

FIRST DIVISION
November 10, 2014

No. 1-12-3682

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 JUSTIN C., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County, Illinois
)	
Petitioner-Appellee,)	
)	No. 11 JD 4777
v.)	
)	
Justin C., a minor,)	Honorable
)	Patricia Mendoza,
Respondent-Appellant.))	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

Held: We hold the circuit court did not improperly limit respondent's cross-examination of the complaining witness; the circuit court's recollection of the evidence was proper; the State presented sufficient evidence to negate respondent's defense of self-defense; and respondent's mandatory minimum sentence under the Juvenile Court Act (705 ILCS 405/5-715(1) (West 2010)) did not violate the equal protection clauses of the federal or Illinois constitutions. We affirm the circuit court's decision, but remand the matter to allow the circuit court to determine

which of respondent's aggravated battery convictions needs to be vacated according to the one-act, one-crime rule; and to modify respondent's probation term.

¶ 1 Respondent, Justin C., a minor, appeals his adjudication of delinquency for two counts of aggravated battery: one for causing great bodily harm (720 ILCS 5/12-3.05(a)(1)(West 2010)) and one for causing bodily harm by using a deadly weapon, a knife (720 ILCS 5/12-3.05(f)(1) (West 2010)). According to the State's evidence presented at trial, respondent and his brothers, who were also his co-defendants in this matter, attacked the complaining witness. Respondent presented evidence that the complaining witness initiated the attack. The circuit court found the State's witnesses credible. The circuit court sentenced him to the mandatory minimum sentence of 5 years' probation under the Juvenile Court Act (Act). 705 ILCS 405/5-715(1) (West 2010).

¶ 2 Respondent raises the following issues for our review: (1) whether the circuit court improperly limited his cross-examination of the complaining witness; (2) whether the circuit court's findings were based on a misrecollection of the evidence; (3) whether the State provided sufficient evidence to negate his defense of self-defense; and (4) whether his mandatory minimum sentence under the Act violated the equal protection clauses of the federal and Illinois constitutions. Respondent also raises two issues in the alternative: (1) whether his two convictions for aggravated battery violate the one-act, one-crime rule; and (2) whether his term of probation needs to be modified to terminate upon his 21st birthday.

¶ 3 We hold the circuit court did not improperly limit respondent's cross-examination of the complaining witness; the circuit court's recollection of the evidence was proper; the State presented sufficient evidence to negate respondent's defense of self-defense; and respondent's mandatory minimum sentence under the Act did not violate the equal protection clauses of the federal or Illinois constitutions. We affirm the circuit court, but remand the matter to allow the

circuit court to determine which of respondent's aggravated battery convictions needs to be vacated according to the one-act, one-crime rule; and to modify respondent's probation term.

¶ 4 JURISDICTION

¶ 5 The circuit court entered its final judgment on June 12, 2012. Respondent timely filed his notice of appeal on July 12, 2012. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603, 606, and 660, governing appeals from a final judgment entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013); R. 660 (eff. Oct. 1, 2001).

¶ 6 BACKGROUND

¶ 7 On November 8, 2011, the State filed a petition for adjudication of wardship alleging respondent committed two counts of aggravated battery on August 16, 2011: one for causing great bodily harm (720 ILCS 5/12-3.05(a) (1)(West 2010)) and one for causing bodily harm by using a deadly weapon, a knife (720 ILCS 5/12-3.05(f)(1) (West 2010)). The State asked respondent be adjudged a ward of the court.

¶ 8 On May 15, 2012, Respondent was tried with his two brothers and co-defendants, Jackson C. and Miguel C., in a joint adjudication hearing. The State presented testimony from Marcelo C., the complaining witness; Jasmine U., Marcelo's friend and an eyewitness; and Officer Juan Ortiz, a Chicago police officer who responded to the incident. Respondent's brothers and co-defendants, Jackson C. and Miguel C., in addition to respondent's mother, Connie C.; testified on respondent's behalf.

