

2019 IL App (1st) 180992-U

No. 1-18-0992

Order filed March 15, 2019

Fifth Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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IN RE LUIS M., a Minor, ) Appeal from the  
                                  ) Circuit Court of  
(The People of the State of Illinois, ) Cook County.  
                                  )  
                                 Petitioner-Appellee, ) No. 17 JD 2064  
                                 )  
v.                            ) Honorable  
                                 ) Steven James Bernstein,  
Luis M,                     ) Judge, Presiding.  
                                 )  
                                 Respondent-Appellant). )

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1   *Held:* Evidence was sufficient to sustain respondent's findings of delinquency for aggravated discharge of a firearm and reckless discharge of a firearm where the State presented eyewitness testimony and videos showing that respondent fired a gun in the direction of the victims' vehicles and a spent shell casing was recovered at the scene within minutes of the shooting, even though no weapon was recovered.

¶ 2 This is an expedited appeal under the provisions of Illinois Supreme Court Rule 311(a) (eff. Mar. 8, 2016). Minor respondent Luis M. (L.M.) appeals from his adjudication of delinquency for aggravated discharge of a firearm and reckless discharge of a firearm. He was sentenced to the Illinois Juvenile Justice Department for a maximum of 15 years.<sup>1</sup> On appeal, respondent contends that his findings of delinquency must be reversed where the only weapon recovered was a BB gun. For the following reasons, we affirm.

¶ 3

#### BACKGROUND

¶ 4 A petition for adjudication of wardship was brought against 17-year-old respondent, L.M., a minor, for aggravated discharge of a firearm, two counts of aggravated unlawful use of a weapon and reckless discharge of a firearm. The charges stemmed from respondent shooting at a vehicle occupied by Kenneth Velez and Crystal Diaz in Cicero, Illinois, following a verbal altercation with the driver of the vehicle, Velez.

¶ 5 During the findings phase, the trial court found probable cause and additionally, based on respondent's criminal background, that there was urgent and immediate necessity to detain him in the detention center pending his trial.

¶ 6 Following a trial, both counts of unlawful use of a weapon were dismissed, but respondent was adjudicated delinquent for aggravated discharge of a firearm and reckless discharge of a firearm. The evidence adduced at trial was as follows.

¶ 7

#### A. Crystal Diaz's Testimony

¶ 8 On November 20, 2017, at approximately 12:00 p.m., Diaz and her boyfriend Velez were riding in an SUV southbound on the 1400 block of 58th Avenue in Cicero. Velez was driving

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<sup>1</sup> L.M. is no longer incarcerated.

and Diaz was seated in the front passenger seat. As they drove down the block, respondent walked across the street from the east side to the west side. Diaz identified respondent in court as the person crossing the street. Diaz testified that Velez slowed down to allow respondent to finish crossing the street. As respondent crossed the street, he said to Velez, "who the f\*\*\* [are you] looking at." Velez asked respondent who he was and asked him "why he was [sic] looking at him some type of way and so forth." The windows of the truck were down at this point. Velez and respondent began arguing and continued arguing for approximately five minutes.

¶ 9 After the argument, Diaz testified that respondent went inside of a house on the west side of the street and quickly came back outside in less than a minute. When he came back outside, his hands were inside of the black hoodie he was wearing and Diaz saw a bulge coming from defendant's hoodie, near where his hands were. Diaz believed that respondent had something other than his hands inside the hoodie because she could see a bulge.

¶ 10 Respondent and Velez resumed their argument for another five minutes. During this time, Velez exited the vehicle. As the argument progressed, Diaz saw Velez lift his shirt, but she did not see anything in his waistband although there was a tattoo of a cobra on his lower abdomen. Respondent then took a black gun out of his hoodie. Velez asked respondent, "what the f\*\*\* was he planning to do with that [gun] \* \* \*," and he told respondent, "don't come out here with a gun if [you are] not going to use it." Respondent said to Velez, "you're lucky you're with that b\*tch, if not I would do that [t]o you. Get the f\*\*\* away from my block \* \* \* [y]ou're going to have it coming." Diaz saw respondent "throw" gang signs at Velez. She believed that respondent was "straight gang-banging" and throwing up gang signs. Velez told respondent that he knew where respondent lived and that he would "f\*\*\* [him] up."

¶11 Diaz told Velez to please get in the vehicle and that they needed to leave and remove themselves from the situation. Velez got back in the vehicle and they left driving southbound on 58th Avenue. Diaz testified that as they drove away, she heard a gunshot. She then turned and looked in the rearview mirror to "confirm" that it was respondent who shot at them. Diaz testified that when she looked in the mirror, she saw respondent standing on the street with the gun in his hands. Neither she nor Velez had a gun that day. Diaz viewed video in court that purported to depict the events of November 20, 2017, and she provided further testimony as to the contents of the video.

