2014 IL App (1st) 140064-U

FOURTH DIVISION
November 6, 2014

No. 1-14-0064

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In the interest of S.C., a Minor,	)	Appeal from the
	)	Circuit Court of
(People of the State of Illinois,	)	Cook County, Illinois.
	)	
Petitioner-Appellee,	)	No. 13 JD 01448
v.	)	
	)	Honorable
S.C.,	)	Stuart P. Katz,
	)	Judge Presiding.
Respondent-Appellant).	)	

JUSTICE TAYLOR delivered the judgment of the court.
Justices Howse and Epstein concurred in the judgment.

ORDER

HELD: Juvenile appealed from his adjudications of delinquency for robbery, battery, and aggravated battery. This court affirmed his adjudication of delinquency and sentence for robbery, finding that (1) the victim's positive identification was sufficiently reliable to sustain an adjudication of delinquency, and (2) mandatory minimum sentence of five years' probation was not unconstitutional. However, this court vacated his adjudications of delinquency for battery and aggravated battery under the one-act one-crime doctrine.

¶ 1 Fifteen-year-old S.C. was arrested on April 8, 2013, after fifteen-year-old Lindale P. identified S.C. as one of four boys who had robbed him of $32.[1] S.C. was found guilty of robbery, battery, and aggravated battery. He was sentenced to five years' probation and ordered to perform community service. He now appeals his conviction and sentence. For the reasons that follow, we affirm his adjudication of delinquency and sentence for robbery, but we vacate his adjudications of delinquency for battery and aggravated battery based on the one-act one-crime doctrine.

¶ 2 I. BACKGROUND

¶ 3 At trial, the victim, Lindale, testified that he was 15 years old. On the evening of April 8, 2013, at around 7 p.m., he was playing basketball in the park with two of his friends. A group of "about seven" boys came and asked to play with them. They played together for about five to ten minutes. Then one of Lindale's friends pulled Lindale and his other friend aside, and he told them that he overheard one of the other boys saying, "Let's just get them now." Upon hearing this, Lindale and his friends threw the ball and ran away from the park in different directions.

¶ 4 Lindale testified that when he was about a block away from the park, he slipped on gravel, and four of the boys caught up with him. One of them was S.C. The four boys encircled Lindale and told him to empty his pockets. Lindale took out $32. The four boys took the money, and one of them hit Lindale in the face.

¶ 5 Regarding his opportunity to view his attackers, Lindale stated that at the time of the robbery, it was dark outside, but there was a streetlight approximately 20 feet away. The four boys stood around him for approximately a minute before taking his money. Lindale testified

[1] Juveniles Kevonte B., Tamari R., and Kendall F. were also arrested and charged in connection with the robbery.

that he remembered the appearances of the boys that he had been playing basketball with earlier, as well as which were on his team and which were on the opposing team. He stated that this was important in basketball "[b]ecause you have to know who to pass the ball to." He recognized S.C. as having been on the opposing team.

¶ 6 After taking Lindale's money, the four boys ran away toward the park. At this time, Lindale testified, he saw the other boys approaching (there were "about five" of them), but they turned around and ran away before reaching him. After they left, Lindale walked down the street and found his friend. They called the police.

¶ 7 Later that evening, Lindale testified that a police officer took him and his friend to identify a group of boys they had apprehended. There were "about 10" boys standing on the sidewalk in a row. The police asked Lindale to identify the four boys that had robbed him. Lindale was able to identify all four. He testified that it only took him a few seconds to identify S.C., and he was 100% certain of his identification. Approximately 30 minutes passed from the time of the robbery to the time that Lindale identified S.C.

¶ 8 The State also called Officer Paul Habiak to the stand. Officer Habiak testified that on the evening of April 8, 2013, he brought Lindale to view a group of youths that had been detained as possible offenders. There were approximately seven of them. According to Officer Habiak, Lindale immediately pointed to S.C. and positively identified him as participating in the robbery.

¶ 9 The parties stipulated that, if called to the stand, Officer Wright would testify that Lindale identified four individuals in the showup: S.C., Kevonte, Kendall, and Tamari. Those four individuals were arrested and searched. S.C. had $1 on his person, Kevonte had $1, Kendall had $5, and Tamari had $25. The State then rested.

¶ 10 The defense called two witnesses: S.C.'s friend Randy Boens and S.C. himself. Randy testified that on April 8, 2013, he went to the park with his friends S.C., Kendall, and Tamari. The three of them played two games of basketball with their friend Kevonte and various others whom Randy did not know. They played for approximately an hour. During that time, Randy testified that S.C. did not leave the game or leave the park. Randy did observe Kendall, Tamari, and Kevonte leaving the park, but he did not know where they went.

¶ 11 After they had finished playing, Randy stated that he and S.C. went to a gas station. Kendall, Tamari, and Kevonte were also at the gas station. Police arrived at the gas station and apprehended the five of them.

¶ 12 Finally, Randy testified that from the time he arrived at the basketball court until he went to the gas station, S.C. was with him the entire time. He never left the basketball court and Randy never lost sight of him.

