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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re D.M. a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 12-JD-185
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-	)	Patrick Yarbrough,
Appellee v. D.M., Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Jorgensen and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence was sufficient to show that respondent possessed a firearm and that his actions were the proximate cause of a police officer's injury; trial court did not fail to properly apply section 5-750 of the Juvenile Court Act of 1987 (705 ILCS 405/5-750 (West 2012)) prior to committing respondent to Illinois Department of Juvenile Justice; but respondent's conviction for aggravated unlawful use of a weapon violated one-act, one-crime principles.

¶ 2 I. INTRODUCTION

¶ 3 Following a bench trial, respondent, D.M., was adjudicated delinquent and a dispositional order of commitment was entered. D.M. was found guilty of three counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6 (West 2012)), which merged into a single count, one count of

possession of a firearm without a firearm owner's identification (FOID) card (430 ILCS 65/2 (West 2012)), and two counts of resisting a police officer (720 ILCS 5/31-1 (West 2012)). One of the resisting counts was elevated to a felony because a police officer was injured as he pursued respondent. Respondent was committed to secure confinement in the Illinois Department of Juvenile Justice for an indeterminate period. Respondent now appeals, raising four issues. First, he argues that the State failed to prove that he possessed a firearm. Second, he asserts that the State did not prove that his actions were the proximate cause of a police officer's injuries or that his actions constituted resistance or obstruction with respect to that officer. Third, he contends, and the State agrees, that his adjudication and sentence on Count III violate one-act, one-crime principles. Fourth, he charges that the trial court did not comply with applicable statutes before committing him to the Department of Juvenile Justice. For the reasons that follow, we vacate in part and affirm in part.

¶ 4

## II. BACKGROUND

¶ 5 The following evidence was presented at respondent's trial. The State first called Officer William Donato of the Rockford police department. Donato testified that he was on duty during the morning of March 1, 2012.<sup>1</sup> He heard a series of gunshots, and, "almost immediately," he observed a vehicle fleeing from a gas station parking lot. The vehicle was a "gold Buick four door," and there were four occupants in the car. Officer Dulgar, Donato's partner, executed a U-turn and followed the car. They reached speeds of 70 to 80 miles-per-hour. The weather was clear, but there was snow on the ground. The car ran several red lights. The officers ceased pursuit and lost sight of the car. They continued westbound "just to make sure the vehicle had not crashed." Subsequently, two other

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<sup>1</sup>Donato responded affirmatively when asked if he was on duty on March 1, 2012. The actual date of the offense was March 4, 2012.

officers located the car at 907 Bruce Street in Rockford. Donato and Dulgar searched the area. Two male suspects were taken into custody (one was respondent). Donato spoke with respondent. Donato was aware that a handgun had been recovered at 1021 North Rockton Avenue. Respondent was located at 1105 North Horsman Street, and the other male suspect was taken into custody at 1028 North Rockton Avenue. He asked respondent about the handgun, but respondent provided no details. Respondent stated something to the effect of “you got the gun, you got footprints, but you don’t have me with a gun, I will take my chances in [c]ourt.” Respondent did not have a FOID card.

¶ 6 During cross-examination, Donato acknowledged that he did not observe a handgun when he first saw the Buick leaving the gas station parking lot. The officers’ presence at the gas station was “random.” Further, no gunshot-residue tests were performed on any of the occupants of the car.

¶ 7 The State next called Gregory Yalden, also of the Rockford police department. He was on duty on March 4, 2012. He was in an unmarked squad car with another officer. He heard Donato and Dulgar’s report of gunshots on the radio and proceeded to the area. Yalden and his partner moved to a position where Yalden believed they would intercept the fleeing vehicle and waited. Yalden observed the vehicle approaching with Donato and Dulgar in pursuit. Yalden estimated the vehicle was going at least 60 miles-per-hour. The vehicle passed Yalden (who was traveling toward it). Yalden made a U-turn and followed the vehicle; however, he did not activate his overhead lights. He tried not to alert its passengers to his presence, hoping they would stop and flee on foot. It appeared that there were four people in the fleeing car. Yalden eventually found the vehicle parked at an “odd angle” with the headlights on in a driveway at 907 Bruce Street. The vehicle was unoccupied, and two females were near the house at that location. The females were taken into custody.

