting the "RC." He further acknowledged that his statement indicated that the defendant had painted "Facility." He testified that he was mistaken, that there were some differences between the statement and his testimony, that he told the truth to the best of his knowledge at the time of the statement, but what he had testified was accurate, although the testimony was

approximately five months after the incident and the statement was given in closer proximity to the incident. Cross denied going to the church with the intent to spray paint, but went because the church was rumored to be haunted.

¶ 16 On redirect, Cross indicated that he was not lying in his statement, but it had been several months since the incident and some of the details in his remembering the events had differed. He reiterated, however, that he did not paint the swastika, he did not paint the upside-down cross, he did not paint the pentagram, and he did not paint the words "Fuck Niggers."

¶ 17 On recross-examination, Cross testified that on the night after the incident when he and Hammond went to talk to the defendant, he allowed Hammond and the defendant to take his car to the gas station to buy sodas. Cross testified that he was told that the defendant asked to drive the car, which Hammond allowed, and the car ended up being impounded. Cross agreed that he "got in trouble" by his dad and he was mad "at myself, [the defendant], everybody. *** I was not happy with what had happened."

¶ 18 Felicity Hammond testified that she is a senior in high school and has been friends with Cross since junior high. She agreed that she also knows the defendant. Hammond confirmed that she went with Cross and the defendant to the church. She testified that on the night in question, after Cross picked her up, they picked up the defendant, then went to Walmart where two cans of spray paint were purchased—one red and one blue. Hammond testified that, after leaving Walmart, they went to the church. She added that she and Cross "used to hang out there pretty frequently because people say it's haunted." Hammond affirmed that the barn is located near the church.

¶ 19 Hammond testified that when they arrived they walked around in the cemetery for awhile, then returned to the car, retrieved the paint, and started spray painting. She could not recall who got the paint out of the car, nor could she recall whose idea it was to spray paint. She admitted to spray painting the word "Facility" in red and confirmed that "Facility" is her nickname. She knew that Cross had painted some initials and she knew the defendant had painted, but she could not recall what either of them specifically painted. She testified that she did not see Cross paint anything other than the initials.

¶ 20 After inspecting the exhibits, Hammond testified that she did not spray paint "Fuck Niggers" nor did she see Cross paint it. She observed that she had only used the red spray paint and the words "Fuck Niggers" were painted in blue. Hammond acknowledged Cross's initials, but she did not know what "AR" beneath those stood for. She also identified the photo of the barn which depicted both red and blue paint. She testified that neither she nor Cross painted anything on the barn because neither of them went anywhere near the barn. She was not sure if the defendant went near the barn, but she testified that when they arrived at the church, she could see that the barn was completely free of graffiti.

¶ 21 Pursuant to People's Exhibit 4a, Hammond observed the word "Facility" that she spray painted and indicated that she did not paint anything else in the photograph. She testified that neither she nor Cross painted the upside-down cross or the pentagram on People's Exhibit 4b. She denied painting "#Ballsack" nor did she observe Cross or the defendant paint anything represented in the photograph at the top of Exhibit 4b.

¶ 22 Hammond testified that she and Cross stayed "pretty close together," close enough to see each other, but a couple of times the defendant was not in their sight. She reported that after they finished painting, Cross took the defendant home, then took her home. She stated that she and Cross had never spent time with the defendant before that night, but they went to the same school and she wanted to give him a chance because she did not believe he had many friends.

¶ 23 Hammond testified that the next night she and Cross went to talk to the defendant. She stated that they "went to Carmi to talk about everything" that happened the night before because "[w]e felt guilty about it and didn't know how to cope with it." She explained that she had never done anything like that before. She added that while Cross met with a friend, she and the defendant took the car to get some drinks and "we got the car impounded."

¶ 24 Hammond confirmed that the police came to talk to her and she told them exactly what she testified to. She had not seen any photographs of the spray painting prior to the hearing. She reiterated that she painted nothing other than "Facility" and Cross painted nothing other than his initials.