¶ 13 S.C. testified in his own defense. He stated that on April 8, 2013, at around 8 p.m., he went to the basketball court with his friends Randy, Kendall, and Tamari. At the court, S.C. asked a group of four boys whom he did not know if they could play basketball together. His friend Kevonte later joined them, so there were nine boys total.

¶ 14 They played two games together. At the end of the last game, S.C. saw Lindale and another boy leaving the park. At the same time, S.C. also saw Kendall, Tamari, and Kevonte leaving the park. S.C. testified that he saw Lindale get robbed by Kendall, Tamari, and Kevonte. S.C. himself did not leave the park or participate in the robbery. He stayed in the park and got Randy a paper towel because Randy had been elbowed and was bleeding. After that, S.C. testified that he and Randy went to a gas station with Randy, where they met up with Kendall, Tamari, and Kevonte. He was arrested by police at the gas station.

¶ 15 On cross-examination, S.C. testified that he was not aware during the game that his friends planned to rob the other boys, and he did not hear anyone say "Let's get these boys now." He stated that when Lindale and his friend left the park, they were walking, not running. S.C. additionally testified, contrary to his direct testimony, that he did not see Kendall, Tamari, and Kevonte rob anybody. He stated that he saw the three of them leave the park, but he was not even aware that Lindale had been robbed until later, when he was at the gas station.

¶ 16 The trial court found S.C. guilty on all counts. It stated that it found Lindale to be a credible witness. Specifically, the court credited Lindale's testimony that the boys had only been playing basketball for around five minutes when one of Lindale's friends pulled him aside and said that he heard of a plot to rob them. The court also believed Lindale's testimony that he was chased by four boys, not three, and it found that Lindale had sufficient time to identify his assailants during the attack.

¶ 17 S.C. was sentenced to five years' probation, pursuant to section 5-715 of the Juvenile Court Act, which prescribes a mandatory minimum sentence of five years' probation for a juvenile who commits a forcible felony. 705 ILCS 405/5-715(a) (West 2012). S.C. was also ordered to perform community service. He now appeals his conviction and sentence.

¶ 18 II. ANALYSIS

¶ 19 On appeal, S.C. raises three contentions of error. First, he contends that the State did not prove him guilty beyond a reasonable doubt where its case relied exclusively upon an unreliable witness identification. Second, he contends that the Juvenile Court Act's mandatory minimum sentence of five years' probation for a forcible felony is unconstitutional. Third, he contends that under the "one act, one crime" rule, his adjudications of delinquency for battery and aggravated battery must be vacated.

¶ 20 A. Sufficiency of the Evidence

¶ 21 We begin by considering S.C.'s contention that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt.

¶ 22 Where a defendant challenges the sufficiency of the evidence used to convict him, the reviewing court must determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318 (1979); *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). The trier of fact has the responsibility to determine the witnesses' credibility and the weight to be given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001); *People v. Evans*, 209 Ill. 2d 194, 211 (2004). Accordingly, a reviewing court may not disturb the verdict at trial unless " 'the evidence is so palpably contrary to the verdict or so unreasonable, improbable or unsatisfactory as to create a reasonable doubt as to guilt.' " *People v. Sanchez*, 375 Ill. App. 3d 299, 301 (2007) (quoting *People v. Eiland*, 217 Ill. App. 3d 250, 260 (1991)). Under this standard, the reviewing court must make all reasonable inferences from the record in favor of the prosecution. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009).

¶ 23 In this case, S.C. argues that the evidence was insufficient to convict him because Lindale's identification of him as one of the robbers was unreliable and contradicted by defense witnesses. It is well established that the testimony of a single eyewitness is sufficient to convict, even if it is contradicted by the defendant, if the witness is credible and viewed the defendant " 'under such circumstances as would permit a positive identification to be made.' " *People v. Young*, 46 Ill. App. 3d 798, 801 (1977) (quoting *People v. Stringer*, 52 Ill. 2d 564, 569 (1972)). In evaluating the reliability of an eyewitness identification, courts consider the following five

factors: (1) the witness's opportunity to view the suspect during the offense; (2) the witness's degree of attention; (3) the accuracy of any prior descriptions given; (4) the witness's level of certainty at the time of the identification procedure; and (5) the length of time between the crime and the identification. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); see also *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977); *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989).

