

No. 1-12-0236

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In the Interest of:)	Appeal from the Circuit Court of
ANTWAN H-L., a minor,)	Cook County, Illinois
)	
Minor-Respondent-Appellant.)	
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	No. 11 JD 4285
)	
Petitioner-Appellee,)	
)	
v.)	Honorable Richard F. Walsh,
)	Judge Presiding.
)	
ANTWAN H-L., a minor,)	
)	
Respondent-Appellant.))	

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *HELD:* Where witness testimony provided circumstantial evidence that victim was a taxi car driver on duty at the time of the crime, the prosecution proved beyond a

reasonable doubt that defendant was guilty of aggravated battery. Court did not abuse its discretion in committing delinquent respondent to Illinois Department of Judicial Justice where respondent had history of violence and failure to comply with prior mental health treatment. Where the circuit court merged convictions for lesser included crimes, failed to merge convictions for crimes based on the same act, but properly based a sentence on the most severe conviction, the mittimus must be corrected to show the convictions violating the one-act, one-crime rule were merged.

¶ 2 On October 6, 2011, the State filed a petition for adjudication of wardship against respondent Antwan H-L. The State alleged that on October 5, 2011, respondent committed the offenses of robbery, theft, aggravated battery, and battery against taxi cab driver Gornelio Mozo. The State later filed an amended petition for adjudication of wardship to add a fifth charge of attempt robbery. Following an adjudication hearing, the trial court found respondent delinquent on all counts. The court merged the count for battery into the aggravated battery count and the attempt robbery count into the robbery count for a total of three convictions. Following a dispositional hearing, the trial court committed respondent to the Illinois Department of Juvenile Justice (DOJJ) for the robbery conviction with a recommendation he be examined for psychiatric needs.

¶ 3 Respondent appeals the trial court's judgment and sentence, arguing that his delinquency adjudication should be reduced from aggravated battery to battery because the State failed to prove that respondent knew that Mozo was a taxi cab driver. Respondent also contends that the trial court erred in considering factors outside of the record in imposing a sentence and the trial order indicates he was adjudicated delinquent on counts of robbery and theft in violation of the

one act-one crime rule. For the following reasons, the judgment of the circuit court is affirmed in part, vacated in part, with directions to correct the Trial Order.

¶ 4

I. BACKGROUND

¶ 5 At trial, Mozo testified through an interpreter that he was a taxi cab driver and was working at around 3:00 a.m. on October 5, 2011, in Arlington Heights, Illinois, when he was hailed by a woman near a Red Roof Inn hotel. The woman identified herself as Alicia and indicated that she wanted a ride to 7802 West 43rd Street in Lyons, Illinois. Mozo drove to the address, which took approximately 30 minutes. Alicia remained on her cell phone while he drove.

¶ 6 When they arrived, Mozo pulled up to an apartment building. He saw respondent and a girl, who was later identified as Alicia's sister Crystal, were standing at a doorway of the apartment building. Alicia stated that she did not have any money to pay Mozo and exited the cab. Mozo testified that Alicia offered to pay him for the ride with sex, but Mozo refused, telling Alicia that he was working and needed money. Alicia left and went into the apartment building. Mozo believed that she was going to get him money for the cab fare and he remained seated in the driver's seat.

¶ 7 Respondent and Crystal approached Mozo at this time. Mozo testified that respondent demanded money from him and then hit him in the face three or four times while the girl rifled through his pockets. Mozo tried to get respondent and Crystal out of his cab so that he could leave, but they pulled him out of the cab, ripping his pants and shirt in the process.

¶ 8 Mozo testified that Alicia then returned from the apartment building and all three hit Mozo about his body and face. Crystal prevented Mozo from getting back into the cab and Alicia got in and drove off in the cab. Mozo called the police and saw Crystal and respondent go into the apartment building. Mozo testified that \$50-80 in cash was taken from his pants and a duffle bag containing approximately \$600 in cash and a cell phone charger and GPS system was in the cab that Alicia drove off with.