¶ 25 On cross-examination, Hammond could not recall who retrieved the paint from the car, but she did not disagree with Cross's statement that it was her and the defendant. She stated that she was not surprised when the police officer arrived at her house because Cross's dad called her mother to inform her that the police were on their way. Hammond added that she was also not surprised when the police arrived because she knew that she "did something wrong." When the officer arrived at her home, he told her that he was

there "about the night of the spray painting" and he asked her to tell him what happened. Accordingly, she wrote down everything that happened. She stated that the officer did not give her a *Miranda* warning, that she gave a truthful statement and did not lie, that nobody forced her or threatened her to make the statement, and that she signed the statement.

¶ 26 Hammond agreed that Cross's statement indicated that the defendant had written her name, but she testified that "he didn't write 'Facility,' which is what I wrote." She testified that she painted nothing other than "Facility," but when confronted with her written statement that she "wrote a few initials," she responded, "Oh yes. I forgot about that. I did write one of my friends' initials on it."

¶ 27 Hammond agreed that they went to the cemetery "because it was spooky." However, when confronted with her written statement that "[Cross], [the defendant], and I went to [the church] assuming it was abandoned and no one would care," she replied that she "worded it wrong then." She indicated that she said that in her statement because "I didn't know anyone owned the church part of it." When Hammond was questioned why her statement indicated that the defendant "went to the other building" and was never linked with being at the church in her statement, she replied that she was just "yelled at by my mom, first of all, so I was in a bad mood, so I was just writing down things as fast as I could."

¶ 28 Kent Darnell testified that he is a trustee of the cemetery and a resident of the township where the church and cemetery are located. He stated that the church had not been used since "about 1967." After that time, the church lawn was mowed but the

church building was not often painted. Accordingly, the paint had chipped off over the years. Darnell testified that the barn, which is located approximately 30 feet from the church, is owned by David Wolf and used as a hunting camp and storage building.

¶ 29 Darnell testified that he drives by the church every day on his way home. During the week in question, he drove by and noticed graffiti painted on the church and barn. Accordingly, he pulled in, got out, walked around, took photographs, and called the sheriff's office. After observing the exhibits, Darnell agreed that the photographs were fair and accurate representations of what he saw on the church and the barn when he pulled up and saw the graffiti.

¶ 30 Darnell opined that the words and symbols painted were "[v]ery vulgar to be written on a church property" and "[a] lot of people hold a lot of prestige in that old church." He agreed that since the day he saw the spray painting, the church and barn had been "fixed." He explained that he attempted to cover some of it up after the police gave the okay to do so "[b]ecause it was so vulgar" but he just quickly painted it over and had since received an estimate for it to be painted properly.

¶ 31 Tracy Lakin testified that he has been employed by the Hamilton County sheriff's office for over seven years. He investigated the vandalism at the church on the week in question. Lakin was familiar with the property, but was not sure whether young people frequented the place. He just knew "that it was an old church." He had never been called to investigate any incidents at the church before and he was uncertain whether any other deputies had.

¶ 32 When Lakin began his investigation, he drove to the church. Immediately when he pulled into the drive he observed "that the church had been spray painted in several areas." He testified that he got out of his car, "took a close visual inspection, and I photographed the vandalism with my phone." When he returned to the sheriff's office, the photographs were downloaded on the "CAD system for the case file." Lakin identified the photographs that comprised the People's exhibits as the ones he took with his phone.

¶ 33 Lakin testified that he wanted to preserve the evidence because he learned that "they were quickly wanting to cover this up" because "[i]t's offensive." Lakin noted the "racial slur," "obscene language," and the "Nazi swastika." He stated that the photographs were posted on the sheriff's office Facebook page to solicit help from the public to determine who was responsible for the vandalism. Later that evening the dispatch center received an anonymous tip, giving the names of Cross and Hammond as suspects. Accordingly, Lakin interviewed Cross and Hammond and learned that the defendant was also implicated in the spray painting.