¶ 24 With respect to the first *Biggers* factor, it is undisputed that the robbery took place after dark, with a streetlight approximately 20 feet away, and the four robbers stood around Lindale for approximately a minute before taking his money. Based upon this evidence, S.C. argues that Lindale had insufficient opportunity to view the robbers. However, this court has held that "[a]n identification may be positive even though the witness viewed the accused for a short period of time." *People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989) (undercover officer's observation of the defendant for two to four minutes was sufficient to satisfy the first *Biggers* factor). In keeping with this principle, eyewitness identifications have been held to be sufficiently reliable even under circumstances that are less favorable than in the present case. See *People v. Herrett*, 137 Ill. 2d 195, 200, 204 (1990) (eyewitness had sufficient opportunity to observe and identify robber where he saw the robber's face only for "a few seconds" in a dimly lit pawnshop before his eyes were covered with duct tape); *People v. Rodriguez*, 134 Ill. App. 3d 582, 589-90 (1985) (where eyewitness saw suspect's face for a few seconds from a second-story window, his identification of defendant was held to be "sufficiently reliable to permit him to testify"). In the present case, Lindale had a greater opportunity to view the perpetrators than the eyewitnesses in *Herrett* and *Rodriguez*. Lindale testified that he was face-to-face with his robbers for a full minute. Additionally, the robbery was not the first time that Lindale saw S.C.'s face; Lindale

testified that he recognized S.C. from the five to ten minutes they played basketball together immediately preceding the robbery.

¶ 25 With respect to the second *Biggers* factor, the witness's degree of attention, Lindale testified that he had been paying attention to the appearances of S.C. and his friends during the basketball game, "[b]ecause you have to know who to pass the ball to." This heightened attention weighs in favor of the reliability of his identification. S.C. argues that Lindale's testimony in this regard is questionable, because it would be expected that the boys would have been playing "shirts and skins" and identifying their teammates based upon who was and was not wearing a shirt. This line of argument is entirely speculative and assumes facts not in evidence, since there was no testimony that the boys were, in fact, playing "shirts and skins." S.C.'s argument in this regard is therefore without merit.

¶ 26 S.C. additionally argues that Lindale's testimony is inconsistent as to how many boys came to play basketball that evening, which he claims is evidence of Lindale's inattention to detail. Lindale initially testified that seven boys came to join the game, but he later testified that when the four boys who robbed him ran away, they rejoined their five friends. He also testified that he viewed about 10 boys at the showup identification. Notwithstanding this testimony, nothing in the record suggests that Lindale was distracted during the robbery itself, which is the critical time period during which he recognized S.C. as one of his assailants. Consequently, we do not give much weight to any inconsistency regarding the number of boys he saw after the robbery was over.

¶ 27 The third *Biggers* factor is the accuracy of any prior descriptions of the perpetrator. This factor is inapplicable here, since the record does not indicate that Lindale gave the police any description of his assailants prior to the showup.

¶ 28 The final two *Biggers* factors both bolster the reliability of Lindale's identification. With regard to the witness' level of certainty, Lindale testified that he was 100% certain of his identification of S.C. This was corroborated by Officer Habiak, who testified that during the showup, Lindale immediately pointed to S.C. and identified him as one of the robbers.

¶ 29 S.C. argues that this factor should receive minimal weight because psychological research has established that there is a low correlation between a witness's confidence and the accuracy of his identification. *People v. Allen*, 376 Ill. App. 3d 511, 524 (2007) (acknowledging that, although jurors tend to rely on a witness's confidence in his identification as an indication of accuracy, studies have shown that there is in fact a low correlation between confidence and accuracy). However, as the State points out, S.C. did not offer an expert to testify about the psychology behind eyewitness identifications. Moreover, in any event, even if we were to credit S.C.'s assertions and accord lesser weight to this factor, it is still a factor that courts of this state must consider under *Biggers* and *Slim*.

¶ 30 Finally, the fact that Lindale's identification of S.C. occurred at a showup only around 30 minutes after the robbery enhances Lindale's reliability. S.C. cites *People v. Manion*, 67 Ill. 2d 564, 569 (1977), for the proposition that showups are inherently suggestive and therefore disfavored. *Manion* is inapposite because the showup at issue in *Manion* was a one-man showup, where defendant was handcuffed and alone in a squad car at the time of the identifications. *Id.* By contrast, the showup in the present case involved seven to ten boys, which enhances its reliability. See *People v. Broadnax*, 177 Ill. App. 3d 818, 833 (1988) (two-man showup considered more reliable than one-man showup, and resulting identification was held to be reliable).

¶ 31 Considering these five factors as a whole, we cannot say that the evidence is " 'so palpably contrary to the verdict *** as to create a reasonable doubt as to guilt' " (*Sanchez*, 375 Ill. App. 3d at 301 (quoting *Eiland*, 217 Ill. App. 3d at 260)). Lindale was face-to-face with the robbers for approximately a minute – significantly longer than the "few seconds" in *Herret* and *Rodriguez* – and he recognized S.C. from the basketball game earlier, during which he was paying attention to his fellow players' appearances. He positively identified S.C. immediately and with a high degree of certainty in a showup that occurred only 30 minutes after the robbery. Based upon these factors, his identification of S.C. is sufficiently reliable under *Biggers* to sustain S.C.'s conviction.