¶ 9 Officer Stutlow of the Lyons police department testified that he was on patrol and responded to a possible robbery call from dispatch. Stutlow went to 7802 West 43rd Street and saw a Hispanic male he later found to be Mozo standing by the street with injuries to his face and torn clothing. Stutlow spoke with Mozo who told him that he been robbed and beaten. Mozo stated that a woman named Alicia stole his taxi cab and that two other individuals involved went into the apartment building. Stutlow's partner, Officer Vizack, was familiar with the residents in the area and showed Mozo a picture of Alicia's sister, Crystal. Mozo identified Crystal as one of the individuals involved.

¶ 10 Stutlow went into the apartment building and found Crystal in an apartment with respondent. Stutlow escorted Crystal outside to see if Mozo could identify her as one of the individuals who had robbed him. Stutlow testified that he learned that respondent was allegedly involved and returned to Crystal's apartment to find respondent, but he was no longer there.

¶ 11 Stutlow next went to the apartment located one floor higher and the tenants granted him access. Stutlow found respondent laying on a bed in a back room. Stutlow placed respondent in

custody and escorted him outside where Mozo identified respondent as involved in the robbery. Respondent was placed under arrest. No proceeds from the robbery were found on respondent's person.

¶ 12 Sergeant Morelli of the Lyons police department testified that he was on patrol around 4:00 a.m. on October 5, 2011, when he responded to a dispatch call of a possible robbery at 7802 West 43rd Street. When he arrived, Morelli put Mozo in his squad car and they drove around the area to try and find Mozo's cab. Morelli testified that their search for the cab was cut short when they were called back to the apartment building where Mozo identified respondent as the man involved. They could not find the cab and no evidence was presented that the cab was ever recovered.

¶ 13 The defense did not present any evidence to the court. The court adjudicated respondent delinquent on all counts. However, the court merged the battery count into the aggravated battery count and the attempt robbery count into the robbery count. Accordingly, the trial court entered a "Trial Order" indicating respondent was found "Guilty of count(s) 1, 2, 3." The court ordered a clinical evaluation and social evaluation and continued the matter for disposition.

¶ 14 At the dispositional hearing, the trial court indicated that it had reviewed the clinical evaluation of respondent prepared by the Cook County Juvenile Court Clinic and heard testimony from respondent's probation officer who completed the social evaluation. The 25-page clinical evaluation was completed on December 22, 2011, by clinical psychologist Krissie Fernandez Smith, Ph.D. The clinical evaluation including extensive coverage of respondent's

family, educational, medical, and legal histories. In preparing the report, Dr. Smith interviewed respondent and his family members.

¶ 15 Respondent has lived with his grandmother and step-grandfather since he was 5 or 6 years-old. His grandparents adopted him when he was 12 years-old as his mother struggled with drug abuse and was absent and his father was incarcerated and also uninvolved. Therefore, respondent's grandparents primarily raised him. Respondent was diagnosed with bipolar disorder when he was 9 years-old and also alleged that a 12 year-old boy sexually abused him around this time. Respondent has struggled with anger and violence issues throughout his life, resulting in numerous interactions with police and psychiatric hospitalizations. Respondent was active in a gang and his legal history included battery, vandalism, running after a peer with a knife, and an aggravated unlawful use of a weapon charge related to an incident where he fired 3 or 5 rounds into a group of people at the prom. Respondent reported that he tried various drugs, but did not like how most made him feel and he only continued to use marijuana and alcohol. Respondent primarily used marijuana on a daily basis.

¶ 16 Respondent received special education services at school, intensive home therapy, and individual therapy. His grandparents had a permissive parenting history with few rules at home. Grandmother appeared to blame medication changes for several of respondent's incidents and poor behaviors. Despite this, because respondent had received treatment both at home and during prior commitments to the DOJJ and had not complied with either, Dr. Smith did not recommend commitment, and opined that family involvement would be helpful. Dr. Smith

recommended that respondent receive individual therapy, family therapy, psychiatric medicine management, substance abuse treatment, and mentoring. However, if the court committed respondent to the DOJJ, Dr. Smith recommended mental health and substance abuse treatment for respondent.

