2015 IL App (1st) 143333-U

FOURTH DIVISION
April 16, 2015

No. 1-14-3333

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MICHAEL S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 14 JD 01101
v.	)	
	)	
Michael S.,	)	The Honorable
	)	William Gamboney,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

ORDER

HELD: The trial court properly found that the State met its burden to disprove respondent's affirmative defense of necessity beyond a reasonable doubt where, although respondent did not occasion the events, he could not have reasonably believed, under the circumstances presented, that his conduct was necessary to avoid a greater public or private injury than that which might reasonably have resulted from his conduct of carrying a loaded gun on the streets of the city of Chicago. In addition, the trial court did not use the wrong standard in evaluating respondent's necessity defense; as of this moment, there is no separate objective reasonableness standard particular to juveniles.

¶ 1 Following a juvenile court hearing, respondent-appellant Michael S. (respondent) was

adjudicated delinquent on two counts of aggravated unlawful use of a weapon and one count of unlawful possession of a firearm. He was sentenced to 18 months' juvenile probation and 60 hours of community service. Respondent appeals, contending that the trial court applied the wrong standard in evaluating his affirmative defense of necessity and that the trial court erred in finding that the State met its burden to disprove his necessity defense beyond a reasonable doubt. He asks that we vacate his conviction and remand his cause either for a new trial or with instructions for the trial court to enter a judgment of not guilty on all three counts. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The State filed a petition for adjudication of wardship, charging respondent with the crimes noted above. As his theory on the case, respondent presented the affirmative defense of necessity.

¶ 4 At the ensuant trial, officer Michael Gentile testified that on March 26, 2014, at approximately 9 p.m., he and two partners were in plainclothes patrolling the area around Homan Avenue in Chicago in an unmarked police car. He averred that, as they drove, he saw two black males in an alley, which was well-lit. He identified one of the males as respondent in open court. Although admitting that it was a brisk evening, officer Gentile stated that respondent was nonetheless wearing a hooded sweatshirt with the hood tied completely over his face so that only his eyes were visible. He observed respondent and the other male walking quickly, and he and his partners decided to approach them and conduct a field interview. They pulled into the alley and, after respondent looked in their direction, he began to run. Officer Gentile exited his vehicle and gave chase, identifying himself as police. Respondent continued to run through an open lot, to the next street over, and then down another alley. Officer Gentile averred that during the entire chase,

respondent kept his right hand close to his right pocket, holding it. Officer Gentile further testified that, at one point, he saw respondent remove a blue steel handgun from his right pocket and throw it into the backyard of a house, whereupon he continued to run. Officer Gentile heard the gun hit the ground, continued to chase respondent and, eventually, his partners arrived and respondent stopped, complied with their orders and was taken into custody. Officer Gentile then immediately ran back to the house's yard, saw the gun and recovered it; it was a .22 caliber handgun loaded with one live round. On cross-examination, officer Gentile admitted that he and his partners did not stop the other black male with respondent nor did they ever make any contact with him, explaining that they gave chase to respondent instead, since he immediately had begun to run away.

¶ 5 Respondent testified that he is a 16-year-old sophomore at a Chicago college preparatory school. In explaining the incident at issue, he began by discussing his friend named Crawford, who he met as a freshman and who he saw every day in school and outside of school, as they played basketball together. He described Crawford as "a very close friend" and noted that they went over to each other's homes. Respondent stated that Crawford often talked to him about his problematic home life, confiding that he felt mistreated, ignored and unloved by his parents. Respondent explained that he told Crawford that he could always talk to him about what was happening at home.

¶ 6 Turning to the night in question, respondent testified that he was with some friends when he received a call from Crawford on his cell phone. Respondent averred that Crawford began the conversation by reminding respondent that he had told him he could call if he was having any problems at home. Crawford then told respondent that he was "going to hurt one of [his] parents." Respondent averred that he believed Crawford was serious, as he had been telling him he was

experiencing problems at home. Respondent told Crawford he was on his way to meet him, and Crawford informed him that he was at his grandmother's house. When respondent arrived, Crawford came outside to the alley, showed him a gun and told him that he was "going to end up hurting one of [his] parents." Again believing him to be serious, respondent took the gun from Crawford's hand. He stated that he planned on walking up the alley and dropping it in a sewer drain because he did not want him "to hurt or harm anybody;" respondent averred that he knew there was a sewer drain less than a city block away located behind a store. He also stated that he did not call his parents for help because he did not "want to get [Crawford] in trouble," and he likewise did not call Crawford's parents for the same reason and because he did not know how to get in touch with them.