¶ 32 S.C. additionally urges that we should accept the alibi testimony of Randy, who testified that S.C. remained with him at the park after Lindale left. However, the weight to be given alibi evidence is a question of credibility for the trier of fact (*People v. Weatherspoon*, 63 Ill. App. 3d 315, 327 (1978)), and the trier of fact is not required to accept alibi testimony over positive identification of an accused (*Slim*, 127 Ill. 2d at 315 (citing *People v. Berland*, 74 Ill. 2d 286, 307 (1978))). This is particularly true where the alibi testimony is offered by a biased witness. *People v. Johnson*, 2013 IL App (1st) 111317, ¶ 63 (citing *People v. Mullen*, 313 Ill. App. 3d 718, 729 (2000) (eyewitness testimony was sufficient to convict defendant notwithstanding alibi testimony of defendant's girlfriend, grandmother, neighbors and friends)). The trial court in this case was entitled to find Lindale's testimony more credible than the testimony of S.C.'s friend. See *Ortiz*, 196 Ill. 2d at 259 (trier of fact has responsibility to determine witness credibility and resolve conflicts in evidence). Accordingly, we reject S.C.'s contention that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt.

¶ 33 B. Constitutionality of S.C.'s Sentence

¶ 34 S.C. next challenges the constitutionality of his sentence. As noted earlier, S.C. was sentenced to five years' probation under section 5-715 of the Juvenile Court Act, which imposes a mandatory minimum sentence of five years' probation for a juvenile who commits a forcible felony. 705 ILCS 405/5-715(a) (West 2012). S.C. argues that this sentence is unconstitutional for two reasons. First, he argues that a five-year mandatory minimum violates equal protection principles because five years is longer than any available probation term for an adult who commits the same crime. Second, he argues that imposition of a mandatory minimum sentence runs contrary to the legislature's stated goal of providing "an individualized assessment" of each juvenile found delinquent under the Act. 705 ILCS 405/5-715(a) (West 2012); 705 ILCS 405/5-101(1) (West 2012).

¶ 35 Section 5-715, which governs probation for delinquent minors, provides as follows:

> "(1) The period of probation or conditional discharge shall not exceed 5 years or until the minor has attained the age of 21 years, whichever is less, except as provided in this Section for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony or a forcible felony. The juvenile court may terminate probation or conditional discharge and discharge the minor at any time if warranted by the conduct of the minor and the ends of justice; provided, however, that *the period of probation for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony, or a forcible felony shall be at least 5 years*." (Emphasis added.) 705 ILCS 405/5-715 (West 2012).

¶ 36 In considering S.C.'s challenge to the constitutionality of this sentencing provision, we are mindful that a statute enjoys a strong presumption of constitutionality (*People v. Breedlove*, 213 Ill. 2d 509, 518 (2004); *People v. Blackorby*, 146 Ill. 2d 307, 318 (1992)), and the party

asserting otherwise bears the burden of rebutting that presumption and clearly establishing a constitutional violation (*People v. Johnson*, 225 Ill. 2d 573, 584 (2007); *People v. Esposito*, 121 Ill. 2d 491, 497 (1988)). The question of a statute's constitutionality is a question of law that we review *de novo*. *Johnson*, 225 Ill. 2d at 584.

¶ 37 Both the United States Constitution and the Illinois Constitution of 1970 require equal protection under the law, and our analysis is the same under both constitutions. U.S. Const. Amend. XIV; Ill. Const., Art. I, § 2. The guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner, unless there is an appropriate reason to treat them differently. *People v. Whitfield*, 228 Ill. 2d 502, 512 (2007); *People v. R.L.*, 158 Ill. 2d 432, 437 (1994). Under equal protection analysis, if a statute does not affect a fundamental right or involve a suspect class, as is the case here, then it only needs to satisfy the rational basis test. *Breedlove*, 213 Ill. 2d at 518 (citing *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 323 (1996)). Under that test, our review is limited and generally deferential; the statute will be found constitutional as long as the means employed by the statute to achieve the stated purpose of the legislation are rationally related to that goal. *Id.*

¶ 38 The stated purposes of the Juvenile Court Act are set forth in section 5-101 of that act, which provides:

> "(1) It is the intent of the General Assembly to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the General Assembly declares the following to be important purposes of this Article:
>
> (2) To protect citizens from juvenile crime.

(3) To hold each juvenile offender directly accountable for his or her acts.

(4) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to rehabilitate and to prevent further delinquent behavior through the development of competency in the juvenile offender. As used in this Section, 'competency' means the development of educational, vocational, social, emotional and basic life skills which enable a minor to mature into a productive member of society.

(5) To provide due process ***." 705 ILCS 405/5-101 (West 2012).

¶ 39 With these legislative goals in mind, we now turn to consider S.C.'s two constitutional challenges to his sentence.

¶ 40 1.

¶ 41 We first consider S.C.'s argument that his five-year mandatory minimum probation term violates equal protection principles because it is longer than any available probation term for an adult who commits the same crime. S.C. contends that this sentencing scheme violates a fundamental principle of law that children should not be punished more harshly than adults.