¶ 9 At the adjudication hearing, Marcelo, who was also a minor, testified that on August 16, 2011, he got his hair cut around the 3300 block of West 59th Street in Chicago, Illinois. Two of

his friends were with him, Ashley C.¹ and Jasmine. After getting his hair cut, Marcelo crossed the street to go to his house. As he was walking towards 57th Street, respondent, Jackson, and Miguel approached him and asked him "[w]hat do I claim." Marcelo understood this to be an inquiry regarding whether he was in a gang. Marcelo testified that he responded that he "wasn't affiliated." Respondent then ran towards him "trying to fight" while Jackson and Miguel "went the other direction to get objects." Marcelo testified he was struck by rocks, bottles, and a four-by-four piece of wood. Miguel threw a bottle and a brick, Jackson threw rocks, and respondent hit him with the piece of wood. The bottle cut the palm of Marcelo's hand, which left a three inch scar. He was hit by rocks thrown by Jackson in multiple areas of his body. Respondent hit him on the head with the wood, which broke into two pieces. Respondent then took a knife out of his pocket and cut Marcello on his left shoulder. After being cut, Marcelo immediately fell to the ground. The police appeared and eventually an ambulance arrived on the scene. Respondent, Jackson, and Miguel ran away. Marcelo received 12 stitches and had a four or five inch scar on his arm from the attack. Marcelo knew respondent and his brothers from the neighborhood.

¶ 10 On cross-examination, Marcelo admitted he was affiliated with a rival gang at the time of the incident, but maintained he told respondent and his brothers at that time that he was not gang affiliated. Defense counsel proceeded to ask Marcelo a series of questions establishing that he was a member of the gang at the time of the incident when the circuit court sustained the following objection from the State.

"Q. Okay. So you want - - you continue to stay by your statement before to the State that when you were approached on

¹ Ashley C. is not related to respondent or his brothers.

August 16 by [Respondent, Jackson C., and Miguel C.], you told them that you were not gang affiliated?

A. No.

MS. NOVY [Assistant State's Attorney (ASA)]: Objection, your honor. This is improper impeachment. The question of the minor was - - the victim was not whether he was a member of a gang, but what he said in response to the question.

THE COURT: Sustained.

MR. KOZUBEK [respondent's counsel]: Okay. Thank you, Judge."

¶ 11 Later during cross-examination, Marcelo reiterated that when respondent asked him if he was in a gang, he denied being affiliated with one. He did so in an effort to avoid being hurt by respondent and his brothers. Marcelo denied that he saw that respondent was injured and had no idea how respondent became injured. Marcelo admitted he had a prior incident at a McDonalds restaurant with respondent, but he could not recall the details of what they said to each other. He recalled that he sustained an injury in the prior incident and reported the prior incident to the police.

¶ 12 Marcelo testified further on cross-examination that he tried to ignore respondent and his brothers when he first saw them a half of a block away. He denied telling police shortly after the incident that he had ongoing problems with respondent and his brothers. He noticed respondent and his brothers right away because of the mean looks on their faces. He testified respondent spoke first in the encounter, asked him his gang affiliation, and called him names.

Marcelo denied screaming " 'King Love' " and " '[c]ome near me, I'll slash you" at respondent and his brothers during the incident.

¶ 13 Jasmine, also a minor, testified at the time of the incident she was with Ashley and Marcelo. They were planning on walking to Marcelo's house when respondent and his brothers approached them. Jasmine explained that "[t]hey *** approached us, and they started throwing up gang signs and *** asking [Marcelo] *** what gang he belong to." Marcelo tried to tell respondent and his brothers "[t]hat he didn't gang bang but they didn't listen and they started throwing objects like rocks." She saw respondent hit Marcelo with a board which eventually broke. Marcelo did not have a weapon. Marcelo and respondent eventually began wrestling and were in the middle of the street. She did not see respondent pull out a knife. At this time, Ashley was trying to help Marcelo while Jasmine stayed on the sidewalk. When the police arrived, Jasmine heard respondent or one of his brothers say "Oh, 5[-]0, the police" before leaving. After the fight she saw Marcelo, who appeared weak, panicking from his injuries. She also saw a lot of blood "gushing."