¶ 7 Respondent recounted that, as he began walking to the sewer, Crawford followed him, he then saw the unmarked police car and, when police exited their vehicle, he ran. He averred that he did so because he did not want to get caught with the gun and he knew he would be in trouble. He also averred that he did not explain to police that it was Crawford's gun because he thought they would not believe him and he knew he would be arrested; he stated that he knew the police would not care about his explanation and they "would still lock [him] up." Therefore, as he ran, he threw the gun so that he would not be caught with it on his person. The police eventually stopped and arrested him. Respondent further testified that he still did not explain the situation to police even at this time because he believed he would have been in trouble, because he believed Crawford would have been in trouble, and because he believed the police "wouldn't care" and "weren't going to believe" him.

¶ 8 At this point in his testimony, respondent's attorney began to ask him questions about his

education, seeking to introduce evidence about the fact that respondent has an Individualized Education Plan (IEP) for a learning disability in math. Following an objection on relevance, respondent's attorney argued that this information went to the reasonableness of respondent's decision-making abilities as a juvenile. The trial court asked respondent's attorney if that really made any difference, since it believed the defense of necessity was to be measured via "a reasonable objective third person." As respondent's attorney began to explain that she believed the question was whether he reasonably believed he needed to act as he did, the court interrupted by asking whether a person's subjective belief, then, would be entitled to the affirmative defense of necessity. Respondent's attorney answered in the negative and clarified that she believed that the question must be viewed from the perspective of a reasonable juvenile. The trial court allowed respondent's attorney to present evidence as to his IEP and learning disability.

¶ 9 On cross-examination, respondent admitted that, although he and Crawford were friends, he did not know his first name, explaining students at school only address each other with last names. He also admitted that Crawford told him about his family problems almost every time they spoke and often told him that he was going to "end up hurting" them; however, respondent averred that the evening in question was the first time he believed that Crawford "was going to do it, like, for real do it." Respondent stated that Crawford lived with his parents on Augusta and Thomas, and, whereas on direct examination he had stated he had been to Crawford's house many times, he now admitted that he (respondent) had never been there, although Crawford had been to his house many times. Respondent did know Crawford's grandmother, who he stated was "cool." Respondent averred that, when he met Crawford in the alley on the night in question, they were alone; no one was home at this grandmother's house. He further noted on cross-examination that

while the hood of his sweatshirt was on his head as it was cold that night, it was not tied around his face but, rather, the strings were hanging loose and his face was entirely visible.

¶ 10 Respondent's mother and stepfather also testified at his trial. His mother stated that respondent is a peaceful person, helpful to friends and family. Corroborating this, his stepfather further testified that he has a "cordial relationship" with respondent and that they often discuss what is going on in respondent's life, including his relationships with his friends. His stepfather admitted that respondent did not call him on the night in question, despite them both having functioning cell phones.

¶ 11 At the close of evidence, the trial court began its colloquy by reviewing the law on the affirmative defense of necessity. The court then stated that it found "a number of holes in the defense case," including whether respondent reasonably believed his conduct was necessary. The court commented:

> "I'm not sure that I necessarily believe everything [respondent] told me, but even if – for purposes of discussion, if you were to believe that it was a noble effort, it wasn't reasonable by third party objective standards."

The court examined case law regarding necessity and noted that there were "so many different things that [respondent] could have done other than to carry a weapon on the streets of Chicago," and it did not agree that respondent's main motive of avoiding trouble for his friend was a legitimate basis for the necessity defense. Returning again to credibility, the court compared officer Gentile's testimony, which it found to be "very credibly," with the circumstances of the police stop during which respondent ran and provided no explanation, which, the court stated, made it "less likely *** to believe what [respondent] is saying." The court ended its colloquy by

acknowledging that, while the fact that respondent was in an alley at night wearing a hoodie and ran from police because he did not think they would believe him might have been "on the mark," this was not a proper basis for a reasonable belief that he was truly acting under the defense of necessity. Thus, the trial court concluded that the State proved its case "beyond a reasonable doubt" and found respondent guilty on all charges.