¶ 42 S.C. was adjudicated delinquent of robbery, a Class 2 felony classified under the criminal code as a "forcible felony." 720 ILCS 5/18-1 (West 2012); 720 ILCS 5/2-8 (West 2012). Initially, we observe that the penalties for juveniles found guilty of robbery are not strictly harsher than adult penalties, but simply different, with a greater emphasis on probation and a lesser emphasis on incarceration. An adult convicted of robbery may be sentenced to three to seven years' imprisonment plus two years of mandatory supervised release (730 ILCS 5/5-4.5-35(a), (l) (West 2012)), or he may be sentenced to a maximum of four years of probation (730 ILCS 5/5-4.5-35(d) (West 2012)). As noted, a juvenile who is found guilty of the same crime faces a mandatory minimum of five years' probation. 705 ILCS 405/5-715 (West 2012).

However, the juvenile may also face commitment to the juvenile division of the Department of Corrections until age 21, with the proviso that the period of commitment may not be longer than the maximum period of commitment for an adult who has performed the same crime (in this case, seven years). 705 ILCS 405/5-710(1)(a)(viii), (7) (West 2012). Thus, if the juvenile is older than 14 years old at the time of sentencing – which S.C. was in the instant case – then any incarceration will necessarily be shorter than the adult maximum; and, as noted, it is statutorily mandated that it cannot be longer than the adult maximum. Additionally, upon release, a juvenile is not subject to a mandatory supervised release term. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 118.

¶ 43 Thus, it is apparent that juveniles found guilty of robbery, as a whole, face less imprisonment but more probation time than their adult counterparts. The question is whether there is a rational basis for differentiating between juveniles and adults in this fashion. We find that there is.

¶ 44 Our supreme court has recognized that although the Juvenile Court Act sets forth multiple goals – individual accountability, protection of the public, due process – the primary goal of the juvenile justice system is rehabilitation. *People v. Taylor*, 221 Ill. 2d 157, 170 (2006) (recognizing that "juvenile proceedings are undergirded by the ideal of rehabilitation rather than punishment") (citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (plurality op.)). Indeed, rehabilitation is a more important goal in the juvenile justice system than in the adult criminal justice system. *Jonathon C.B.*, 2011 IL 107750, ¶ 93; see *In re A.G.*, 195 Ill. 2d 313, 317 (2001) (proceedings under the Juvenile Court Act "are to be administered in a spirit of humane concern for, and to promote the welfare of, the minor"). Moreover, juveniles, as a group, are considered to be less culpable than adult offenders. *Miller v. Alabama*, 132 S. Ct.

2455, 2464 (2012) (stating that "juveniles have diminished culpability and greater prospects for reform") (citing *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010)).

¶ 45 Based upon these considerations, it is reasonable that the legislature would choose to mete out less harsh punitive measures to juveniles, but also provide them with additional scrutiny and structure to help reform them. Indeed, a key stated goal of the Juvenile Court Act is helping juvenile offenders to develop "educational, vocational, social, emotional and basic life skills" so that they may "mature into [] productive member[s] of society." 705 ILCS 405/5-101(c) (West 2012). When viewed as a whole, the current sentencing scheme – which provides shorter commitment times for juveniles over the age of 14, but also a mandatory five-year probationary term – is rationally related to this goal. A five-year probationary term provides delinquent juveniles with the proper scrutiny, structure, discipline, and services needed to help them become productive citizens, rather than developing into chronic offenders. At the very least, we cannot say that such a sentencing scheme is not rationally related to the goals of the legislation. Accordingly, under the deferential rational basis test, we find that the difference in penalties for juveniles and adults who have been convicted of robbery does not violate equal protection principles. *Breedlove*, 213 Ill. 2d at 518.

¶ 46 2.

¶ 47 We next consider S.C.'s argument that a mandatory minimum probation term violates equal protection principles because it runs contrary to the legislature's stated goal of providing an "individualized assessment" of delinquent juveniles (705 ILCS 405/5-101(1) (West 2012)).

¶ 48 At the outset, we note that S.C. does not explicitly state what statutory classification he is challenging. However, the mandatory minimum probation term of which he complains only applies to those juveniles who have been convicted of a forcible felony. 705 ILCS 405/5-715

(West 2012). It is therefore apparent that the classification at issue is between those juveniles who have been convicted of a forcible felony and those juveniles who have been convicted of a lesser offense. The State argues that there is an appropriate reason to treat these groups differently and, in particular, that a five-year mandatory minimum probation term for juvenile forcible felons is rationally related to the legislature's goals. We agree.