¶ 14 On cross-examination, Jasmine testified she didn't see respondent with a knife because he was wrestling with Marcelo. She did not see anything in Marcelo's hand and she did not see him pick anything up. Marcelo had told her that he had problems with respondent and his brothers in the past couple of months. When respondent and his brothers showed their gang signs, Jasmine, Marcelo, and Ashley did not turn and run. Marcelo told respondent and his brothers that he did not want any problems and that he was not "gang-banging." Respondent and his brothers continued to yell at Marcelo about what gang he was in.

¶ 15 Officer Juan Ortiz of the Chicago police department testified that when he arrived on the scene, Marcelo was "bleeding profusely from his arm," and was light-headed from his wounds.

He thought Marcelo's cut on his arm was from a knife because it was a clean cut as opposed to a jagged cut. Marcelo also had small lacerations on his hand. Office Ortiz secured the following pieces of evidence from the scene: a broken bottle; board that "looked like it had blood on it;" and a brick. Approximately ten minutes after his arrival, respondent and his mother talked to him. Officer Ortiz testified respondent's hand "looked like [it had] a scrape on" it. Respondent's mother thought respondent was the victim and requested an ambulance for him. Officer Ortiz requested the ambulance because respondent's mother asked for it and because respondent was a minor. On cross-examination, Officer Ortiz testified Marcelo did not acknowledge any gang affiliation. Officer Ortiz testified that Marcelo indicated to him that a knife had cut him, but the police did not recover a knife from the scene.

¶ 16 At the close of the State's case, the circuit court denied respondent's motion for a directed verdict.

¶ 17 Jackson testified on respondent's behalf. At the time of the incident, he was walking home with respondent and Miguel when he saw Marcelo, who stated to him " '[w]hat up King Love." Jackson explained "[i]t's a gang like he goes for." Marcelo then screamed at them " '[i]f you run up, I'm going to slash you.' " Two girls and a boy were with Marcelo. Jackson testified that he and his brothers, including respondent, "walked up to see who it was *** and then he started throwing rocks at us." Jackson, respondent, and Miguel threw rocks back. Jackson denied having any weapons on him, including a knife. As respondent got closer, Ashley grabbed respondent's hand and Marcelo slashed him in the arm with a knife. He did not see any of his brothers cause any injuries to Marcelo. Jackson testified that respondent, however, needed stitches for his injuries. On cross-examination, Jackson denied that one of his brothers threw a bottle, but he did see that a bottle was thrown. When the police came, Jackson

ran home. He denied seeing respondent with a knife. On re-direct examination, Jackson testified that Marcelo threw rocks first.

¶ 18 Connie C., respondent and co-defendants' mother, testified that at the time of the incident, respondent returned home with a cut on his arm. She took him to the hospital due to his injury, where he received 12 stitches in his arm and two stitches in his finger. She did not see any weapons. She testified respondent has a scar on his hand from the incident. On cross-examination, Connie admitted that she did not actually see the fight.

¶ 19 Miguel testified that he did not throw rocks or bottles. As soon as trouble started, he fled to his house. On cross-examination, Miguel testified Marcelo was "saying 'king love.' " and walking towards his brothers. He couldn't remember if his brothers were talking back to Marcelo, but testified that he was not talking to Marcelo.

¶ 20 In making its ruling, the court noted that both sides provided self-serving testimony, but it found Marcelo's and Jasmine's testimony credible. The court further pointed out that Officer Ortiz testified he saw Marcelo "in very bad shape" with "a huge gash." Officer Ortiz testified that respondent only had a scratch. The court found that the State established that Marcelo was attacked. The court did not find Jackson and Miguel's testimony credible. In conclusion, the court stated "[a]nd for those reasons - - particularly as I said based on the testimony of the police officer who was an impartial witness and who was there and witnessed everything, there will be a finding of guilt for all three minors." Accordingly, the circuit court entered a finding of guilt against defendant on both counts.

¶ 21 On June 12, 2012, the circuit court adjudged respondent to be a ward of the court and placed him on five years' probation pursuant to section 5-715(1) of the Act. 705 ILCS 405/5-715(1) (West 2010). On that July 12, 2012, respondent timely appealed.