¶ 8 Yalden advised by radio that two other subjects had fled on foot to the north—as he had originally seen four people in the vehicle and he observed no one cross the street to the south as he approached 907 Bruce Street. There was fresh snow, and Yalden observed footprints coming from the vehicle, including two sets that came out of the back doors of the car and went north. Yalden looked into the vehicle and observed a shell casing on the rear, passenger-side floor. Footprints from the front-seat of the vehicle on both the driver and passenger side led to where the two females were found. Footprints from the rear, driver’s side went along the east side of the house at 907 Bruce Street and through the backyard, around the rear of a garage, and to an alley. The footprints that originated from the rear, passenger-side of the vehicle went along the east side of a driveway and also went through the backyard, though “away from the original set from the rear driver’s side.” Yalden followed both sets of tracks, and both went near 1021 North Rockton Avenue. One set of tracks passed near the residence at that address, and the other passed about 30 feet to the north. Officers Wagner and Castronovo, after taking respondent into custody, followed his tracks back to 1021 North Rockton Avenue and found the handgun lying next to the residence on its north side. The set of footprints that passed near the house was “right next to where the handgun was.” After respondent was taken into custody, Yalden inspected his shoes and determined that they were the same as the ones leading from the rear, passenger-side of the car to “where the gun was recovered.” The other male suspect’s shoes matched the other set of footprints. There was no snow on the handgun when it was recovered.

¶ 9 During cross-examination, Yalden explained that the gun was found within “one foot of the actual foundation of the residence” at 1021 North Rockton Avenue. It appeared that the gun had been “freshly discarded” and “dropped” there. Yalden acknowledged that there were no obstructions

between where the gun was found and where the set of footprints passed 30 feet to the north. The other set of footprints passed directly over the gun.

¶ 10 Officer Katy Statler, also of the Rockford police department, next testified for the State. On March 4, 2012, she was on duty and responded to the area of North Rockton Avenue and Ashland Avenue after receiving a call regarding “a vehicle fleeing from the east side from a possible shots fired incident.” Other officers were pursuing respondent on foot, and Statler remained in her vehicle. They had lost contact with respondent. She observed respondent, who was “going from porch to porch.” A woman was just arriving home from work and walked onto her porch. The woman screamed, and respondent ran west across North Rockton Avenue. Still in her vehicle, Statler pursued respondent. She drove to the other side of the block to Horsman Street (which parallels North Rockton Avenue to the west). She saw respondent “drop down by the corner of [a] fence” at 1105 North Horsman Street. Statler got out of her car. Officer Stundzia approached from the south. Statler drew her weapon and ordered respondent to show his hands. Respondent immediately complied and stood up. There was a fence between the two officers and respondent. The two officers grabbed respondent’s hands and ordered respondent to come over the fence. They pulled respondent over the fence, and respondent landed on the ground. Respondent was not compliant when directed to place his hands behind his back.

¶ 11 Statler transported respondent back to where the Buick was parked on Bruce Street. Respondent admitted being in the Buick and running. Respondent denied knowing anything about an incident at a gas station. Statler asked respondent if there was evidence in the vehicle. Respondent stated that if the police found any shell casings, they would not have his fingerprints on them. Statler then asked how he knew there would be shell casings in the Buick if he did not know

anything about a shooting at the gas station. Respondent then stated that whatever the police found would not have his fingerprints.

¶ 12 During cross-examination, Statler admitted that she never observed respondent in possession of a gun. She described the fence that they pulled respondent over as “loose” and “chicken wire if that makes sense.” Respondent did not assist as the officers pulled him over the fence. No contraband, bullets, or magazines were found on respondent.

¶ 13 The State then called Rockford police detective Matthew Gibbons. Gibbons testified that he responded to 907 Bruce Street on the morning of March 4, 2012, regarding a vehicle that had been struck by gunfire. He inspected the Buick and noted that the front windshield had been struck and that there was a shell casing in the back of the passenger compartment. It appeared that the bullet had glanced off the windshield and not entered the passenger compartment. Subsequently, Gibbons was advised that the gun had been found, and he went to collect it. The gun was not loaded when Gibbons took it into his possession. Gibbons processed the gun and the shell casing for latent evidence, including fingerprints, but did not find any. Gibbons opined that it was not uncommon to find no latent evidence on such items. During cross-examination, Gibbons acknowledged that a gunshot-residue test was not performed on respondent.