¶ 49 Our supreme court has upheld the constitutionality of mandatory minimum sentences in the juvenile justice context in *People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67 (1980).[2] In that case, respondents challenged the constitutionality of the Habitual Juvenile Offender Act, which provides that any minor who is adjudged a habitual juvenile offender shall be sentenced to confinement until the age of 21. *Id.* at 71. The *Chrastka* court found that enactment of such a

[2] We note that the State also cites a number of cases in which mandatory minimum sentences were found to be constitutional for adult offenders. *People v. Dunigan*, 165 Ill. 2d 235 (1995) (Habitual Criminal Act, mandating sentence of life imprisonment for third conviction of Class X felony, was not unconstitutional); *People ex rel. Daley v. Strayhorn*, 119 Ill. 2d 331, 336 (1988) (mandatory minimum penalty was constitutional and left sentencing judge with no discretion as to defendant's sentence); *People v. Tompkins*, 376 Ill. App. 3d 629, 637 (2007) (mandatory minimum was constitutional notwithstanding the fact that it precluded the trial court from considering evidence in mitigation). These cases are all inapposite, insofar as they deal with adult offenders and not juveniles. S.C.'s challenge to the constitutionality of the mandatory minimum in this case is premised upon the Juvenile Court Act's express goal of "provid[ing] an individualized assessment of each alleged and adjudicated delinquent juvenile" (705 ILCS 405/5-101(1)(c) (West 2012)); no such parallel provision exists for adult offenders.

mandatory minimum sentence, even in the juvenile justice context, was a permissible use of the legislature's authority:

> "It is indisputable that the legislature has the authority to define offenses against the People and to determine sentences, and this authority, by definition, enables the legislature to establish minimum sentences. Such legislative action necessarily limits the inquiry and function of the judiciary in imposing sentences, but this alone does not render the legislation violative of the constitutional provisions upon which respondents rely. Any resulting diminution of the judiciary's role is adequately remedied by the legislature's clear and comprehensive treatment of the subject, and we cannot say that the means chosen by the legislature is not ' " *** reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare." ' " *Id.* at 79 (quoting *People v. Bradley*, 79 Ill. 2d 410, 417 (1980) (quoting *Heimgaertner v. Benjamin Electric Manufacturing Co.*, 6 Ill. 2d 152, 159 (1955))).

The *Chrastka* court additionally found no violation of equal protection principles, due to the State's compelling interest in protecting society from habitual juvenile offenders. *Id.* at 80-81.

¶ 50 In keeping with our supreme court's decision in *Chratska*, we find that S.C.'s sentence in the instant case does not violate equal protection principles but, rather, is rationally related to the goals set forth in section 5-101 of the Juvenile Court Act. We begin by considering the goal that S.C. focuses upon, namely, providing an individualized assessment of delinquent juveniles in order to rehabilitate them and prevent further delinquent behavior. 705 ILCS 405/5-101(1)(c) (West 2012). We begin by noting that, despite the five-year mandatory minimum probationary term, the trial court is not entirely divested of discretion in sentencing a juvenile convicted of a forcible felony. The trial court may choose to sentence the juvenile to probation until he reaches

the age of 21 (705 ILCS 405/5-710(1)(a)(viii) (West 2012)), which, in S.C.'s case, would have meant an additional year of probation, since he was 15 at the time of sentencing. Additionally, the trial court may sentence the juvenile to commitment in the juvenile division of the Department of Corrections until age 21. 705 ILCS 405/5-710(1)(b) (West 2012). It is apparent that the trial court in this case did, in fact, exercise its discretion in choosing not to impose these harsher penalties upon S.C., presumably because of S.C.'s unique characteristics, his background, and the nature of the offense.

¶ 51 Therefore, it cannot be said that the mandatory minimum in this case thwarts the stated legislative goal of providing an individualized assessment of delinquent juveniles for purposes of rehabilitation. On the contrary, it serves an important rehabilitative purpose. As discussed earlier, a five-year probationary term provides juveniles with the proper scrutiny, structure, discipline, and services needed to help them become productive citizens. The legislature could rationally conclude that those juveniles who have committed a forcible felony, as opposed to those found delinquent of lesser offenses, need a five-year term of probation in order to help them stay on track to become law-abiding citizens.

¶ 52 The five-year mandatory minimum is also rationally related to the other goals of the Juvenile Court Act, namely, protecting citizens from juvenile crime and holding juvenile offenders accountable for their actions (705 ILCS 405/5-101 (West 2012)). It is entirely reasonable for the legislature to conclude that juvenile offenders who have committed forcible felonies are more dangerous to the public because of their use or threat of force in face-to-face encounters. See *Chrastka*, 83 Ill. 2d at 81 (mandatory minimum sentence in juvenile justice context was constitutional on grounds of protecting public). It is similarly reasonable to consider such crimes more serious and therefore impose a higher penalty on a theory of accountability.

Accordingly, we must reject S.C.'s claim that no rational basis exists for the classification in the instant case.

¶ 53 Notwithstanding the foregoing, S.C. contends that the legislature's goals could be better satisfied if no mandatory minimum sentence were in effect. With no mandatory minimums, courts would enjoy broader latitude to perform individualized assessments of delinquent juveniles. Additionally, S.C. argues, the legislative goals of protecting the public, holding juveniles accountable for their actions, and rehabilitating juveniles would not have to suffer, since courts would still have discretion to impose a five-year probationary term in those cases where they deemed such a sentence to be appropriate under the circumstances. S.C. claims that such a system would save limited resources by allocating five-year probationary terms only to those offenders who truly needed or deserved them, while according lesser sentences in cases where there were mitigating factors. See Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction*, http://www.ijjc.illinois.gov/rta (last visited September 30, 2014) (criticizing the five-year mandatory minimum probationary period for all forcible felonies on grounds that "the probation oversight and resources available to help prevent delinquent behavior among high-risk youth are diluted when courts are unable to discharge lower-risk and rehabilitated youth").