¶ 22

ANALYSIS

¶ 23 Respondent raises the following issues for our review: (1) whether the circuit court improperly limited his cross-examination of the complaining witness; (2) whether the circuit court's findings were based on a misrecollection of the evidence; (3) whether the State provided sufficient evidence to negate his defense of self-defense; and (4) whether his mandatory minimum sentence under the Act violated the equal protection clauses of the federal and Illinois constitutions. Respondent also raises two issues in the alternative: (1) whether his two convictions for aggravated battery violate the one-act, one-crime rule; and (2) whether his term of probation needs to be modified to terminate upon his 21st birthday.

¶ 24

Cross-Examination

¶ 25 Respondent first argues the circuit court improperly limited his cross-examination of the complaining witness, Marcello, when it sustained the State's objection to Marcello's alleged retraction of his prior testimony. Specifically, respondent argues Marcello had previously testified that when respondent and his brothers approached him on the street, Marcello denied being affiliated with a gang. The court sustained the State's objection in the following colloquy:

"Q. Okay. So you want - - you continue to stay by your statement before to the State that when you were approached on August 16 by [Respondent, Jackson C., and Miguel C.], you told them that you were not gang affiliated?

A. No.

MS. NOVY [Assistant State's Attorney (ASA)]: Objection, your honor. This is improper impeachment. The question of the

minor was - - the victim was not whether he was a member of a gang, but what he said in response to the question.

THE COURT: Sustained.

MR. KOZUBEK [respondent's counsel]: Okay. Thank you, Judge."

Respondent admits that he did not properly preserve this issue for our review, but asks that we review the merits of his claim under the plain error doctrine.

¶ 26 The State responds that no error occurred here because Marcello's answer in the above colloquy was consistent with his prior testimony and the record does not remotely suggest that Marcello sought to retract his testimony. According to the State, respondent is confused in that Marcello does not deny being a gang member. Rather, Marcello denied being a gang member when confronted by respondent and his brothers to avoid a fight.

¶ 27 The plain error doctrine allows this court to reach forfeited errors affecting substantial rights in two instances: (1) "where the evidence *** is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence;" and (2) "where the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Defendant bears the burden of persuasion under either prong of the plain error doctrine. *Id.* A defendant's failure to carry the burden of persuasion results in the procedural default being honored. *People v. Eppinger*, 2013 IL 114121, ¶19. The first step in plain-error analysis is to determine whether an error occurred at all. *Id.*

¶ 28 The right to conduct reasonable cross-examination is included in a defendant's fundamental constitutional right to confront the witnesses against him or her. *People v. Davis*, 185 Ill. 2d 317, 337 (1998). The right allows cross-examination of witnesses' prejudices,

biases, or any ulterior motives. *People v. Gonzalez*, 104 Ill. 2d 332, 337 (1984). The right to cross-examination, however, is not absolute. *People v. Price*, 404 Ill. App. 3d 324, 330 (2010). Trial judges are allowed wide latitude and may impose reasonable limits on cross-examination to avoid prejudice, repetitive and irrelevant interrogation, confusion of the issues, and harassment of the witness. *People v. Harris*, 123 Ill. 2d 113, 144 (1988); *People v. Faria*, 402 Ill. App. 3d 475, 479 (2010) ("the court may interject to avoid repetitive or unduly harassing interrogation.") A trial judge may properly limit the scope of cross-examination if the inquiry is based on an uncertain or remote theory. *People v. Tabb*, 374 Ill. App. 3d 680, 689 (2007). Furthermore, in our review of cross-examination, we must review the whole record, as opposed to isolated instances in the record. *Harris*, 123 Ill. 2d at 144-45. We will not reverse the circuit court's decision to limit cross-examination absent an abuse of discretion. *Price*, 404 Ill. App. 3d at 330; *Tabb*, 374 Ill. App. 3d at 689.