¶ 12 Later, at respondent's sentencing hearing, his attorney asked the trial court to clarify whether it had evaluated the cause against respondent, including his affirmative defense, pursuant to a "reasonable adult standard or a reasonable juvenile standard." The court did not believe there was a difference and asked respondent's attorney to present a case or some law "that shows that there is a different standard for necessity between juveniles and adults." Respondent's attorney stated that this was "an issue of first impression." Without any presentation to the contrary, then, the court reaffirmed its guilty finding and ultimately sentenced respondent to 18 months' probation and 60 hours of community service.

¶ 13 ANALYSIS

¶ 14 The defense of necessity is an affirmative defense. Therefore, unless the State's evidence raises the defense for him, a defendant must present " 'some evidence' " to support its introduction at trial. *People v. Govan*, 169 Ill. App. 3d 329, 336 (1988), quoting *People v. Perez*, 97 Ill. App. 3d 278, 280 (1981); accord *People v. Kite*, 153 Ill. 2d 40, 44 (1992) (the defendant bears the initial burden of presenting sufficient evidence to establish affirmative defense of necessity). While this threshold is relative low (see *Kite*, 153 Ill. 2d at 45), the " 'some evidence' to be deemed adequate to raise the defense must be evidence sufficient to raise a reasonable doubt as to his guilt." *Govan*, 169 Ill. 2d at 336, citing *People v. White*, 78 Ill. App. 3d 979, 981 (1979).

Only at this point does the burden then shift to the State to disprove the defense beyond a reasonable doubt. See *Kite*, 153 Ill. 2d at 44; see, *e.g.*, *People v. Johns*, 387 Ill. App. 3d 8, 14 (2008) (once the defendant presents some evidence of affirmative defense, the State's burden is enlarged to both prove beyond a reasonable doubt the offense charged and overcome the evidence supporting the defense). Accordingly, where the defendant presents no supporting evidence for his alleged affirmative defense, it cannot stand. See, *e.g.*, *Perez*, 97 Ill. App. 3d at 45 (the lack of "some evidence" means that there was no foundation for the affirmative defense).

¶ 15 Statutorily, a defendant claiming necessity must show (1) that he was not to blame for occasioning the situation at hand, and (2) that he reasonably believed his conduct was necessary to avoid a greater public or private injury than that which might reasonably have resulted from his own conduct. See 720 ILCS 5/7-13 (West 2010); *People v. Janik*, 127 Ill. 2d 390, 399 (1989) (the conduct chosen "must promote some higher value than the value of literal compliance with the law"). However, in addition, our courts have made critically clear that a defendant must also show two other requirements in order to establish this affirmative defense. See *People v. Azizarab*, 317 Ill. App. 3d 995, 998-99 (2000) ("the defense [of necessity] has been construed to apply only in those situations where" two additional elements are established). The first is that there is a threat of harm that is specific and immediate. See *Azizarab*, 317 Ill. App. 3d at 998-99, citing *Kite*, 153 Ill. 2d at 45. This is vital to the necessity defense, since without such a specific and immediate threat, the essence which creates the foundation for necessity simply does not exist. See *Kite*, 153 Ill. 2d at 45 (this is a "threshold requirement" for the establishment of necessity and failure to prove it "obviates" the defense); accord *Azizarab*, 317 Ill. App. 3d at 999 ("threat of injury sought to be avoided" must be "imminent"). The second additional requirement is that the

defendant's chosen conduct was the "sole option available to avoid" the cited injury. *Azizarab*, 317 Ill. App. 3d at 999; accord *Kite*, 153 Ill. 2d at 45. This is because the defense of necessity "is viewed as involving the choice between two admitted evils where other optional courses of action are unavailable." *Janik*, 127 Ill. 2d at 399; accord *People v. Kratovil*, 351 Ill. App. 3d 1023, 1034 (2004); *People v. Cord*, 258 Ill. App. 3d 188, 192-93 (1994) ("[s]imply stated, the defense of necessity involves a choice that can be made only between two admitted evils, other options being unavailable"); *People v. Hayes*, 223 Ill. App. 3d 126, 128 (1991); *People v. Dworzanski*, 220 Ill. App. 3d 185, 192 (1991); *Perez*, 97 Ill. App. 3d at 281. Thus, conduct that would otherwise be illegal is justified by necessity, but only if the conduct was the sole reasonable alternative available under the circumstances. See *Kratovil*, 351 Ill. App. 3d at 1034; *Dworzanski*, 220 Ill. App. 3d at 192, citing *Perez*, 97 Ill. App. 3d at 281. Accordingly, " '[w]hen another alternative exists besides the two evil choices, which, if carried out, would cause less harm, then the accused is not justified in breaking the law' " and the necessity defense cannot stand. *Cord*, 258 Ill. App. 3d at 193, quoting *Hayes*, 223 Ill. App. 3d at 128; accord *Kratovil*, 351 Ill. App. 3d at 1034.