¶ 54 There is some cogency to S.C.'s arguments in this regard, but it is not this court's province to strike down a statute because it may not be the optimal means of reaching the legislature's goals. Rather, under rational basis review, a statute is constitutional as long as the means employed by the statute to achieve the stated purpose of the legislation are rationally related to that goal. *Breedlove*, 213 Ill. 2d at 518. For the reasons stated above, the statute at issue is sufficient to meet this deferential standard.

¶ 55 Finally, S.C. argues that, if there were no five-year mandatory minimum probationary period, he would be a prime candidate to receive a lesser sentence. We need not directly address this argument, as it bears no direct impact upon our decision. However, we note in passing that S.C.'s arrest report identified him as a member of the Brick Squad Gangster Disciple street gang, although S.C. subsequently denied any gang involvement to his probation officer. Additionally, according to a social investigation report prepared by S.C.'s probation officer, S.C. had a history of a five-day suspension at his high school, and two years ago, he had a "tantrum" at home which resulted in his mother calling the police, although no arrest was made. Under these facts, S.C.'s assertion that his background should warrant a more lenient sentence is at least questionable.

¶ 56 C. Application of the One-Act One-Crime Doctrine

¶ 57 Finally, S.C. contends that under the one-act one-crime doctrine, his adjudications of delinquency for battery and aggravated battery must be vacated, because the force that formed a necessary element of those crimes is the same force that was used to effectuate the robbery. The State concedes that S.C.'s adjudication of delinquency for battery should be vacated, but it contends that his adjudications of delinquency for aggravated battery and robbery arose from separate acts and should therefore be affirmed.

¶ 58 Initially, we note that S.C. has waived this issue by failing to raise it below. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, the plain-error doctrine allows us to review unpreserved error that is "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). An alleged violation of the one-act one-crime doctrine affects the integrity of the judicial process and may be considered as plain error. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004).

¶ 59 The common-law one-act one-crime doctrine allows for only one criminal conviction for a single act. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996) (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). That is, multiple convictions are improper where they are based on a single physical act or where one charge is a lesser included offense of another. *People v. Artis*, 232 Ill. 2d 156, 165 (2009); *King*, 66 Ill. 2d at 566 (defendant's multiple convictions did not violate one-act one-crime principle where the offenses "are based on separate acts, each requiring proof of a different element"). The question of whether convictions must be vacated under the one-act one-crime rule is a question of law that we review *de novo*. *People v. Rogers*, 364 Ill. App. 3d 229, 240 (2006).

¶ 60 Under our supreme court's decision in *King*, 66 Ill. 2d at 566, our analysis follows a two-step process. We must first determine whether the defendant's conduct consisted of separate acts or a single physical act. *Id.*; see also *Rodriguez*, 169 Ill. 2d at 186 (reaffirming and discussing *King* analysis). An "act" is defined as "any overt or outward manifestation which will support a different offense." *King*, 66 Ill. 2d at 566. If we determine that defendant committed a single physical act, multiple convictions based upon that single act are improper. *Rodriguez*, 169 Ill. 2d at 186. On the other hand, if we determine that defendant committed separate acts, then we consider whether the multiple convictions are lesser included offenses. *Id.* If so, then multiple convictions are improper, and the conviction for the lesser included offenses should be vacated; if not, then multiple convictions may be entered. *Id.*

¶ 61 Therefore, we must first determine whether S.C.'s conduct consisted of separate acts or a single physical act. S.C. argues that his taking of Lindale's money and his attendant use of force amounts to a single physical act that supports only a robbery conviction. We disagree. In this regard, we find the instant case to be highly analogous to *People v. Pearson*, 331 Ill. App. 3d 312

(2002), in which the court rejected a similar argument. In *Pearson*, the defendant grabbed the victim's purse off her shoulder and, in the struggle that ensued, knocked her to the ground. *Id.* at 314. He was convicted of robbery and aggravated battery. On appeal, he argued that his convictions violated the one-act one-crime doctrine, since his actions amounted to a single physical act that would only support a single conviction. *Id.* at 322. The *Pearson* court disagreed, explaining:

> "Here, defendant contends that the victim was knocked to the ground in the course of a single continuous act-robbery. We disagree. Although closely related, taking the purse and then pushing the victim to the ground are separate acts. Two separate acts do not become one solely because of proximity in time. [Citation.] We conclude that the act of taking the purse and the act of pushing the victim to the ground were overt outward manifestations that support the offenses of robbery and aggravated battery." *Id.* (citing *People v. Myers*, 85 Ill. 2d 281, 287-88 (1981) (two cuts with a knife to the same victim in the same area were not one physical act)).