¶ 34 Lakin testified that Cross and Hammond were not shown the photographs to determine who did what, but both admitted to Lakin that they had been there and had spray painted the church. Both further informed Lakin that the defendant "had alone himself had [*sic*] spray painted on the [barn]" and neither of them went to the barn. After Cross and Hammond submitted written statements, Lakin went the following evening to the defendant's father's house and asked to speak to the defendant. He was told that the defendant was out of town. Lakin asked the defendant's father if he would bring him to

the sheriff's office as soon as possible, but the defendant never arrived at the sheriff's office. Accordingly, Lakin never spoke with the defendant nor did the defendant submit a statement. After the testimony and arguments, the trial court found the defendant guilty on all three charges and adjudicated him a ward of the court.

¶ 35 The trial court ordered a social history investigation report, which was prepared by the defendant's probation officer and filed on October 11, 2017. A sentencing hearing was held on November 13, 2017. There, Susie York testified that she has been employed as the Hamilton County probation officer for over 35 years and she served as the defendant's probation officer. York testified that the defendant's probation began in approximately 2014 and he had not avoided trouble since that time, nor had he abided by the terms of his probation.

¶ 36 York reported that one of the terms of the defendant's probation was—when he was attending school—he was required to contact York's office on the days he was absent. York testified that while the defendant was attending school, he missed 17 of 80 days and, although she could not recall the precise number of times he failed to contact her on those days, she knew he consistently failed to contact her as required. York reported that the defendant had also been enrolled in GED classes but quit after attending only four classes.

¶ 37 Another term of the defendant's probation was "to not commit any future crimes." York testified that while on probation, the defendant threw a brick from a building onto an oncoming vehicle, pleaded guilty to criminal damage to property, and was ordered to perform 50 hours of community service, none of which York believed were completed.

¶ 38 York testified that the defendant was ordered to perform 40 hours of community service in 2016, after he and another individual were charged with disorderly conduct and truancy for pushing each other around in a wheelchair at the hospital after 9:30 p.m. York indicated that the defendant had not completed any of the 40 hours of service. York was mindful that the defendant was currently on mandatory supervised release from a previous case involving the Illinois Youth Center. She opined that, based on the defendant's prior performance while on probation, she "would be very guarded as to his prognosis to successfully complete."

¶ 39 Aggravating and mitigating factors were presented. At the conclusion of the hearing, the trial court acknowledged that, standing alone, the crimes in the instant case were "not *** that serious." The trial court noted that harm to the community and damage to the property—while offensive—was minimal and nobody was physically harmed. However, the trial court emphasized that, besides the instant case, the defendant had been convicted in seven other juvenile delinquency cases and another juvenile delinquency case was pending. The trial court stated that the defendant "continues to engage in minor offenses, such as curfew violations, to more serious offenses, shoplifting and theft of materials ***, to very serious offenses, throwing bricks off of buildings on to cars." The trial court expressed concern with the defendant's prior noncompliance with probation, opined that "probation would deprecate the seriousness of this offense," and "given the limited options I have and the nature of these offenses, the court believes that a sentence to [the DOJJ] is warranted." Accordingly, the trial court sentenced the defendant to the custody of the DOJJ until his twenty-first birthday, entered a

corresponding order of commitment on November 13, 2017, and entered an amended order of commitment on December 4, 2017. The defendant filed a timely notice of appeal. Additional facts will be provided as necessary in our analysis of the issues on appeal.

¶ 40 ANALYSIS

¶ 41 As a preliminary matter, because this appeal involves a final judgment in a delinquent minor proceeding, Illinois Supreme Court Rule 660A(f) (eff. July 1, 2018) requires, except for good cause shown, the appellate court to issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on April 27, 2018. However, the defendant filed motions for extensions of time to file briefs which were granted by this court, resulting in good cause for us to issue this order past the deadline. After the briefing schedule was complete, this case was placed on the oral argument docket and we now issue this order.

¶ 42 The defendant raises three issues on appeal: (1) whether there was sufficient evidence for the State to prove the defendant guilty beyond a reasonable doubt; (2) whether the trial court complied with the requirements of the Juvenile Court Act when sentencing the defendant; and (3) whether the defendant's adjudication for the lesser offense—criminal damage to property—violates the one-act, one-crime doctrine.