¶ 29 After reviewing the whole record, we cannot say the circuit court improperly limited respondent's cross-examination of the complaining witness, Marcelo. The circuit court allowed Marcelo to be questioned extensively about his gang involvement. He admitted that he was a member of a gang but testified that when confronted by respondent and his brothers before the incident, he told them he was not a gang member in an attempt to avoid confrontation. We find respondent's suggestion that Marcelo was in the process of retracting his testimony to be a speculative and remote theory. *Tabb*, 374 Ill. App. 3d at 689. At no point did Marcelo definitively state that he wished to retract his statement. Furthermore, later in the trial transcript, but still during cross-examination, Marcelo was again asked what his response was to respondent when asked if he was affiliated with a gang. Marcelo again testified he told respondent he was not in a gang and explained to the court that he did so because he "didn't want

to get hurt." Marcelo's consistent testimony admitting his gang membership, but denying gang involvement when confronted by respondent and his brothers, does not indicate Marcelo's attempt to retract his testimony. Rather, it shows he offered consistent testimony both before and after the complained of objection here. We hold the circuit court did not improperly restrict respondent's cross-examination of the complaining witness. Respondent, therefore, has not satisfied his burden under the plain error doctrine because he has not shown that error occurred. Accordingly, we must honor respondent's procedural default of this issue.

¶ 30 Circuit Court's Recollection of the Evidence

¶ 31 Respondent next argues the circuit court's finding of guilt against him was based on its misrecollection of the evidence. Specifically, respondent argues that the circuit court found that Officer Ortiz was an impartial witness who "was there and witnessed everything." Respondent argues that this was improper because Officer Ortiz did not arrive on the scene until the end of the incident. Respondent admits he did not properly preserve this issue for our review, but argues that we should excuse his procedural default because it involves the conduct of the circuit court. Alternatively, he asks that we review the issue for plain error.

¶ 32 In response, the State argues no error occurred here because the circuit court did not misstate testimony. According to the State, respondent relies on one statement out of context in making his argument. The State contends that a review of the entirety of the circuit court's findings show that the circuit court relied on Officer Ortiz's testimony as unbiased testimony addressing the injuries that occurred after the incident.

¶ 33 The circuit court denies a party its right to due process where it fails to recall or consider testimony that is critical to a defendant's defense. *People v. Mitchell*, 152 Ill. 2d 274, 323 (1992). "In a bench trial, the trial court is presumed to have considered only competent

evidence in reaching its verdict, unless that presumption is rebutted by affirmative evidence in the record." *People v. Simon*, 2011 IL App (1st) 091197, ¶91. The circuit court is to consider all matters in the record, and must not consider matters outside the record, in reaching its decision. *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976).

¶ 34 Our review of the circuit court's findings reveals that in announcing its findings, the circuit court found Marcelo's and Jasmine's testimony credible. It found Miguel and Jackson's testimony incredible. Regarding Officer Ortiz, the circuit court pointed out that he found Marcelo "in very bad shape" with "a huge gash." The circuit court discussed how Officer Ortiz had difficulty communicating with Marcelo due to his injuries, so he called an ambulance. The circuit court also pointed out how Officer Ortiz only noticed a scratch on respondent. In conclusion, after finding Marcelo had been attacked, the circuit court commented that "[a]nd for those reasons - - particularly as I said based on the testimony of the police officer who was an impartial witness and who was there and witnessed everything, there will be a finding of guilt for all three minors." A close look at the circuit court's finding that respondent claims is improper, *i.e.* that Officer Ortiz "witnessed everything," does not amount to affirmative evidence rebutting the presumption that the circuit court considered only competent evidence. *Simon*, 2011 IL App (1st) 091197, ¶91. The circuit court started the comment by saying "particularly as I said." Looking at what the circuit court said earlier shows it relied on Officer Ortiz's testimony of the injuries sustained to the parties. It does not indicate that the court found that Officer Ortiz witnessed the actual fighting, as respondent would like us to believe. As no error occurred here, we must honor defendant's procedural default of this issue.

¶ 35 Sufficiency of the Evidence

¶ 36 Next, respondent challenges the sufficiency of the evidence of the circuit court's findings of guilt against him. He does not raise any arguments concerning the elements of aggravated battery based on great bodily harm (720 ILCS 5/12-3.05(a)(1)(West 2010)) or for aggravated battery by using a deadly weapon (720 ILCS 5/12-3.05(f)(1) (West 2010)). See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2005) ("Points not argue are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Rather, respondent argues that the State failed to prove beyond a reasonable doubt that he did not act in self-defense.