¶ 17 The probation officer testified that respondent had received extensive intervention services. He had been enrolled in alternative schools, received counseling, prescribed medication, received short and long-term attention treatment, and had three previous commitments. Despite all of these efforts, respondent continued his involvement in delinquent and violent delinquent activities. The probation officer recommended commitment to DOJJ because all available remedial actions had been exhausted and respondent refused to comply. In addition, the officer expressed concern that the lack of rules and control at home would not help the odds of success of the treatment.

¶ 18 The trial court entered a sentence, stating:

"This was a trial. This was a violent crime. I have to consider that.

I also am a little disturbed by the clinical recommendation of residential treatment. In lieu of that, some counseling with MST. I think everybody knows my position. Was [at] a meeting yesterday with the director of one of those charities that run it. Reinforced everything I think about this program. It does not work. They come in with those phony numbers that come from Charleston. They can't give you any logical numbers. So that's out. And I don't know – you know,

it's kind of like the recommendations we used to get from this clinic that let's send them to Disney World and let them ride the rides. They don't have the facilities to do this. Onus is on the Cook County Board, and they will not appropriate money for this kind of program.

So, one side; and the other side is that, you know, this is a violent young man who is obviously someone, because of an incident report I have, who is very much in need of therapy. I am going to commit the minor to the Illinois Department of Juvenile Justice with recommendation they examine him for treatment of psychiatric needs."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Sufficiency of the Evidence

¶ 22 Under the Juvenile Court Act of 1987 (Act), delinquency proceedings consist of three phases: the findings phase, the adjudicatory phase, and the dispositional phase. *In re Samantha V.*, 234 Ill. 2d 359, 365 (2009), citing 708 ILCS 405/5-101 *et seq.* (West 2004). During the findings phase, the court holds a trial applying the rules of evidence for a criminal case and the State is required to present proof beyond a reasonable doubt of every necessary fact to find a respondent delinquent. *Id.* In assessing the sufficiency of the evidence to sustain a verdict on appeal, we must view the evidence in the light most favorable to the prosecution to determine if any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893-94; see also, *People v. Bush*, 214 Ill. 2d 318, 326 (2005), citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979).

¶ 23 This means that we must allow all reasonable inferences from the record in the favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A conviction may stand if based solely on circumstantial evidence and the inferences that flow normally from that evidence. *People v. Patterson*, 217 Ill. 2d 407, 435 (2005). Furthermore, resolution of the credibility of witnesses and conflicts in evidence are matters within the province of the trier of fact and we grant deference to those findings. *People v. Rendak*, 2011 IL App (1st) 082093 ¶ 28.

¶ 24 Respondent argues that the aggravated battery statute required the State to prove that, in committing the battery, respondent knew that the individual harmed was a taxi driver and was on duty at the time of the battery. 720 ILCS 5/12-4(b)(21) (West 2010). Respondent contends that this requires a higher standard of proof than just whether respondent "knew or should have known" that Mozo was a taxi cab driver. Citing *People v. Ruiz*, 312 Ill. App. 3d 49, 58 (2000); *People v. Jasoni*, 2012 IL App (2d) 110217, ¶18 (circumstantial evidence insufficient to prove knowledge that victim was over 60 years of age); *People v. Infelise*, 32 Ill. App. 3d 224, 227 (1975) (aggravated assault reversed where facts did not prove beyond reasonable doubt defendant knew undercover officers were police officers). Respondent asserts that the State's complete failure to present any evidence concerning the appearance of Mozo's vehicle, including pictures or testimony, or any other evidence that respondent knew Mozo was a taxi cab driver, requires his aggravated battery adjudication be reduced to battery.

¶ 25 As addressed in *Jasoni*, "[k]nowledge is often proven by circumstantial evidence" rather than direct proof. *Jasoni*, 2012 IL App (2d) 110217 at ¶20. We agree with the State that, viewing the evidence in the light most favorable to the prosecution, it is clear that any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. Mozo testified that he was a taxi cab driver, he was on duty as a taxi cab driver in the early morning of October 5, 2011, and that he was driving his taxi cab in Arlington Heights at around 3:00 a.m. when he was stopped by Alicia who asked him for a ride to Lyons. Mozo drove Alicia to Lyons and saw respondent and Crystal standing at the entrance of the apartment building where he stopped. Alicia got out of the vehicle, said she had no money to pay for the fare, offered sex, and then left when Mozo refused the offer of sex and demanded money. At this time, respondent and Crystal approached Mozo, demanded money, and beat Mozo and pulled him out of his cab.