¶ 43 I. Sufficiency of the Evidence

¶ 44 The first issue on appeal is whether there was sufficient evidence for the State to prove the defendant guilty beyond a reasonable doubt of the two hate crimes. "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court,

considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48. "[A] criminal conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*

¶ 45 We are mindful that under a challenge of the sufficiency of the evidence, " 'a reviewing court must allow all reasonable inferences from the record in favor of the prosecution.' " *People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007) (quoting *People v. Bush*, 214 Ill. 2d 318, 326 (2005)). "This standard of review applies in cases whether the evidence is direct or circumstantial." *Id.* " 'When weighing the evidence, the trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *Id.* (quoting *People v. McDonald*, 168 Ill. 2d 420, 447 (1995)). "The reviewing court will not retry the defendant." *Id.*

¶ 46 Here, the defendant's challenges to the sufficiency of the evidence are threefold. He alleges: (1) there is no direct link between the defendant and the allegations; (2) there are inconsistencies between the testimonies of Cross and Hammond and their written statements to the sheriff's office; and (3) accomplice testimony is suspect. As we address these arguments in turn, we reemphasize that we will not retry the defendant (see *Brown*, 2013 IL 114196, ¶ 48), it is the duty of the trial court to determine the credibility of the witnesses because it observes their conduct and demeanor (*People v. Cosey*, 82 Ill. App.

3d 968, 974 (1980)), and for that reason, we will not substitute our judgment for that of the trial court. See *id*.

¶ 47 A. *No Direct Link*

¶ 48 The defendant argues that in order to be convicted of the two hate crimes, the State was required to prove that he spray painted the swastika and the words "Fuck Niggers." He repeatedly emphasizes that the evidence did not directly link him as the offender because neither Cross nor Hammond actually saw him spray paint anything specific. He argues that it is not enough to merely show that he was there and spray painted *something*, but the State's burden was to prove him guilty beyond a reasonable doubt of the elements of the crimes alleged and it failed to do so. We disagree.

¶ 49 As previously noted, the trial court was not required to disregard the inferences flowing from the evidence and on review, we must resolve all reasonable inferences from the record in favor of the State. See *Saxon*, 374 Ill. App. 3d at 416. The standard of review applies whether the evidence is direct or circumstantial. *Id*. Applying these principles to the evidence presented at the hearing in the case at bar, we find ample evidence to support the defendant's conviction, notwithstanding the lack of anyone directly witnessing what the defendant specifically painted.

¶ 50 Testimony showed that Cross, Hammond, and the defendant all spray painted. That is not in dispute. Cross and Hammond both testified that when they arrived on the scene on the night in question they could see that neither the church nor the barn had any spray paint on them. Cross and Hammond testified that Cross painted his initials—"CRC" and Hammond painted her nickname—"Facility" on the church and neither of

them painted anything more. Both Cross and Hammond denied painting the words "Fuck Niggers," both denied painting the swastika, and neither saw who did paint them. Hammond stated that neither she nor Cross went near the barn that night. This was corroborated by Deputy Lakin's testimony that a few days after the spray painting, Cross and Hammond implicated the defendant and both informed him that the defendant was the only one who went to the barn. Kent Darnell testified that the next day he saw, *inter alia*, the words "Fuck Niggers" on the church and the swastika on the barn.

¶ 51 In summary, all three spray painted. Cross and Hammond observed that the church and barn were free of spray paint when they arrived. Cross and Hammond both testified that they did not spray paint the swastika or the words "Fuck Niggers," and further testified that they were together the whole time while the defendant left their sight "a couple of times." Darnell, who drives by the church every day, testified that, in addition to the graffiti admitted to by Cross and Hammond, he saw "Fuck Niggers" on the church and the swastika on the barn. The trial court could reasonably infer from the fact that Darnell drives by the church every day, that all of the graffiti, including the hate crime graffiti, was placed on the buildings the night before. Again, we must resolve all reasonable inferences in favor of the State. See *Saxon*, 374 Ill. App. 3d at 416. A reasonable inference derived from the evidence is that the defendant painted the swastika and the words "Fuck Niggers."