¶ 62 See also *King*, 66 Ill. 2d at 566 ("when more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered"); *People v. McLaurin*, 184 Ill. 2d 58, 105 (1998) ("multiple convictions and concurrent sentences are permitted where a defendant has committed several acts, despite the interrelationship of those acts").

¶ 63 Similarly, in the instant case, although S.C.'s act taking of Lindale's money and his attendant use of force were closely related, they still constituted separate overt and outward manifestations that would support the offenses of robbery and aggravated battery. *King*, 66 Ill. 2d at 566.

¶ 64 We therefore turn to the second step of the *King* analysis and consider whether aggravated battery is a lesser included offense of robbery. (As noted, the State has conceded that battery is a lesser included offense of aggravated battery and that S.C.'s adjudication of delinquency for battery must therefore be vacated.) When determining whether an offense is a lesser included offense, we look to the language of the charging instrument. *McLaurin*, 184 Ill. 2d at 104 (citing *People v. Hamilton*, 179 Ill. 2d 319, 324 (1997)). The greater offense, as described in the charging instrument, must set forth the main outline of the lesser offense. *Id.* at 104-05.

¶ 65 In this case, the petition for adjudication of wardship states that S.C. committed the offense of robbery in that he "knowingly took property, to wit: $32 USC, from the person or presence of Lindale P[], by the use of force or threatening the imminent use of force." It further states that S.C. committed the offense of aggravated battery "in that *** while Lindale P[] was at or about 7300 S Perry Ave, Chicago, IL 60621, a public way, the above-named minor knowingly made physical contact of an insulting or provoking nature to Lindale P[], in that he struck Lindale P[] about the head and body." S.C. argues that, although the petition is not entirely clear as to the precise nature of the force used by S.C. to accomplish the robbery, the evidence presented at trial shows that the force was the same as alleged in the aggravated battery charge. That is, the only force that S.C. used against Lindale was in the process of carrying out the robbery. We agree.

¶ 66 In this regard, the present case is similar to *People v. Houston*, 151 Ill. App. 3d 718 (1986). The *Houston* defendant was convicted of robbery, theft, and battery based upon an incident where he took a woman's purse and pushed her while making his escape. *Id.* at 719-20. On appeal, the court vacated his conviction for theft because the indictment clearly showed that

it was based upon the same physical act of taking the victim's property as was the robbery offense. *Id.* at 723. The court also vacated the battery conviction. *Id.* Although the indictment merely stated that he took the victim's purse " 'by the use of force' " without specifying the nature of the force used, the evidence presented at trial clearly showed that the force at issue was his pushing of the victim, which was the same force that constituted the offense of battery. *Id.* at 722-23. Thus, both convictions were based upon the same physical act. See also *People v. Jordan*, 33 Ill. App. 3d 80, 83 (1975) (vacating an aggravated battery conviction that was based upon the same conduct as defendant's robbery conviction). Likewise, the aggravated battery in the instant case is merely a lesser included offense of robbery, insofar as it is based solely upon S.C.'s act of striking Lindale during the course of the robbery, and S.C.'s adjudication of delinquency for aggravated battery must therefore be reversed. *Rodriguez*, 169 Ill. 2d at 186 (where one of defendant's convictions is a lesser included offense of another conviction, the conviction for the lesser included offense should be vacated).

¶ 67 The State nevertheless argues that we should follow *Pearson*, 331 Ill. App. 3d at 323, where the court found that aggravated battery was not a lesser included offense of robbery. However, the *Pearson* decision was based upon specific language in the indictment that is not present here. Specifically, in *Pearson*, the indictment for aggravated battery stated that defendant " 'intentionally or knowingly' " caused bodily harm to the victim, while the indictment for robbery was silent as to the defendant's mental state. *Id.* Because the robbery charge did not set out the required mental state to sustain an aggravated battery conviction, the *Pearson* court found that aggravated battery was not a lesser included offense of robbery. *Id.* By contrast, in the instant case, both the charge for robbery and the charge for aggravated battery

state that S.C. acted "knowingly." Accordingly, the reasoning applied by the *Pearson* court does not apply here.

¶ 68 III. CONCLUSION

¶ 69 For the foregoing reasons, we affirm S.C.'s adjudication of delinquency and sentence for robbery but vacate his adjudications of delinquency for aggravated battery and for battery. We additionally correct the mittimus to reflect this change.

¶ 70 As a concluding matter, the State requests that this court require S.C. to pay costs and a fee of $100 to the State for having to defend this appeal, pursuant to *People v. Nicholls*, 71 Ill. 2d 166, 174 (1978), in which the court held that the State is authorized by statute to recover attorney fees as costs in the appellate court against "an unsuccessful criminal appellant upon affirmance of his conviction." See also 725 ILCS 5/110-7(h) (West 2012), 55 ILCS 5/4-2002.1 (West 2012). However, insofar as we are vacating S.C.'s adjudications of delinquency for aggravated battery and for battery, S.C. is not an unsuccessful criminal appellant, so recovery of costs is not warranted.

¶ 71 Affirmed in part and vacated in part; mittimus corrected.