¶ 26 This evidence is sufficient proof for any rational trier of fact to find that respondent knew Mozo was a taxi cab driver on duty. The reasonable inferences drawn from Mozo's testimony that he was a cab driver, in his cab, and on duty, when he was stopped by Alicia in the middle of the night for a ride, only lead to the conclusion that he was in a marked vehicle that was a taxi cab to the naked eye. The evidence further leads to the inference that he was on duty as he dropped Alicia off, had a dispute about payment of the fare, and remained waiting with his door open. According to the evidence, respondent witnessed this dispute and then approached and

demanded money from the victim. This circumstantial evidence was sufficient to prove knowledge and respondent's adjudication for aggravated battery is affirmed.

¶ 27 B. Dispositional Order

¶ 28 Defendant argues that the trial court erred in rejecting the recommendation from the clinical evaluation and committing him to DOJJ. Defendant argues, and the State concedes, that the circuit court failed to admonish respondent under Rule 605(a) that a written motion asking the court to reconsider the dispositional order in this case was necessary to preserve the issue. Ill. S. Ct. R. 605(a) (eff. Oct. 1, 2001). Accordingly, respondent's failure to challenge the disposition does not constitute forfeiture and this court may hear the challenge. *People v. Henderson*, 217 Ill. 2d 449, 467-68 (2005).

¶ 29 The disposition of a minor adjudicated delinquent rests with the sound discretion of the trial court and we will not disturb the trial court's ruling unless it is an abuse of discretion or the findings of fact are against the manifest weight of the evidence. *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009). A trial court may order a juvenile offender to be committed to the DOJJ only after a written social investigation report is completed and considered by the court. 705 ILCS 405/5-750(1) (West 2010). The court may consider all helpful evidence available, including oral and written reports. *Id.* In addition, when determining an appropriate disposition, the trial judge may consider any available alternative and need not defer to any particular recommendation. *In re W.C.*, 261 Ill. App. 3d 508, 518 (1994), *aff'd* 167 Ill. 2d 307 (1995).

¶ 30 The Act requires the court to determine a disposition that best serves the interests of the minor and the public. 705 ILCS 405/5-750(1) (West 2010). Respondent asserts that the trial court performed its own investigation, relied on matters outside of the record, and abused its discretion in entering the disposition committing respondent to DOJJ because imprisonment did not serve the best interests of the minor or the community. Respondent points to case law and the Act to emphasize the main purpose of the Act is to serve the safety and moral, emotional, mental and physical welfare of the minor and the Act is to be administered "in a spirit of humane concern." *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006); 705 ILCS 405/1-2(1), (2) (West 2004). Respondent points to a recent amendment to the Act by the General Assembly adding specific individualized factors to consider and increasing the emphasis on rehabilitation. 705 ILCS 405/5-750(1) (West 2012).

¶ 31 Respondent argues that the trial court's alluding to a discussion the day before with "the director of one of those charities" was improper as deliberations on sentencing are to be limited to the record before the court. *People v. Dameron*, 196 Ill. 2d 156, 176 (2001). He contends that the trial court's utilizing this "private investigation" to reinforce his negative opinion about residential treatment programs violated his constitutional right to a fair sentencing hearing. He argues this extra-record information and stated predetermination against residential treatment programs constituted an abuse of discretion and warrants reversal and remand for resentencing.

¶ 32 We agree with the State that the context of the trial court's comments did not evidence an impermissible investigation or reliance on extra-record materials in committing respondent to DOJJ. Unlike cases where the court actively investigated and utilized information that was not of record, the trial court reviewed the clinical and social evaluations and rested the decision on those reports and testimony. See *Dameron*, 196 Ill. 2d at 179 (trial court improperly relied

extensively on sociology book on the death penalty); *In re Seth S.*, 396 Ill. App. 3d at 274-76 (trial court utilized own training materials and "conducted her own risk assessment" instead of considering actual assessment by clinician). In the instant matter, the trial court cited to respondent's evident mental health needs and that he was "very much in need of therapy." Both evaluators noted respondent's failure to comply with extensive services he had received in the past and the permissive home environment that would make future compliance unlikely.