¶ 14 The State’s next witness was David Welte, a forensic scientist at the Illinois State Police forensic science laboratory. Welte examined the handgun recovered by Gibbons. He also examined the shell casing recovered from the Buick. Welte determined that the shell casing had come from the handgun. When cross-examined, Welte agreed that his testing did not reveal who fired the gun or when it was fired.

¶ 15 Officer Clint Wagner of the Rockford police department next testified for the State. On March 4, 2012, he responded to the area of North Rockton Avenue and Bruce Street regarding a vehicle pursuit. Yalden advised that a suspect was running north from 907 Bruce Street. Wagner was going north on North Rockton Avenue and observed an individual running northward down the alley that paralleled North Rockton Avenue to the east. Wagner turned onto the next cross street (Ashland Avenue) and then drove down the alley. He stopped and exited his car. Officer Castronovo was present, as were several other officers. Wagner began following a set of footprints. There had been a recent snowfall, and the prints were the only ones in the area. He and four other officers followed the tracks to a residence on Ashland Avenue (Ashland parallels Bruce Street one block to the north). As they approached, an individual jumped off the porch and ran westbound across North Rockton Avenue. As the officers pursued this individual, they encountered a six-foot chainlink fence. They heard an officer yelling from the direction of Horsman Street, “Show me your hands” and “Get down to the ground.” This indicated that the officer had the suspect in sight, so they decided to jump the fence to provide assistance. Wagner and Castronovo climbed the fence without incident, but Officer Jones fell and landed on the other side of the fence. Subsequently, they carried Jones out to Horsman Street, as he had broken his ankle. Wagner and Castronovo then followed the tracks backward to 1021 North Rockton Avenue, where they located the handgun. Wagner testified that when he first saw the handgun, it had no snow on it and appeared to have been “recently placed there.” During cross-examination, Wagner stated that the gun was found about 10 feet from the closest set of footprints.

¶ 16 Finally, the State called Officer Christopher Jones. Jones testified that he is employed as a police officer for the City of Rockford. Jones responded to the area of North Rockton Avenue and

Ashland Avenue in response to a call regarding a fleeing vehicle. He proceeded northbound on North Rockton Avenue then east on Ashland Avenue. Jones observed a woman unloading packages from a car in front of an Ashland Avenue residence. He proceeded eastbound past where he saw the woman, traveling at less than five miles-per-hour. It was about 2 a.m. He heard a scream come from the area where he had previously observed the woman. He looked back and saw an individual running west from this same area. Jones placed his squad car in reverse and backed up. He then exited his car to pursue the individual. Wagner and Castronovo were in the area. Jones proceeded west and came to a six-foot chainlink fence. He heard Statler yelling at someone. Based on what he heard, he believed that Statler had made contact with the subject. As Statler was confronting the subject, Jones felt he “needed to get to her as directly and quickly as possible.” He surmised the quickest way was to jump the fence. However, when Jones landed on the opposite side of the fence, it was slippery and he rolled and crushed his ankle. Jones stated that he would not have “been in that area if [he was] not pursuing the suspect.” He would not have crossed the fence had he not heard Statler yell (he added that had he observed footprints crossing the fence, he would have followed them). Jones’ ankle was broken.

¶ 17 Following the admission of various exhibits, the State rested. Respondent moved for a directed verdict, which was denied. The defense then rested without calling any witnesses. Ultimately, respondent was found guilty of three counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6 (West 2012)), one count of possession of a firearm without a FOID card (430 ILCS 65/2 (West 2012)), and two counts of resisting a police officer (720 ILCS 5/31-1 (West 2012)). The trial court determined that the first two counts of aggravated unlawful use of a weapon merged with the third, as they were all based on a single act of possession. It sentenced respondent to an

indeterminate period of up to five years in the Illinois Department of Juvenile Justice. This appeal followed.