¶ 16 Ultimately, the necessity defense requires the trier of fact to determine whether the defendant's actions were objectively reasonable pursuant to the circumstances presented, and the defendant's reasonable belief has been held to encompass an objective factor. See *People v. Kucavik*, 367 Ill. App. 3d 176, 180 (2006). Clearly, the factors involved in determining the validity of a necessity defense inherently go to the weight and credibility of the evidence and, therefore, are properly determined by the trier of fact. See *Kite*, 153 Ill. 2d at 46. As such, we, as a reviewing court, will defer to the trier's findings, since the determination of weight to be

afforded to witness testimony, witness credibility and reasonable inferences to be drawn therefrom are the trier's primary responsibility and we will not substitute our judgment in this regard. See *Kite*, 153 Ill. 2d at 46; accord *Azizarab*, 317 Ill. App. 3d at 999; see also *People v. Steidl*, 142 Ill. 2d 204, 226 (1991).

¶ 17 Upon our review of the instant cause, and viewing the evidence in the light most favorable to the State, we find that a rational trier of fact–the trial court in this matter–could find beyond a reasonable doubt that respondent did not reasonably believe his conduct was necessary. Simply put, the evidence presented does not support that respondent was confronted with and required to make a choice between two evils in light a specific and immediate threat with no other reasonable alternative than choosing to violate the law as he did.

¶ 18 Respondent was the only witness at trial to give testimony regarding what occurred leading up to the events in question, before police became involved. Essentially, he testified that his good friend Crawford had been troubled regarding his family life for some time and that, on that particular evening, Crawford called to tell him that he was going to take action. When respondent met with him, Crawford showed him a gun and told him he was going to hurt his parents. Without resistance, respondent was able to take the gun out of Crawford's hands and was proceeding to a nearby storm drain with the intent to throw the gun away and with the purpose of avoiding trouble for both Crawford and himself.

¶ 19 However, as we have discussed, the trial court was not required to accept respondent's testimony as credible and, in fact, as evinced by its colloquy, it did not. After reviewing the law of necessity, the trial court immediately declared that it found "a number of holes" in respondent's version of events and that it did not "necessarily believe everything" respondent recounted. It then

compared officer Gentile's testimony, which the trial court declared to be "very credible," with respondent's actions during the police stop, namely, his flight, his discard of the gun into a home's backyard, and his repeated failure to provide police with any explanation of the events, let alone one recounting his alleged belief that he needed to help his friend. All this, stated the court, made it "less likely" for it "to believe what [respondent] is saying." In addition to respondent's credibility issues, the trial court went on to find that the necessity defense could not stand because respondent's actions were not "reasonable by third party objective standards." The court stated that, "even if – for purposes of discussion," it did believe respondent's version of events and even if it could be seen as "a noble effort," there were "so many" alternative options respondent could have chosen to do other than to break the law, especially for a legally meritless motive.

¶ 20 We find the trial court's comments and decision to be directly on point here. Apart from a determination with respect to respondent's credibility which, again, is precisely for the trial court and not us, the facts and circumstances present in this case do not create a legitimate legal basis for a valid necessity defense. While it may be true that respondent did not occasion the initial situation leading to the events at hand, we find that he could not have reasonably believed his resulting conduct was necessary under the legal standard at issue here.

¶ 21 First, there was no immediate or specific threat of harm. Respondent testified that Crawford lived with his parents on Augusta and Thomas in Chicago. However, respondent met Crawford that night at his grandmother's house, which was near 16th Street and Homan Avenue in Chicago. The distance between these two locations spans several miles. See *People v. Deleon*, 227 Ill. 2d 322, 326 n.1 (2008) (appellate court may take judicial notice of distance between two locations); accord *People v. Clark*, 406 Ill. App. 3d 622, 632 (2010) (appellate court may take

judicial notice of map taken from mainstream Internet site showing distance between locations). Thus, respondent was not confronted with any sort of immediate situation where Crawford was even remotely able to point the gun at or shoot his parents when the two friends met and when he allegedly made his "threat." Instead, there was no testimony that Crawford was even on his way to his parents' house that night, the means he would use to get there, or how quickly he could get there. And, respondent testified that Crawford willingly turned the gun over to him, without so much as a word. This relative ease with which he diffused the alleged situation further indicates a lack of immediacy with respect to the alleged threat.