¶ 37 In response, the State argues its evidence amply supports respondent's adjudications and that the circuit court properly rejected his claim of self-defense on the basis that respondent was the aggressor. The State characterizes respondent's argument as an attempt to have this court re-try respondent and re-weigh the evidence.

¶ 38 The due process clause of the fourteenth amendment to the United States Constitution ensures that an accused defendant is not convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008); *People v. Brown*, 2013 IL 114196, ¶52 ("the State bears the burden of proving beyond a reasonable doubt each element of a charged offense and the defendant's guilt.") It is not, however, the function of this court to retry a defendant when reviewing whether the evidence at trial was sufficient to sustain a conviction. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our review of is focused on "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies to both

circumstantial and direct evidence as well as to both jury and bench trials. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2000); *Brown*, 2013 IL 114196, ¶48.

¶ 39 The trier of fact is responsible for determining a witness's credibility and the weight to be given to a witness's testimony, as well as drawing any reasonable inferences from the evidence. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Although all reasonable inferences in the record must be given in the prosecution's favor, unreasonable inferences will not be allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The trier of fact, however, is in the best position to resolve any conflicting inferences produced by the evidence. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). Further, "the trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*; see also *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.") A defendant's conviction will not be reversed "simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible." *Id.* at 228. "The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Circumstantial evidence alone can support a criminal conviction. *Brown*, 2013 IL 114196, ¶49.

¶ 40 The findings of the trier of fact are given great weight because it saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, "a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses." *Brown*, 2013 IL 114196, ¶ 48. Although the trier of fact is accorded great deference, its decision is not binding or conclusive. *Id.* at 115. As

such, a conviction will be reversed where the evidence is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 41 Once the affirmative defense of self-defense is raised, the State has the burden of proving that the defendant did not act in self-defense and that the defendant's use of force was not justified. *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995). In order for a claim of self-defense to be proper, "a defendant must establish some evidence of each of the following elements: (1) force is threatened against a person; (2) the person threatened is not the aggressor;(3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable." *Id.* at 127-28. If the State negates any one of the above elements, the claim of self-defense fails. *Id.* at 128. The trier of fact does not have to accept a claim of self-defense. *People v. Young*, 347 Ill. App. 3d 909, 920 (2004).

¶ 42 In this case, the State presented substantial evidence that respondent was the aggressor in this matter. Marcelo testified respondent and his brothers approached him, asked him if he was affiliated with a gang, and then attacked him. Jasmine testified consistently with Marcelo's account of how respondent and his brothers approached Marcelo and then attacked him. Based on Marcelo's and Jasmine's testimony, the State negated respondent's affirmative defense of self-defense beyond a reasonable doubt by showing respondent was the aggressor. We agree with the State that respondent's argument essentially amounts to a request to this court to reweigh the evidence, which we are not prepared to do. *Hall*, 194 Ill. 2d at 329-30. Additionally, the circuit court here found the testimony respondent offered as evidence that Marcelo was the aggressor to be incredible, which it is entitled to do in its role as trier of fact. *Young*, 347 Ill.

App. 3d at 920. Accordingly, we hold the State presented sufficient evidence showing respondent was the aggressor in the incident. In doing so, the State negated respondent's affirmative defense of self-defense beyond a reasonable doubt.

¶ 43 Equal Protection

¶ 44 Respondent next argues that his mandatory minimum sentence under the Act (705 ILCS 405/5-715(1) (West 2010)) violates the equal protection clauses of the Illinois and federal constitutions because the sentencing scheme is contrary to the purpose of the Act and, thus, does not have a rational basis. Respondent, adjudicated of a forcible felony, claims he is similarly situated to juveniles adjudicated delinquent of other offenses as well as adults convicted of the same offense, aggravated battery.