¶ 52 To reiterate, we must consider the evidence in the light most favorable to the State and determine if *any* rational trier of fact could have found the defendant guilty beyond a reasonable doubt. See *Brown*, 2013 IL 114196, ¶ 48. Moreover, we can only reverse if

the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Id*. Here, we find a rational trier of fact could have found the defendant guilty beyond a reasonable doubt and that the evidence supports the defendant's conviction and adjudication and is not so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt.

¶ 53 B. *Inconsistencies*

¶ 54 The defendant also points out several inconsistencies between Cross and Hammond's testimonies and their written statements that were submitted to the sheriff's office and argues that these inconsistencies undermine the State's proof of the defendant's guilt. We find the inconsistencies are immaterial to the issues on appeal and do not create a reasonable doubt of the defendant's guilt.

¶ 55 As the defendant notes, Cross and Hammond were inconsistent in what colors they may have used while spray painting, their knowledge as to whether the defendant went to the barn, and Cross's reason for buying the spray paint. Cross admitted that there were discrepancies between his testimony and his written statement to the sheriff's office, but indicated that the discrepancies involved details such as who retrieved the paint from the car, who painted the "RC" in his initials, and whether the defendant or Hammond painted the word "Facility."

¶ 56 Like Cross, there were discrepancies between Hammond's testimony and her statement to the sheriff's office but, also like Cross, those discrepancies involved minor details such as forgetting that she also painted the initials of one of her friends. When asked why her written statement linked the defendant only with being at the barn but not

at the church, she responded that she was writing quickly while being reprimanded by her mother.

¶ 57 Despite any discrepancies regarding knowledge of the defendant going to the barn, who may have used what color, and Cross's reason for buying the spray paint, Cross and Hammond unequivocally testified that they did not paint the swastika or "Fuck Niggers." We find the discrepancies immaterial and of no consequence to the trial court's conclusion that the State proved the defendant guilty beyond a reasonable doubt.

¶ 58 C. *Accomplice Testimony*

¶ 59 The defendant's final argument regarding the sufficiency of the evidence is that the defendant's adjudication was based on the "untrustworthy and inconsistent accomplice testimony" of Cross and Hammond, "who both had motives to lie." He cites *People v. Newell*, where the Illinois Supreme Court stated "that accomplice testimony 'is fraught with serious weaknesses such as the promise of leniency or immunity and malice toward the accused[,]' and should therefore be accepted only with utmost caution and suspicion and have the absolute conviction of its truth." 103 Ill. 2d 465, 470 (1984) (quoting *People v. Wilson*, 66 Ill. 2d 346, 349 (1977)). However, in that same case the Illinois Supreme Court also emphasized that it has "frequently acknowledged that the uncorroborated testimony of an accomplice is sufficient to sustain a conviction if such testimony convinces the [finder of fact] of [the] defendant's guilt beyond a reasonable doubt." *Id*. at 469-70.

¶ 60 The defendant argues that Hammond and Cross each had "a compelling motive to lie" because by implicating the defendant, "they barely received a slap on the wrist" and

"[n]o charges were filed against them." The State aptly responds that, although Cross and Hammond were not charged with a crime, they did not know that they would not be charged when they gave their statements, nor would implicating the defendant mitigate their roles on the night in question. Moreover, while accomplice testimony is generally viewed with suspicion, "the trial court is presumed to know the law and apply it properly." *People v. Howery*, 178 Ill. 2d 1, 32 (1997). That presumption is rebutted only if "the record contains strong affirmative evidence to the contrary." *Id.*

¶ 61 Here, notwithstanding the accomplice testimony, we find no strong affirmative evidence to indicate that the trial court did not know the law and apply it properly in this case. The trial court acknowledged on the record that Cross and Hammond could have been charged as accomplices and the prosecutor had discretion to do so. Defense counsel also informed the trial court of the discrepancies between Cross and Hammond's testimonies and their written statements. Nevertheless, the trial court indicated more than once on the record that it found both Cross and Hammond credible witnesses. Upon reviewing the evidence in the light most favorable to the prosecution and with all reasonable inferences resolved in favor of the prosecution, we conclude that the trial court reached a logical, reasonable conclusion and there is sufficient evidence to support the defendant's convictions.