¶ 33 Moreover, the trial court pointed to the violent nature of the underlying crime as well as the violent nature of respondent's prior crimes and the evaluator's recitation of his history of anger and violence establishing respondent was a "violent young man." Accordingly, the trial court weighed respondent's crime, his violent nature and threat to society, with the likelihood that residential treatment would not be successful given respondent's past and home environment. While we agree with the State's assessment of the trial court's commentary on residential treatment as "passing commentary," we also express concern that the trial court's almost cavalier attitude on this issue and statements concerning residential treatment programs would be troublesome for a case involving a closer factual scenario. The court, as our Judicial Code of Conduct requires, must strive to avoid any appearance of impropriety or partiality in faithfully and diligently exercising its duties to maintain professional competence in the court. Despite these concerns, the evidence of record before the trial court and the court's analysis do not support reversal of the dispositional order as it serves the rehabilitative purpose of the Act as well as protecting the public. The trial court's findings of fact were not against the manifest weight of the evidence and it did not abuse its discretion in entering the order.

¶ 34

C. One Act-One Crime

¶ 35 Under the one-act, one-crime rule, a defendant may be convicted for only one crime resulting from a single act. *People v. Dresher*, 364 Ill. App. 3d 847, 863 (2006). When multiple convictions for the same crime are entered based on a single act, those convictions must be vacated. *People v. Crespo*, 203 Ill. 2d 335 (2001). The one act-one crime rule applies to juvenile proceedings the same as in typical criminal matters. *Samantha V.*, 234 Ill. 2d at 375.

¶ 36 In the instant matter, the dispositional order indicates a sentence for the charge of robbery only; however, the Trial Order indicates that respondent was delinquent of robbery and theft. Because the theft and robbery counts were both based on the single act of taking Mozo's property, respondent argues that this court must vacate the lesser included offense of theft under the one act-one crime rule. Although he did not preserve this issue for appeal, respondent asserts that this matter affects his substantial rights and is reviewable as plain error. *Id.* at 378-79.

¶ 37 The State argues that because the dispositional order only contains the committing charge of robbery, there is nothing for this court to vacate or correct. The State contends that there is no prejudice in the instant matter as there can only be a final judgment where there is an adjudication of guilty and an associated sentence entered on the same charge. 730 ILCS 5/5-1-12 (West 2010); *People v. Holmes*, 405 Ill. App. 3d 179, 186 (2010). After the court merged the counts in the dispositional order, the State asserts that respondent had no argument.

¶ 38 Following the holding in *Samantha V.*, we disagree with the State. As our supreme court addressed, "[i]t may be true that, generally, only one finding of delinquency is entered against a minor, and a minor receives only one sentence. However, it cannot reasonably be argued that the crimes underlying the delinquency finding will have no impact once the juvenile is sentenced and the dispositional order is entered. In the event of a future encounter with the juvenile or criminal justice systems, it is hard to imagine that the State would merely inform a court

preparing to set bond, fashion a sentence, or entertain matters related to juvenile detention or parole of the mere fact of a juvenile delinquency finding without seeking to inform the court of the crimes committed." *Samantha V.*, 234 Ill. 2d at 373. Accordingly, as in *Samantha V.* this issue is reviewable under the plain error doctrine and the Trial Order must be corrected in this case to protect respondent "from prejudice [he] will encounter within the justice system." *Id.* at 374. Therefore, we vacate the theft adjudication and remand the matter to the circuit court clerk to correct the Trial Order accordingly (Ill. S.Ct.R. 615(b) (eff. Aug. 27, 1999)).

¶ 39

III. CONCLUSION

¶ 40 For the reasons stated, we affirm in part, vacate in part, and order the clerk of the court to correct the respondent's Trial Order.

¶ 41 Affirmed in part, vacated in part, Trial Order corrected.