

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).

2013 IL App (4th) 130040-U  
NO. 4-13-0040  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
August 19, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: TYKIERA D., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JD211
TYKIERA D.,	)	
Respondent-Appellant.	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Respondent failed to establish plain error resulted from the State's failure to serve her father with notice of her juvenile delinquent proceedings.
- ¶ 2 In October 2012, the State filed a petition for adjudication of wardship, alleging respondent, Tykiera D. (born in 1996), was a delinquent minor because she committed one count of battery (720 ILCS 5/12-3(a)(1) (West 2012)) and one count of aggravated battery (720 ILCS 5/12-3.05(c) (West Supp. 2011), as amended by Pub. Act 97-313, § 5 (eff. Jan. 1, 2012) and Pub. Act 97-467, § 5 (eff. Jan. 1, 2012)). After a December 2012 adjudicatory hearing, the Champaign County circuit court found respondent had committed the offenses charged in the petition and adjudicated respondent a delinquent minor on the aggravated-battery charge. At the January 2013 dispositional hearing, the court made respondent a ward of the court and sentenced her to 18 months' probation.

¶ 3 Respondent appeals, asserting she is entitled to new delinquency proceedings because the State never served her father, Clarence Warren, with notice of her original delinquency proceedings. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On November 1, 2012, the trial court held an initial hearing on the wardship petition at which respondent appeared with her mother, Tequilla Davis, and grandmother, Cora Davis. The court noted the petition lacked Tequilla's information and obtained her address. The court then asked about respondent's father. Tequilla identified Warren and stated she did not know where he lived. Further, Tequilla indicated Warren's only involvement with respondent was the payment of child support through the courts. The court directed the State to obtain Warren's address and supply it to the circuit clerk, who was directed to issue a summons to Warren for the next hearing date. The record contains no evidence the State did so.

¶ 6 On December 10, 2012, the trial court held an adjudicatory hearing, at which respondent appeared with Tequilla. The State's evidence consisted of the testimony of the victim, Cyria D., and a video taken with a cellular telephone showing the incident. Cyria D. testified that, around 5:45 p.m. on February 24, 2012, she was walking down Market Street in Champaign, Illinois, to a friend's house. As she was walking, a car pulled up, and respondent and two other girls jumped out of the car. Cyria D. stated she knew respondent because, at that time, they both went to Central High School. After respondent asked Cyria D.'s friend if the house they were standing in front of was her house, respondent began to hit Cyria D. and the other girls joined in. Cyria D. was hit "a lot" by the girls and was kicked as well. The incident ended when Cyria D.'s sister ran down the street. Respondent and the two other girls jumped in

the car and drove off. The State then played the video. Cyria D. testified the video fairly and accurately described the incident on February 24, 2012. Cyria D. identified respondent as the girl wearing a gray-striped shirt and jeans. She testified also the person on the video had the same hairstyle and general build as respondent. Cyria D. also identified the other two girls as Shaykiera H. and "Andrea" (documents in the record indicate Andrea R.). Finally, Cyria D. testified she and respondent had a dispute at school, during which respondent claimed Cyria D. was "picking with her" and stated she wanted to fight Cyria D.

¶ 7 Respondent testified on her own behalf and stated she went to Central High School from August 2011 to March 2012. She denied knowing Cyria D. and speaking to her at school. Respondent further denied she was on the video and indicated she had no role in the February 2012 fight. She stated she was "[p]robably in the house" at the time of the alleged incident. The only person she recognized in the video was Cyria D.'s sister. Additionally, she testified that, in February 2012, she was five feet, four inches tall and weighed around 120 pounds.

¶ 8 In adjudicating respondent a delinquent minor, the trial court noted "the melee as depicted in the video is not entirely clear as to who the individuals assaulting, actually battering the victim were." However, it stated the victim was clearly close enough to identify the people who attacked her and went to the same school as them. The court also noted the victim identified a reason for the melee and found it interesting respondent did not know the victim at all but knew her sister. It concluded by noting respondent's testimony she was probably home at the time of the incident was insufficient to rebut the positive identification made in court.

¶ 9 At the January 14, 2013, dispositional hearing, the trial court made respondent a

ward of the court and sentenced her to 18 months' probation.

¶ 10 On January 16, 2013, respondent filed a timely notice of appeal from the trial court's dispositional order in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). See Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001) (providing the rules applicable to criminal cases govern appeals from final judgments in delinquent-minor proceedings, unless specifically provided otherwise). Since the original notice of appeal was sufficient, we need not address the late notice of appeal filed in March 2013. A dispositional order in a juvenile delinquency proceeding is a final order (*In re Justin L.V.*, 377 Ill. App. 3d 1073, 1079, 882 N.E.2d 621, 626 (2007)), and thus we have jurisdiction over this appeal under Illinois Supreme Court Rule 660(a) (eff. Oct. 1, 2001).

¶ 11

## II. ANALYSIS

¶ 12 Respondent's sole argument on appeal is she entitled to new delinquency proceedings because the State did not serve her father with notice of her original delinquency proceedings. She acknowledges she did not object in the trial court to the lack of service on her father and requests we review the matter under the plain-error doctrine (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)). See *In re M.W.*, 232 Ill. 2d 408, 431, 905 N.E.2d 757, 773 (2009). The State asserts respondent has not established plain error.