¶ 18

### III. ANALYSIS

¶ 19 On appeal, respondent raises the following issues. First, he contends that the State failed to prove beyond a reasonable doubt that he possessed a firearm. Second, he argues that the State failed to prove that his actions were the proximate cause of Jones' injuries or that his actions constituted resistance or obstruction with respect to Jones. Third, he asserts that his adjudication and sentence on Count III violate one-act, one-crime principles. Fourth, he argues that the trial court did not follow necessary statutory guidelines before sentencing him to the Department of Juvenile Justice. We will address these issues in turn.

¶ 20

#### A. Sufficiency of the Evidence: Possession of the Handgun

¶ 21 Respondent first argues that the State did not prove beyond a reasonable doubt that he possessed a handgun. When a defendant challenges the sufficiency of the evidence, the relevant issue is “whether, viewing the evidence in the light most favorable to the State, *any* rational trier of fact could find the essential elements of the charged offense beyond a reasonable doubt.” (Emphasis in original.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09 (2009). It is not the role of a court of review to retry a defendant (*People v. Smith*, 318 Ill. App. 3d 64, 73 (2000)), and we will not substitute our judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). We will not reverse “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt.” *Graham*, 392 Ill. App. 3d at 1009. Respondent contends that the evidence that he possessed the handgun was so improbable and unsatisfactory that his convictions based on possession must be undone.

¶ 22 We disagree. Possession may be proven by circumstantial evidence. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). There is sufficient evidence in the record from which the trial court could find that respondent possessed the handgun. There was evidence that the gun was in the Buick, as Welte testified that the shell casing recovered from the car had been fired from the handgun. There was also evidence that respondent was in the Buick, as he admitted this to Statler. Respondent's footprints led from the Buick to the handgun and then on to where respondent was apprehended. Moreover, as the trial court noted, there was no evidence that the gun had been thrown 30 feet. This evidence is neither improbable nor unsatisfactory.

¶ 23 Respondent states that “[i]t is not clear why it was significant to the trial court that no snow was found on the gun once it lay on the ground.” While we agree with respondent's observation, this is a minor point. Based on Welte's testimony, the gun was in the Buick, so it could not have been where it was found for very long. Respondent points out that it may have hit the side of the house, presumably dislodging any snow from it, regardless of whether he or the other minor who passed 30 feet to the north threw it. Accepting this proposition (though it is not clear to us how snow would have gotten on the gun before it was thrown), that would simply mean that the absence of snow would point neither toward nor away from respondent. In other words, we do not find this argument particularly persuasive.

¶ 24 Respondent next contends that the other minor could have tossed the gun next to the house. Thus, though he does not use the phrase, respondent has set forth a reasonable hypothesis of innocence. The reasonable-hypothesis-of-innocence standard was rejected by our supreme court over 20 years ago. See *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). Thus, the mere fact that the other minor might have tossed the pistol to where it was found does not render respondent's

adjudication infirm. Moreover, that respondent's footprints were in closer proximity to the gun makes it more likely that he deposited it there. *Cf. People v. Hall*, 194 Ill. 2d 305, 330 (2000) ("The trier of fact need not, however, be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt."). In short, the existence of this possibility is not so compelling as to render the other evidence against respondent unsatisfactory or improbable.

¶ 25 Respondent cites *In re Woods*, 20 Ill. App. 3d 641 (1974), in support of his position. In that case, the victim testified that she passed two boys on the street; after they passed, one of them pushed her down; she could not say which of them took items from her; and they ran away. The reviewing court reversed the conviction, stating that the only evidence against the defendant was "his presence and his flight." *Id.* at 650. This case is distinguishable from *Woods*. In addition to respondent's presence and flight, the handgun was discovered near his footprints, providing a link between respondent and the charged crime.

¶ 26 In *People v. Wright*, 2013 IL App (1st) 111803, the defendant was arrested after he tripped, fell, and landed on the floor. A gun was found beneath him; however, none of the officers who arrested the defendant saw the gun in the defendant's hand or observed him making any sort of movement that would have suggested he was trying to dispose of the gun. Moreover, no physical evidence linked the defendant to the gun. The court found that the mere presence of the gun was insufficient to prove the defendant guilty of possessing it. *Id.* at ¶ 26. *Wright* is also distinguishable. There was evidence the handgun in this case was in the Buick (Welte's testimony). It was moved from the Buick to 1021 North Rockton Avenue and found near respondent's footprints. This provides a basis for an inference that respondent carried the gun from the Buick to where it was