¶ 22 In addition to this, Crawford's alleged threat that evening was not specific. Respondent recounted that Crawford mentioned hurting his parents repeatedly. In fact, respondent testified that Crawford would tell him about his troubles at home with his parents and how he wanted to hurt them "every time [they] talked," which, respondent stated on direct examination, was "[e]very day" inside and outside of school. Respondent presented no evidence–other than his subjective belief that Crawford was, for whatever reason, serious that particular evening–to indicate that Crawford was going to "hurt" his parents that night or that the way he was going to do so would be, explicitly, to shoot them. Thus, there was neither an immediate nor a specific threat here.

¶ 23 Moreover, respondent's decision to take the gun from Crawford and walk along the streets of Chicago with it in his possession was, undeniably, not the sole option available to him under the circumstances presented. Rather, respondent had a number of different alternatives that were clearly more reasonable than choosing to violate the law as he did. Respondent testified he had a functioning cell phone with him that night. Obviously, when Crawford called him to tell him he was going to hurt his parents, and even when he finally met up with Crawford and saw the gun,

respondent, if he truly believed Crawford to be serious this particular time, could have called 911 or other law enforcement authorities to report what was occurring. Or, again as respondent testified, he knew Crawford's grandmother and stated that she was "cool;" respondent could have waited with Crawford there at his grandmother's home, where Crawford had immediately and without any struggle relinquished the gun to him, for her to return, given her the gun (or placed it in her house) and informed her of the situation. Also, respondent's stepfather testified that he had a good relationship with respondent wherein respondent openly spoke to him about his relationships with his friends. Respondent's stepfather also confirmed that he had a functioning cell phone with him that evening. Clearly, then, another simple alternative would have been for respondent to call his stepfather for assistance and advice, as he had done many times before. Ultimately, police eventually arrived on the scene, in the very alley where respondent and Crawford were speaking. At this point, and as another reasonable alternative, respondent could have easily informed them, at least preliminarily, of what was occurring and even could have turned over the gun. However, respondent chose to run instead, leading police on a chase and then throwing the gun into the backyard of a residential home, where, had it not been quickly recovered, could have proved disastrous. Even then, once respondent was apprehended, he still failed to explain his version of events to police, even though, again, that option was clearly available to him. Interestingly, respondent consistently testified that the motive for his actions–his decision not to call anyone, to flee from police, to throw the gun into the yard, to not explain what was happening to police–was that he did not want Crawford or himself to get in trouble. However, the desire to avoid trouble from one's parents or authorities does not "promote some higher value than the value of literal compliance with the law," which is the underlying legitimacy for the necessity defense. See *Janik*,

127 Ill. 2d at 399.

¶ 24 Accordingly, from all this, we find that respondent's decision to violate the law as he did was wholly unwarranted, particularly in light of fact that there was no immediate or specific threat and that there were so many other reasonable alternatives that existed at the time which, if carried out, would have clearly caused less harm than respondent's breaking of the law.

¶ 25 In his brief on appeal, respondent urges us to follow *People v. Kucavik*, 367 Ill. App. 3d 176 (2006) (*Barry, J., dissenting*), a Third District case which commented that a defendant asserting the affirmative defense of necessity need not necessarily prove that his conduct was the sole option available. See 367 Ill. App. 3d at 180 (opining that such an interpretation is not in accord with the defense's statutory language). However, while *Kucavik* has not specifically been overruled, its proposition on this point has never been supported by any other court. In fact, as we noted earlier, our state supreme court in both *Janik* (127 Ill. 2d at 399) and *Kite* (153 Ill. 2d at 45) made clear that the "sole option available" element is part and parcel of a valid necessity defense. Our supreme court has never wavered on this point, and our reviewing courts have reaffirmed the same view, with detailed specificity, both before and after the Third District's decision in *Kucavik*. See *People v. Gibson*, 403 Ill. App. 3d 942, 952 (2010), *abrogated on other grounds*, *People v. Bailey*, 2014 IL 115459; *Azizarab*, 317 Ill. App. 3d at 999. Moreover, the Second and Fifth Districts of our reviewing court have also made clear, in direct line with our very district, their acceptance of the "sole option available" requirement. See *Gibson*, 403 Ill. App. 3d at 952 (2d Dist.); *Kratovil*, 351 Ill. App. 3d at 1034 (2d Dist.); *Cord*, 258 Ill. App. 3d at 192 (2d Dist.); *Haynes*, 223 Ill. App. 3d at 128 (5th Dist.); see also *Dworzanski*, 220 Ill. App. 3d at 192 (1st Dist.); *Azizarab*, 317 Ill. App. 3d at 999 (1st Dist.); *Perez*, 97 Ill. App. 3d at 281 (1st Dist.).