¶ 12

#### B. Louis Marovitch's Testimony

¶ 13 Louis Marovitch testified that he was walking down the alley between 58th Avenue and 58th Court on November 20, 2017, at approximately noon. He then walked through the gangway separating 1408 and 1406 South 58th Avenue on his way to visit his friend and neighbor, Michael McKee, who lived at 1408. Marovitch, who was 88 years old, lived around the corner in the 1400 block of South 58th Court. He testified that this was his normal route when visiting McKee.

¶ 14 As he stood in the gangway, Marovitch saw someone standing on the sidewalk arguing with another person in a vehicle on 58th Avenue. Marovitch testified that during the course of the argument, he saw the person on the sidewalk fire a pistol and he heard a gunshot. Marovitch then went inside McKee's home. Marovitch was not able to see the face of the shooter but he could see that it was a male.

¶ 15

### C. Michael McKee's Testimony

¶ 16 When Marovitch entered McKee's home, McKee was in the kitchen preparing to cut a birthday cake for one of his children. McKee testified that just before Marovitch opened the door, he heard a loud "boom" and he thought the sound came from one of his children throwing something onto a landing in the house. After speaking with Marovitch, McKee checked the landing and saw that the children had not thrown anything. He opened the front door and saw respondent standing on the sidewalk and in the grass. Respondent was wearing a black hoodie and jeans. McKee identified respondent in court. McKee, who was 40 years old, was respondent's next-door neighbor, and had known respondent since he was born. McKee went outside and asked respondent whether someone shot at him, and respondent replied that no one had. McKee told respondent to be honest because he was going to check the surveillance tapes from cameras around his home. McKee stated that he had eight exterior surveillance cameras installed in various places around his home; three cameras face 58th Avenue in the front, and two that face the alley. The surveillance system is connected to a television and a DVR that records up to two days, and McKee has the ability to rewind the cameras to see previous events.

¶ 17 McKee testified that respondent then said that "some guy pulled up and was talking sh\*t," and that he did go get his "piece" but he didn't shoot anyone and no one shot at him. McKee testified that he was familiar with the word "piece" as another word for a firearm.

¶ 18 After speaking with respondent, McKee checked his surveillance cameras and testified that he was able to see what happened out front. The cameras in front of McKee's home showed respondent arguing with people in a truck, the truck driving away and respondent shooting in the direction of the truck that had just driven away. They also showed respondent looking on the ground of the area where he fired the gun, respondent talking to McKee, respondent opening the

driver's side door and the trunk of a black truck parked in front of McKee's home, and the police arriving and arresting respondent in front of McKee's house. The surveillance cameras in the back of McKee's home showed Marovitch approaching McKee's home from the alley. McKee testified that the cameras were functioning on November 20, 2017, and the resolution on the equipment was "very good." McKee testified that after watching the surveillance videos, he called the police and gave a copy of the recordings to the police. McKee viewed video from his surveillance cameras in court and testified to the events depicted on the video.

¶ 19

#### D. Police Officers' Testimony

¶ 20 Cicero Police Officer Surillo was the first officer on the scene after being dispatched to 1406 South 58th Avenue in response to a report of shots fired. When Surillo arrived, he saw respondent standing on the street and ordered him to get on the ground. Surillo identified defendant in court as the person he saw standing on the street. When backup arrived, Surillo handcuffed respondent and placed him in the patrol car. Surillo testified that he and other officers then spoke with a witness and began their investigation. During the course of the investigation, Surillo saw a shell casing on the parkway between 1406 and 1408 South 58th Avenue.

¶ 21 Cicero Police Officer Decianni testified that he was also dispatched to the scene in response to a report of shots fired. He identified respondent as the person he saw in custody at the scene. When Sergeant Gilpin arrived, she and Decianni searched the area between 1406 and 1408 South 58th Avenue looking for shell casings. Decianni subsequently saw a .9 millimeter shell casing in between both addresses on the parkway, approximately 8 to 10 feet from the curb. Decianni testified that he knew it was a .9 millimeter casing because the words "9 mm Luger"

were inscribed on the back. The shell casing was recovered and placed in an evidence envelope, which he subsequently inventoried. On cross-examination, Decianni agreed that he could not testify as to how long that shell casing was on the street before it was recovered as part of this investigation.