¶ 62 II. Compliance With the Juvenile Court Act

¶ 63 The second issue on appeal is whether the trial court complied with the requirements of the Juvenile Court Act when it entered the order of commitment. The defendant claims that the trial court failed to comply with the requirements of

commitment as set forth in section 5-750 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-750 (West 2016)). We initially note that the defendant has forfeited this issue because he did not object to the order of commitment at the sentencing hearing, nor did he file a posttrial motion raising the issue. See *In re M.W.*, 232 Ill. 2d 408, 430 (2009) (claimed error forfeited where defendant fails to object at trial and fails to raise it in a posttrial motion).

¶ 64 Forfeiture notwithstanding, we will address the merits of the defendant's arguments. "A trial court's decision to send a minor to [the] DOJJ is reviewed for an abuse of discretion." *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22. However, "[t]he question of whether the court complied with statutory requirements is a question of law we review *de novo*." *Id*.

¶ 65 Section 5-750(1)(b) of the Act provides that a delinquent minor who has been adjudged a ward of the court may be committed to the DOJJ if the trial court finds, *inter alia*, that "(b) commitment *** 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." 705 ILCS 405/5-750(1)(b) (West 2016).

¶ 66 Here, the defendant cites *In re H.L.*, which held that the trial court must make an express finding that commitment to the DOJJ is the least restrictive alternative. 2016 IL App (2d) 140486-B, ¶ 45. The defendant argues that the trial court did not make an express finding in the instant case—neither verbal nor written—that committing him to the DOJJ was the least restrictive alternative. We disagree.

¶ 67 The case cited by the defendant indicates that the trial court there did not provide a written finding, did not verbally make the finding, and did not state on the form order itself that commitment was the least restrictive alternative. See *In re H.L.*, 2016 IL App (2d) 140486-B, ¶ 46. This case is easily distinguished because here, the trial court entered an amended order of commitment on December 4, 2017, that states in writing the following: "Commitment to the [DOJJ] is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement ***." Accordingly, the defendant's argument to the contrary fails.

¶ 68 The defendant further argues that the trial court failed to determine that commitment was the least restrictive alternative based on evidence that efforts were made to obtain an alternative and why those efforts were unsuccessful. He bases his argument on the fact that the trial court left blank the lines on the form order that are provided for an explanation as to why efforts to secure less restrictive alternatives were unsuccessful. We find the blank lines are of no consequence here because a review of the transcript of the sentencing hearing indicates that the trial court specified in great detail other alternatives and why those alternatives would not be successful.

¶ 69 In particular, the trial court stated:

> "And [the defendant] doesn't come into this in a vacuum as a first offender ***. *** [He] has this case, 14-JD-12, 14-JD-13, 14-JD-14, 15-JD-6, 15-JD-12, 16-JD-3, 16-JD-6, and then the pending case of 17-JD-15, and the instant case.
>
> Our resources are limited in this area. We have tried placing him in different settings. He lived with his mother for a while, lived with his father for a while,

lived in Johnston City, lived in McLeansboro, and he's lived in Marion, but he continues to engage in minor offenses, such as curfew violations, to more serious offenses, shoplifting and theft of materials from Huck's and Fred's, to very serious offenses, throwing bricks off of buildings on to cars.

As I said, this offense in a vacuum is not so serious. I would give him probation if this was the only thing he had or maybe if it was even curfew and this or retail theft and this.

When you look at the totality of all his cases, he hasn't really done anything in any of the cases. The testimony is he's still not attending school with no excuse, he's still not doing the public service work with no excuse. If I put him on probation, that's kind of saying, 'All your failures on probation in the past don't really concern me that much. Let's try it again.' But they do concern me. We don't seem to be getting his attention. I'm not sure how much prison or [the DOJJ] is going to get his attention. We have tried that before, and it didn't seem to work.

But *** given the limited options I have and the nature of these offenses, the court believes that a sentence to [the DOJJ] is warranted. I believe probation would deprecate the seriousness of this offense, but it is necessary to send a message to the community that this will not be tolerated. It is necessary to try and modify his behavior because the other things we have tried have had no success."

We find these comments by the trial court adequately explain why efforts to secure less restrictive alternatives were unsuccessful and the defendant's arguments to the contrary must fail.