Thus, we find no basis to abandon the reasoning that the "sole option available" requirement is essential to a necessity defense in favor of respondent's assertions. And, even were we to consider doing so in general terms, it still would not matter with respect to the instant cause for, under either view, we have already found that the State here sufficiently proved an absence of necessity and that the evidence supported the trial court's finding that respondent's belief that he needed to take possession of the gun and flee with it was unreasonable.

¶ 26 Furthermore, in disavowing *Kucavik*'s applicability to the instant cause, we would note that the issue there was whether the jury in that defendant's cause should have received a jury instruction on necessity. The implications and threshold burdens in that situation are very different than those presented in the instant cause, where the issue is whether the evidence was sufficient beyond a reasonable doubt to disprove necessity. Compare *Kucavik*, 367 Ill. App. 3d at 179 (necessity in context of jury instruction issue), with, *e.g.*, *Azizarab*, 317 Ill. App. 3d at 998-99 (necessity in context of sufficiency of evidence); see also *People v. White*, 180 Ill. App. 3d 1032, 1035 (1989) (declaring that cases involving necessity in the context of jury instructions and those involving necessity in the context of sufficiency of the evidence "are inapposite"). Instead, the instant cause is more like *White*. There, a 15-year-old minor-defendant was found guilty of unlawful use of a weapon when he brought a gun to school, despite his assertion of the necessity defense. As here, much of the evidence was comprised of his own testimony, during which he described how, in his freshman year of high school, he was approached daily by gang members who accosted and harassed him–to the point of repeated physical assaults and deadly threats–due to his lack of gang affiliation. He never told anyone about these encounters. One day, he decided to bring his father's gun and some bullets to school, not, as he testified, to use them but only to

show them to other students hoping that word would get back to the gang members and they would leave him alone. See *White*, 180 Ill. App. 3d at 1034-35. On appeal, the *White* court agreed with the trial court to find that, even taking the defendant's testimony as entirely true, it failed to provide a legal basis for the defense of necessity. See *White*, 180 Ill. App. 3d at 1035. Citing the law of necessity and its elements, as we have described herein, the *White* court explained that none of the evidence presented at trial demonstrated that the defendant could have reasonably believed that carrying a loaded gun was necessary to avoid the injury he feared. See *White*, 180 Ill. App. 3d at 1035. Ultimately, because there was no immediate threat and because "common sense" prohibited the conclusion that the sole reasonable alternative available to him was to carry around a loaded gun in the city of Chicago to protect himself against alleged threats, the *White* court held that the defendant failed to establish the affirmative defense of necessity. See *White*, 180 Ill. App. 3d at 1035-36. As we have discussed, the same reasoning–and the same findings–apply to the instant cause.

¶ 27 Accordingly, for all the foregoing reasons, we find that the State sufficiently proved beyond a reasonable doubt that respondent did not act under necessity here.

¶ 28 Finally, we would be remiss if we did not address one last matter for the record. We note that respondent devotes the initial, and largest, portion of his argument in his brief on appeal to the much-recently cited line of United States Supreme Court cases which includes *Miller v. Alabama*, 132 S.Ct. 2455 (2012), *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011), *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005).[1] Referring repeatedly to these

[1]Briefly, the Supreme Court held in *Roper* that the eighth amendment forbids the death penalty for juvenile offenders, finding that they "cannot with reliability be classified among the

cases, as well as some state cases written in a similar vein, and along with various briefs, reviews and articles from psychological and scientific publications, respondent insists that the trial court misapplied the law in the instant cause.[2] He states that the court should have analyzed the affirmative defense of necessity's objective reasonableness standard from the perspective of a reasonable juvenile in light of his age as a 16-year-old minor, rather than from the perspective of a reasonable person, *i.e.*, a typical adult. Respondent maintains that, had the court done so and, thus, considered the recent commentaries on developmental brain science and psychology that demonstrate an inherent lack of maturity, self-control and other vital decision-making characteristics among juveniles as compared to adults, it would have clearly come to the conclusion that, under the circumstances presented, his defense of necessity was legally valid. We do not, and cannot, agree with respondent, for various reasons.