¶ 22 Cicero Police Detective Savage arrived at the scene later that evening with a search warrant for the first floor and basement of 1406 South 58th Avenue. Savage testified that he served as an evidence technician in this case and was responsible for identifying items that could potentially have been evidence. Savage searched the first floor and basement of respondent's family home at 1406 South 58th Avenue, pursuant to the warrant, and he also searched the second floor with consent of the residents. The search yielded a .9 millimeter magazine, a loose .9 millimeter round, other gun shell casings that were not .9 millimeter, and a black airsoft BB gun from respondent's home. The magazine contained seven rounds, but could hold up to 12 rounds. Savage testified that the .9 millimeter magazine and the .9 millimeter round were found in a bedroom where two pieces of mail addressed to respondent, respondent's high school certificate and an inventory sheet from respondent's previous arrest were recovered from a dresser drawer. An airsoft BB gun was found in the basement. Savage testified that no other gun was recovered. Savage further testified that a .9 millimeter shell could not be fired from an airsoft BB gun because BB guns fired with a CO2 cartridge. Additionally, although a BB gun sounded like a gun when fired, it was at a "lower level." All of the items recovered during the search were placed in evidence envelopes and inventoried at the police station.

¶ 23

E. Respondent's Case-in-Chief

¶ 24 At the close of the State's case, respondent moved for a directed finding, which the trial court granted as to the two aggravated unlawful use of a weapon charges. The trial court stated that there was no proof of respondent's age, there was no proof that anyone inquired whether respondent had a Firearm Owners' Identification (FOID) Card, and no evidence that respondent was "not engaged in wildlife." Respondent then rested his case.

¶ 25 F. Trial Court Findings and Sentencing

¶ 26 After closing arguments, the trial court found respondent guilty of aggravated discharge of a firearm and reckless discharge of a firearm, finding the witnesses to be credible, and that the bedroom where the additional rounds, mail and documents were found was respondent's bedroom. The court also dismissed respondent's argument that no gun was recovered because of the shell casing at the scene, similar casings in the home, the witness testimony and images on the video that showed respondent firing a gun. The court noted that the video showed respondent placing something in the back of an SUV after the shooting; however that SUV was not searched.

¶ 27 Respondent requested release under house arrest in his mother's custody, but the State countered with his background, namely a violation of probation for unlawful use of a weapon and a pending trial for attempted murder. The trial court denied respondent's request. At the sentencing hearing, respondent was sentenced to the Illinois Juvenile Justice Department for an indeterminate period for up to the minor's 21st birthday and a maximum term of 15 years. This appeal followed.

¶ 28

ANALYSIS

¶ 29 On appeal, respondent contends that his findings of delinquency must be reversed where the only weapon recovered was a BB gun.

¶ 30 A. Respondent's Findings of Delinquency

¶ 31 Respondent was adjudicated delinquent on the basis of his findings of delinquency for aggravated discharge of a firearm and reckless discharge of a firearm. Respondent contends that his findings of delinquency for aggravated discharge of a firearm and reckless discharge of a firearm should be reversed where the State failed to prove that he discharged a firearm. He argues that although a .9 millimeter Luger shell casing was recovered from the scene and additional live .9 millimeter rounds were found in his bedroom, the only weapon recovered during a search was a BB gun. Defendant further contends that none of the witnesses definitively established that a firearm was discharged at Velez's vehicle. In light of the lack of such evidence, defendant concludes that the State failed to prove that he discharged an actual firearm beyond a reasonable doubt and that his findings of delinquency should be reversed.

¶ 32 Juvenile delinquency proceedings have three phases: the findings phase, the adjudicatory phase, and the dispositional phase. *In re Samantha V.*, 234 Ill. 2d 359, 365 (2009); *In re Nasie M.*, 2015 IL App (1st) 151678, ¶ 22. During the findings phase, the court holds a trial applying the rules of evidence for a criminal case, and the State presents proof beyond a reasonable doubt of every necessary fact to find a respondent delinquent. *Samantha V.*, 234 Ill. 2d at 365. If a delinquency finding is entered, the matter proceeds to sentencing. 705 ILCS 405/5-620 (West 2016). The sentencing phase is included in the adjudication phase, where the court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. 705 ILCS 405/5-705(1) (West 2016). If the court makes the minor a ward of the court,

the matter proceeds to the dispositional phase where the court fashions an appropriate sentence that will best serve the minor and the public. *Samantha V.*, 234 Ill. 2d at 365-66.