found. No similar inference was possible in *Wright*, so that case provides no guidance here. Respondent cites *People v. Holtz*, 294 Ill. 143, 154 (1920), for the proposition that presence combined with opportunity is insufficient to sustain a conviction, and *People v. Taylor*, 164 Ill. 2d 131, 140 (1995), which holds that presence plus knowledge that a crime is being committed is insufficient to establish accountability. Both cases are distinguishable on the same basis as *Wright*. Quite simply, there was a basis for the trial court to infer respondent carried the gun from the Buick to 1021 North Rockton Avenue. As such, this is not a case of mere presence plus knowledge or opportunity.

¶ 27 We find the cases respondent relies on distinguishable and his arguments unpersuasive. Moreover, we cannot say that no rational trier of fact could have found that respondent possessed the handgun. As such, we cannot disturb his convictions on this basis.

¶ 28 B. Sufficiency of the Evidence: Resisting Officer Jones

¶ 29 Respondent initially presents his next argument as having two subparts. He asserts that he did not resist or obstruct Officer Jones and that his act of running from the police was not the proximate cause of Jones' injuries. However, his argument focuses on the latter contention. Respondent notes that the statute defining the offense of resisting a peace officer provides, in pertinent part:

“A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor. \*\*\* A person convicted for a violation of this Section whose violation was the proximate cause of an injury to a peace

officer, firefighter, or correctional institution employee is guilty of a Class 4 felony.” 720 ILCS 5/31-1 (West 2012).

Based on the injury to Jones, respondent was convicted of a Class 4 felony. He argues that his running from the police was not the proximate cause of Jones’ injury.

¶ 30 Proximate cause is a question of fact. *People v. Herkless*, 361 Ill. 32, 40 (1935); see also *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 226 (2010). Hence, the question before us is whether, construing the record in the light most favorable to the State, any reasonable trier of fact could find beyond a reasonable doubt that Jones’ injury was proximately caused by respondent’s flight. See *Graham*, 392 Ill. App. 3d at 1008-09. Parenthetically, we note that, while generally a question of fact, a court may find the *absence* of proximate cause as a matter of law in certain circumstances. *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 27.

¶ 31 Proximate cause, as it exists in Illinois, consists of two components: cause in fact and legal cause. *Krywin*, 238 Ill. 2d at 225-26. Generally, cause in fact concerns whether an injury would have occurred but for the subject’s conduct. *Martinelli v. City of Chicago*, 2013 IL App (1st) 113040, ¶ 23. Indisputably, Jones would not have been injured but for respondent’s flight. At issue here, then, is legal cause, which we assess in terms of foreseeability of harm. *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 257-58 (1999). The pertinent question is “whether the injury *is of a type* that a reasonable person would see as a likely result of his conduct.” (Emphasis added.) *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395 (2004); see also *People v. Hudson*, 222 Ill. 2d 392, 401 (2006). Moreover, “the extent of the harm or the exact manner in which it occurs need not be foreseeable.” *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 556 (2005). This determination is made with reference to what a reasonable person in respondent’s position would

have foreseen. *People v. Johnson*, 392 Ill. App. 3d 127, 131 (2009). Illinois Criminal Pattern Jury Instructions defines “proximate cause” as: “any cause which, in the natural or probable sequence, produced the” harm. Illinois Pattern Jury Instructions, Criminal, No. 4.24 (4th ed. Supp. 2011).

¶ 32 We have little trouble concluding that a reasonable trier of fact could find that respondent’s conduct was the probable cause of Jones’ injury. As noted, cause in fact is not at issue. As for legal cause, the type of harm suffered by Jones would have been reasonably foreseeable to a reasonable person in respondent’s position. When one flees from the police, it is foreseeable that they will pursue. There was a fresh coating of snow on the ground, so it was also foreseeable that the ground was slippery. It is further foreseeable that a police officer would attempt to overcome an obstacle in his or her way, such as the fence, particularly in light of the serious nature of the offense for which respondent was being pursued (that is, Jones had reason to believe that a fellow officer was confronting a potentially armed subject). Finally, a reasonable trier of fact could conclude that it was foreseeable that an officer in hot pursuit of such a suspect might slip and fall given the condition of the ground.