¶ 70 When making a decision to commit a minor, the Act further requires the trial court to:

> "make a finding that secure confinement is necessary, following a review of the following individualized factors:
>
> * * *
>
> (C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.
>
> (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.
>
> * * *
>
> (G) Services within the [DOJJ] that will meet the individualized needs of the minor." 705 ILCS 405/5-750(1)(b)(A)-(G) (West 2016).

¶ 71 Here, the defendant argues that the trial court failed to review factors C, D, and G before finding that commitment to the DOJJ was necessary. We disagree. There is evidence that the trial court did, in fact, review evidence regarding these factors. In sentencing the defendant, the trial court stated that it had "considered the evidence presented at the sentencing hearing and the report filed by the probation officer, the arguments of the counsel, the statement of the minor, and the statements of each parent." The trial court further stated that it also presided "over the adjudicatory hearing and considered the evidence that was presented at that hearing also."

¶ 72 The evidence considered by the trial court included all of the factors listed in the Act. Factor C requires a "[r]eview of results of any assessments of the minor *** ." 705 ILCS 405/5-750(1)(b)(C) (West 2016). The State and the defendant each stated that there was no evidence that the defendant had ever been assessed. Accordingly, there were no assessments for the trial court to review. The trial court cannot review what was never conducted. The defendant argues that the trial court was required to both refer *and* review the results of any assessments. This is incorrect. The Act does not require the trial court to make referrals, but only requires a review of any available results. Accordingly, there is no basis for the defendant's argument.

¶ 73 Regarding factor D—the defendant's educational background—(705 ILCS 405/5-750(1)(b)(D) (West 2016)), the trial court noted that he was not attending school. The record reflects that after attending several schools, he quit without completing high school. He is not learning disabled and he attended alternative schools because of behavioral issues. He obtained some credit toward his GED while incarcerated at Illinois Youth Center. Although an order was entered allowing the defendant to take GED courses, he quit after attending only three or four courses. The defendant also has a history of truancy and behavioral issues in school. This evidence was considered by the trial court prior to committing the defendant to the DOJJ. There was no error.

¶ 74 Finally, factor G requires the trial court to consider the services available within the DOJJ that will meet the individual needs of the defendant. 705 ILCS 405/5-750(1)(b)(G) (West 2016). Before entering the order of commitment, the trial court observed that the DOJJ would "probably keep him a short time, *** try to get him

treatment ***, [and] try to get his GED ***, but I suspect they'll release him shortly." The trial court also considered the social history investigation report, which indicated that the defendant could be treated on an outpatient basis by Egyptian Health Department, to address any mental health and/or substance abuse counseling needs. There is no evidence that this could not be accomplished during the defendant's confinement at the DOJJ. The record reflects that the trial court reviewed evidence regarding this factor, and the defendant's argument to the contrary fails.

¶ 75 III. One Act, One Crime

¶ 76 The defendant's final issue on appeal is whether the defendant's adjudication for the lesser offense—criminal damage to property—violates the one-act, one-crime doctrine. See 720 ILCS 5/21-1(a)(1) (West 2016). A lesser-included offense is one that is composed of some, but not all, of the elements of the greater offense and which does not have any element not included in the greater offense. *People v. Nunez*, 236 Ill. 2d 488, 496 (2010). The State concedes that criminal damage to property (see 720 ILCS 5/21-1(a)(1) (West 2016)) is composed of some, but not all, of the elements of the hate crimes (see *id.* § 12-7.1(a), (b-5)(5)) and does not have any element not included in the hate crimes. Accordingly, the State agrees that the defendant's adjudication for criminal damage to property should be vacated.

¶ 77 CONCLUSION

¶ 78 For the foregoing reasons, we affirm the portions of the September 7, 2017, order of the circuit court of Hamilton County that adjudicated the defendant a ward of the court after finding him guilty of two counts of hate crime, we vacate the portion of the

September 7, 2017, order convicting the defendant of criminal damage to property, and we affirm the amended December 4, 2017, order committing the defendant to the DOJJ until his twenty-first birthday.

¶ 79 Affirmed in part and vacated in part.