¶ 13 With plain-error review, the reviewing court first determines whether an error occurred. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773. The State's failure to give notice of the wardship petition to respondent's father, whose address appeared easily obtainable, was error. See *M.W.*, 232 Ill. 2d at 431-32, 905 N.E.2d at 773; *In re Marcus W.*, 389 Ill. App. 3d 1113, 1123, 907 N.E.2d 949, 956 (2009). Here, the trial court explained to the prosecutor how to get

respondent's father's address and to provide that information to the circuit clerk. The record contains no evidence the State did so as the petition was never amended to include his information, no notice of service to him is included in the record, and he did not appear at any of the proceedings.

¶ 14 When an error exists, the "reviewing court will grant relief in either of two circumstances: (1) if 'the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant,' or (2) if the error is 'so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.'" *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). The respondent bears the burden of persuasion on whether she is entitled to relief as a result of the unpreserved error. See *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773.

¶ 15 Here, respondent asserts she can establish both bases for plain-error relief. She first contends the evidence was closely balanced, asserting "[t]his was a she said/she said case." Respondent notes the trial court did not find the video entirely clear as to the individuals who were attacking Cyria D. Since we mainly have the victim's testimony, we consider whether the evidence presented on that testimony's reliability rendered this case one that is closely balanced. The five factors for assessing the reliability of identification testimony are the following:

"(1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the criminal, (4) the level of certainty demonstrated by the witness at the confrontation, and (5)

the length of time between the crime and the confrontation." *M.W.*,  
232 Ill. 2d at 435, 905 N.E.2d at 775.

¶ 16 Cyria D. testified respondent jumped out of a car with two others and asked Cyria D.'s friend a question before respondent struck Cyria D. Thus, Cyria D. had an opportunity to calmly view respondent before the attack. Moreover, Cyria D. knew respondent because they went to school together and had engaged in a verbal dispute. Cyria D. was certain in her identification of respondent and noted respondent wanted to fight Cyria D. because respondent believed Cyria D. was picking on her. The testimony at trial did not indicate when Cyria D. first identified respondent as the one who first struck her, but the record does show the wardship petition was filed eight months after the incident and Cyria D. identified respondent at trial 10 months after the incident. Cyria D. also testified the girl she identified in the video as respondent had the same hairstyle and build as respondent. Accordingly, Cyria D.'s testimony is sufficient to weigh the five factors in favor of the State.

¶ 17 Additionally, respondent's testimony was questionable as she denied even recognizing Cyria D. but admitted knowing her sister. Her alibi testimony was weak as she stated she was probably at her house at the time of the incident.

¶ 18 Accordingly, we find the evidence respondent participated in the aggravated battery of Cyria D. was not so closely balanced that she is entitled to a new hearing on the basis of plain error.

¶ 19 Respondent also argues the error was so serious it affected the fairness of her proceedings and challenged the integrity of the judicial process. In doing so, she recognizes our supreme court has found the presence of one concerned parent can render harmless the lack of

notice to the other parent. See *M.W.*, 232 Ill. 2d at 439-40, 905 N.E.2d at 777-78. However, respondent cites this court's decision in *Marcus W.*, 389 Ill. App. 3d at 1128, 907 N.E.2d at 960, where we noted the trial court's and State's lack of attention to the procedural requirements of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-1 *et. seq.* (West 2006)) for over 20 years. She points out the State is still ignoring the procedural requirements of the act and should have to obey court orders. However, respondent does not address how the fairness of her proceedings was undermined by the absence of her father. See *M.W.*, 232 Ill. 2d at 439, 905 N.E.2d at 777 (noting, *inter alia*, the minor did not suggest how the fairness of the proceeding was undermined by her father's absence in finding the minor failed to establish the second basis for plain-error relief).

¶ 20 In *Marcus W.*, 389 Ill. App. 3d at 1128, 907 N.E.2d at 960, we found plain error where the respondent minor had a relationship with his parents and his legal guardian, the State had the addresses of the respondent's mother and the legal guardian, the State made no attempt to provide notice of the respondent's probation-revocation proceedings to any of the three, and no adult appeared in support of the respondent minor at those proceedings. In our analysis, we recognized "the importance our supreme court has placed on a minor having at least one person, besides an attorney or court-appointed guardian, present during juvenile proceedings whose only loyalty and concern would be toward the minor, even when the minor has little or no relationship with that individual." *Marcus W.*, 389 Ill. App. 3d at 1127, 907 N.E.2d at 960. Additionally, this court stated the outcome of the respondent minor's sentencing hearing might have been different if an adult had been present and indicated a willingness to take the respondent minor back home with him or her. *Marcus W.*, 389 Ill. App. 3d at 1128, 907 N.E.2d at 960.

¶ 21 While we do not condone the State's disregard of the trial court's direction to give notice to respondent's father and continue to disapprove of the State's ignoring the notice requirement of the Juvenile Act (see 705 ILCS 405/5-525(1)(a) (West 2012)), respondent, who bears the burden of persuasion, provided no argument as to how her father's absence impacted the fairness of her delinquency proceedings. Respondent's mother was present at every hearing in this case, and thus respondent always had an adult present in support of her. Thus, respondent has also failed to establish the second basis for plain error.

¶ 22 Accordingly, we find respondent has failed to establish she is entitled to new delinquency proceedings under the plain-error doctrine for the State's failure to provide her father with notice of her original delinquency proceedings.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 25 Affirmed.