¶ 33 Indeed, in *People v. Cervantes*, 408 Ill. App. 3d 906, 909-910 (2011), this court confronted a similar situation and determined that an injury to a pursuing officer was reasonably foreseeable:

“Here, the trial court reasonably found that defendant's conduct of leading the officers on a chase through ice- and snow-covered yards and driveways proximately caused Wilde's injuries. Contrary to [the] defendant's argument, the wintery conditions were not the type of ‘extraordinary circumstance’ that would break the causal connection. [The] defendant was presumably aware of the weather conditions. When he chose to run from the pursuing police, it was reasonably foreseeable that the officers would continue the chase on foot and,

in doing so, might be injured by falling on the snow or ice. It is simply not extraordinary to slip on ice in February. Moreover, Wilde testified that he suffered additional injuries by climbing a fence, which was apparently not related to the weather conditions at all. Again, [the] defendant should reasonably have foreseen that a pursuing officer might be injured by a fall.”

*Cervantes* would appear dispositive here. Respondent, however, urges that we do not follow *Cervantes*, as its reasoning is flawed.

¶ 34 In *Cervantes*, the court initially determined, in the passage set forth above, that the defendant’s conduct was a proximate cause of a police officers injuries. *Id.* The defendant then argued that, based on the language of section 31-1(a-7) of the Criminal Code of 2012 (720 ILCS 5/31-1(a-7) (West 2012)), he could be found guilty only if his conduct was the sole proximate cause of the officer’s injury. *Id.* at 910. The *Cervantes* court rejected this argument. The reasoning that respondent now contends is flawed pertained to this argument rather than the determination that the *Cervantes* defendant’s conduct was a proximate cause of the officer’s injuries. Thus, regardless of the soundness of its rejection of the defendant’s contention that his conduct had to be the sole proximate cause at work, *Cervantes* remains persuasive regarding its initial determination.

¶ 35 Respondent further argues that for his conduct to be the proximate cause of Jones’ injury, “then one would have to come to the untenable conclusion that the [respondent] should have foreseen that his running away and eluding Jones would have resulted in Jones walking by a 6 foot fence after giving up the chase, then Jones hearing an officer yelling as if making an arrest of someone, then Jones deciding to climb the fence, and then Jones injuring himself climbing the fence.” Respondent cites nothing that would suggest that he would have had to foresee things with

this level of detail before his conduct could be found to be the proximate cause of Jones' injury. Indeed, it is only necessary that the harm be "of a type" that a reasonable person would foresee as the likely result of his or her conduct. *Beretta U.S.A. Corp.*, 213 Ill. 2d at 395. That is, "the exact manner in which it occurs need not be foreseeable." *Knauerhaze*, 361 Ill. App. 3d at 556. Respondent's contention is, therefore, misplaced.

¶ 36 In short, the natural and probable result of respondent leading the police on a foot chase through freshly fallen snow is that an officer would slip, fall, and be injured. That is sufficient to find that respondent's conduct is the proximate cause of Jones' injury. We therefore reject respondent's argument on this point.

¶ 37 C. One-Act, One-Crime

¶ 38 Respondent next asserts that his adjudication of delinquency for aggravated unlawful use of a weapon (Count III) (720 ILCS 5/24-1.6 (West 2012)) must be vacated on one-act, one-crime principles. See *People v. King*, 66 Ill. 2d 551, 556 (1977). He points out that it is based on the same act as the more serious offense of possession of a firearm without a valid FOID card (Count IV) (430 ILCS 65/2 (West 2012)). The State confesses error.

¶ 39 Defendant asks for a remand; however, the State asserts that a remand is unnecessary because there is no dispute that Count III is the less serious offense and that this court has the authority to vacate the surplus conviction. See *People v. Walker*, 2011 IL App (1st) 072889, ¶ 40 ("Under Illinois Supreme Court Rule 615(b)(1), a reviewing court may 'reverse, affirm, or modify the judgment or order from which the appeal is taken.' [Citation.] Remand is unnecessary because we have the authority to directly order the clerk of the circuit court to make the necessary corrections to defendant's sentencing order."). Accordingly, we vacate the adjudication of delinquency based

on Count III and direct the clerk of the circuit court to correct the mittimus and sentencing order consistent with this opinion.