¶ 29 Again, for the record, we have noted in our decision here that respondent raised this issue at different points during his trial. For example, during his testimony, his attorney sought to introduce evidence regarding his IEP and learning disability, stating that it went to his decision-making ability and, therefore, was related to his assertion of necessity. Also, at his sentencing

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worst offenders." *Roper*, 543 U.S. at 568. Next, it found in *Graham* that the eighth amendment prohibits a sentence of life without the possibility of parole for juveniles who did not commit homicide. See *Graham*, 560 U.S. at 74-75. Then, in *J.D.B.*, it concluded that a child's age can be a relevant consideration in the *Miranda* custody analysis. These holdings culminated in *Miller*, wherein the Supreme Court held that the eighth amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders, including those convicted of homicide, stating that a judge must first have the opportunity to examine the circumstances involved. See *Miller*, 132 S.Ct. at 2469.

[2]Philadelphia-based Juvenile Law Center, Children and Family Justice Center, and Center on Wrongful Convictions of Youth filed an *amicus curiae* brief in our Court on behalf of respondent with respect to this particular issue on appeal.

hearing, respondent's attorney asked the trial court to clarify whether it had evaluated his cause pursuant to a "reasonable adult standard or a reasonable juvenile standard." The court consistently maintained that this did not matter as there was no such difference and, when it asked respondent to present a case or some law "that shows that there is a different standard for necessity between juveniles and adults," he could not.

¶ 30 We, as our fellow reviewing courts, including our state supreme court, consider the decisions issued in *Miller*, *J.D.B.*, *Graham*, and *Roper* to be significant in their recognition of the physiological differences between juvenile and adult minds and their relevance regarding culpability and rehabilitative potential. See, *e.g.*, *People v. Patterson*, 2014 IL 115102 (*Theis*, *J.*, *dissenting*) (and cases cited therein); *People v. Harmon*, 2013 IL App (2d) 120439 (and cases cited therein). And, we acknowledge the propositions for which that line of cases stands. However, as of this moment, our current case law has not implemented their concepts into our jurisprudence. Specifically, the *Miller* line of cases has been used by defendants to challenge statutes like the automatic transfer and exclusive jurisdiction provisions of the Illinois Juvenile Court Act of 1987. See 705 ILCS 405/5-120, 130 (West 2010). Every one of our courts, while recognizing *Miller*, *J.D.B.*, *Graham*, and *Roper*, has outrightly rejected these challenges, refusing to extend the holdings of those United State Supreme Court cases within our jurisdiction. See, *e.g.*, *Patterson*, 2014 IL 115102; *Harmon*, 2013 IL App (2d) 120439; *People v. Salas*, 2011 IL App (1st) 091880; *People v. Markley*, 2013 IL App (3d) 120201; *People v. Pacheco*, 2013 IL App (4th) 110409. Thus, while respondent's argument here is novel, and even interesting, there is no basis anywhere in our law, as he himself admits, to ignore our precedent and to instead extend the *Miller* line to now establish a legal distinction within the objective standard of the necessity

defense to create separate categories for "reasonable juveniles" and "reasonable adults." One can quickly contemplate the swift progression down a most slippery slope that will surely ensue from such a decision.

¶ 31 Even more critically, again, although we find respondent's argument to be a thought-provoking one, it is one we simply cannot entertain in this forum. Instead, all we can do is comment, as our state supreme court has, that this is a matter upon which only the legislature may impart its review. And, if it decides that there is a need for the exercise of judicial discretion in matters involving the objective reasonableness component of the necessity defense, that is a decision that must come from that governmental entity. See, *e.g.*, *Patterson*, 2014 IL 115102, ¶ 111.

¶ 32 Ultimately, whatever the outcome of such a review, the fact remains that, in the instant cause, under the particular circumstances presented, the State clearly disproved respondent's necessity defense beyond any reasonable doubt.

¶ 33 CONCLUSION

¶ 34 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 35 Affirmed.