¶ 33

### 1. Standard of Review

¶ 34 It is the State's burden to prove beyond a reasonable doubt each of the elements of the charges against a defendant. *People v. Bueno*, 358 Ill. App. 3d 143, 162 (2005). When a minor respondent challenges the sufficiency of the evidence in his or her adjudication, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Gabriel W.*, 2017 IL App (1st) 172120, ¶ 28. When reviewing an adjudication on appeal, a reviewing court may not substitute its judgment for that of the trier of fact, particularly on issues of witness credibility, the weight their testimony deserves, or the reasonable inferences that may be drawn from their testimony or other evidence. *Gabriel W.*, 2017 IL App (1st) 172120, ¶ 29. This is because the trial court observed and heard the witnesses. *Gabriel W.*, 2017 IL App (1st) 172120, ¶ 29.

¶ 35 A reviewing court must give the State the benefit of all reasonable inferences. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 62. In determining the reasonableness of an inference, the trier of fact need not look for all possible explanations consistent with innocence or "be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *Nasie M.*, 2015 IL App (1st) 151678, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007)). The evidence of a single witness is sufficient to convict if the witness is found to be credible. *Daheya*, 2013 IL App (1st) 122333, ¶ 62. Testimony may be found insufficient to convict only where the record

evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Daheya*, 2013 IL App (1st) 122333, ¶ 62.

¶36 The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; rather, the evidence is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the minor's guilt. *Gabriel W.*, 2017 IL App (1st) 172120, ¶ 30. Circumstantial evidence that proves the elements of the crime charged beyond a reasonable doubt suffices to sustain a criminal conviction. *Nasie M.*, 2015 IL App (1st) 151678, ¶ 24. When determining the correctness of a trial court's findings in a juvenile case, a reviewing court may affirm for any basis found in the record. *Gabriel W.*, 2017 IL App (1st) 172120, ¶ 31.

¶ 37

## 2. Sufficiency of the Evidence

¶ 38 Here, respondent was found delinquent of aggravated discharge of a firearm and reckless discharge of a firearm, both of which require proof that a defendant actually possessed a firearm.

¶39 A person commits aggravated discharge of a firearm when he or she knowingly or intentionally discharges 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). An essential element to aggravated discharge of a firearm is the defendant's awareness of the presence of an individual in the direction in which he fires a weapon. *Daheya*, 2013 IL App (1st) 122333, ¶ 64.

¶40 A person commits reckless discharge of a firearm by discharging a weapon in a reckless manner which endangers the bodily safety of an individual. 720 ILCS 5/24-1.5(a) (West 2016). To sustain a conviction of reckless discharge of a firearm, the State must prove that the

defendant discharged a firearm in a reckless manner and endangered the bodily safety of an individual. *People v. Grant*, 2017 IL App (1st) 142956, ¶ 10.

¶ 41 In the case at bar, contrary to respondent's assertions, the State presented more substantive evidence than simply the recovered BB gun. The State presented Diaz's eyewitness testimony of the encounter between respondent and Velez, who saw respondent enter his home and come back with an object, later determined to be a gun, that he shot at the vehicle in which she was a passenger. The State also presented the testimony of respondent's neighbor, 88-year old Marovitch, who saw respondent arguing with someone in a vehicle, pull out a gun and then shoot at the vehicle. Additionally, the State presented the testimony of respondent's next-door neighbor, McKee, who, after hearing a loud noise, saw respondent standing outside and questioned him about a shooting before checking his surveillance cameras for footage of the events that occurred in front of his home. That footage, viewed in court and testified to by two witnesses at respondent's trial, showed respondent shoot a gun at Velez's vehicle and look around on the ground for a few moments, presumably for the shell casing, before placing an object in the back of a black SUV parked in front of his home. Police recovered a shell casing at the scene less than 20 minutes later and a subsequent search of respondent's residence yielded additional ammunition as well as a BB gun.

¶ 42 We disagree with respondent's characterization of the State's evidence and find that the State's evidence was sufficient to prove respondent guilty beyond a reasonable doubt of aggravated discharge of a firearm and reckless discharge of a firearm. Although respondent is correct that no gun was recovered, the direct evidence – testimony from eyewitnesses who saw respondent fire a gun and the video showing him fire a gun; as well as the reasonable inference

from the evidence, namely that respondent hid the gun in the black SUV which was never searched by police which is why it was not recovered, was sufficient to support his findings of delinquency, as the evidence showed that respondent possessed a firearm at the time of the shooting. See 720 ILCS 5/24-1.2(a)(2), 5/24-1.5(a) (West 2016).

¶ 43

#### CONCLUSION

¶ 44 For the foregoing reasons, we affirm the decision of the trial court.

¶ 45 Affirmed.