¶ 40

D. Sentencing

¶ 41 Respondent's final contention is that the trial court failed to comply with the requirements of section 5-750 of the Juvenile Court Act of 1987 (705 ILCS 405/5-750 (West 2012)). What this statute required of the trial court prior to sentencing respondent to the Department of Juvenile Justice is a question of law subject to *de novo* review. *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 52. Section 5-750 provides, in pertinent part, as follows:

“(1) Except as provided in subsection (2) of this Section, when any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the Department of Juvenile Justice, if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under Section 5-740, or it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; and (b) commitment to the Department of Juvenile Justice 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 to secure confinement. Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:

(A) Age of the minor.

(B) Criminal background of the minor.

(C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.

(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

(G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor.

(1.5) Before the court commits a minor to the Department of Juvenile Justice, the court must find reasonable efforts have been made to prevent or eliminate the need for the minor to be removed from the home, or reasonable efforts cannot, at this time, for good cause, prevent or eliminate the need for removal, and removal from home is in the best interests of the minor, the minor's family, and the public.”

At issue here are the requirements of subsection (b), which were added by amendment effective in January 2012 (see 705 ILCS 405/5-750 (West 2012)). Respondent contends that the State presented

no evidence of efforts to locate a less restrictive alternative to commitment to the Department of Juvenile Justice.

¶ 42 As we read the trial court's decision, it adequately complies with the requirements of section 5-750. The court began its ruling by stating that it had reviewed social histories, addenda, letters of recommendation in support of respondent, detention reports, and past adjudications. Further, the court stated that it had heard arguments from counsel. Notably, defense counsel requested respondent be placed with his parents and put on probation. Counsel further argued that respondent would do well in society. The trial court noted that respondent had been involved in a "pattern" of "being involved with possession of weapons." It observed that respondent had an exemplary record during his previous commitment to the Department of Juvenile Justice, but when released, respondent ends up making bad choices. The court considered respondent's attorney's argument that respondent should be placed on probation and the State's assertion that respondent is "a different person when [he has] structure." It then found that "another period of probation is not in the minor's best interest." It noted that "[t]he minor poses a danger to himself and to the community." Therefore, it found that "a sentence to the Illinois Department of Juvenile Justice \*\*\* is in the best interest of the minor." The trial court further found that "[r]easonable efforts have been made to prevent or eliminate the need for [respondent] to be removed from [his] home" and that "[respondent's] commitment is necessary to ensure the protection of the public from the consequences of the criminal activity of [respondent]."

¶ 43 Thus, in its ruling, the trial court expressly considered probation and placing respondent in his home. Respondent does not indicate what other less restrictive alternatives to commitment to the Department of Juvenile Justice the trial court should have considered. It is true that the trial court

never expressly stated that “commitment to the Department of Juvenile Justice is the least restrictive appropriate alternative.” However, this is implicit in the trial court’s findings that (1) probation is not in respondent’s best interest; (2) commitment is in his best interest; and (3) commitment is necessary to ensure the protection of the public. The last finding is particularly significant. If commitment is the only way to ensure the public’s safety, then, obviously, a less restrictive alternative is not appropriate. Moreover, we note that there was evidence that respondent did well in a structured environment, but outside of such an environment, repeatedly made bad (and dangerous) choices. As for the “reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement” (705 ILCS 405/5-750(1)(b) (West 2012)), respondent’s continued involvement in weapons offenses, and the intrinsic danger associated with them, provides a sufficient reason why a less restrictive alternative is inappropriate.

¶ 44 On appeal, respondent, as the appellant, bore the burden of showing error. *People v. Hughes*, 2011 IL App (2d) 090992, ¶ 20. Respondent has identified no alternative that could have been considered beyond those that the trial court expressly did. We can find no error here. As such, we need not consider respondent’s contention that this error was plain. See *People v. Sims*, 192 Ill. 2d 592, 621 (2000).

¶ 45 IV. CONCLUSION

¶ 46 In light of the foregoing, we vacate respondent’s adjudication based on aggravated unlawful use of a weapon, and we otherwise affirm the judgment of the circuit court.

¶ 47 Vacated in part; Affirmed in part.