¶ 45 In response, the State argues that respondent's equal protection claim fails because he cannot show he is similarly situated to either of the comparison groups: juveniles adjudicated delinquent for non-forcible felony offenses and adults convicted of aggravated battery. The State further argues that even if respondent is similarly situated to either of the comparison groups, the mandatory minimum probation period under the Act (705 ILCS 405/5-715(1) (West 2010)) comports with the equal protection clauses of the federal and Illinois Constitutions.

¶ 46 Challenges to the constitutionality of a statute are questions of law subject to *de novo* review. *People v. Masterson*, 2011 IL 110072, ¶23. Statutes are presumed to be constitutional. *People v. Johnson*, 225 Ill. 2d 573, 584 (2007). Whenever reasonably possible, courts of review are to uphold the constitutionality of a statute. *Masterson*, 2011 IL 110072, ¶23. The challenger to the constitutionality of a statute has the burden of proving the statute's invalidity. *Id.*

¶ 47 Governments must treat similarly situated individuals in a similar manner in order to comply with the constitutional guarantee of equal protection. *People v. Breedlove*, 213 Ill. 2d

509, 518 (2004). "The equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose." *In re Jonathon C.B.*, 2011 IL 107750, ¶116. We use the same equal protection analysis under both the federal and Illinois constitutions. *Id.* Under the rational basis test, which the parties agree is appropriate for this case, "the court's review is limited and generally deferential and simply inquires whether the means employed by the statute to achieve the stated purpose of the legislation are rationally related to that goal." *Breedlove*, 213 Ill. 2d at 518. A movant, however, must show that "it is similarly situated to the comparison group." *Masterson*, 2011 IL 110072, ¶25. Failure to meet this preliminary threshold is fatal to an equal protection claim. *Id.*; *People v. J.F.*, 2014 IL App (1st) 123579, ¶ 14.

¶ 48 Section 5-715(1) of the Act mandates, in relevant part, that juveniles found guilty of a forcible felony receive a mandatory minimum sentence of five years' probation. 705 ILCS 405/5-715(1) (West 2010). Recently, another panel of this court rejected an equal protection claim from a juvenile sentenced under section 5-715(1) of the Act because the juvenile could not show she was similarly situated to juveniles adjudicated delinquent of non-forcible felonies or of adults convicted of the same offense. *People v. J.F.*, 2014 IL App (1st) 123579, ¶¶ 9-16. In *People v. J.F.*, this court reasoned that "[o]ur supreme court has rejected similarly situated arguments that compare two groups of juvenile offenders" *Id.* ¶15. Regarding adult offenders, this court reasoned that juveniles are not subject to adult sentencing and stressed that "courts have not recognized juvenile proceedings as criminal in nature." *Id.* 16. We see no reason to depart from this court's holding in *People v. J.F.* (2014 IL App (1st) 123579, ¶¶ 9-16)) and reject respondent's equal protection claim here. Accordingly, we hold respondent has not carried his

burden of proving section 5-715(1) of the Act (705 ILCS 405/5-715(1)(West 2010)) violates the equal protection clauses of the federal and Illinois constitutions because he has not shown he is similarly situated to either of the comparison groups, *i.e.*, juveniles adjudicated delinquent of non-forcible felony offenses and adults convicted of aggravated battery.

¶ 49 One-Act, One-Crime Rule

¶ 50 Respondent alternatively argues that one of his two counts of aggravated battery should be vacated according to the one-act, one-crime rule. The State agrees. The parties, however, dispute which one of his two counts of aggravated battery should be vacated. Findings of guilt were entered against respondent for knowingly causing great bodily harm (720 ILCS 5/12-3.05(a)(1)(West 2010)) and for causing bodily harm by using a deadly weapon, a knife (720 ILCS 5/12-3.05(f)(1) (West 2010)). Our supreme court has held that under the one-act, one-crime rule, "when it cannot be determined which of two or more convictions based on a single physical act is the more serious offense, the cause will be remanded to the trial court for that determination." *People v. Artis*, 232 Ill. 2d 156, 177 (2009). Therefore, in accordance with *Artis*, upon remand the circuit court should determine which count of aggravated battery is the more serious charge.

¶ 51 Probation Term

¶ 52 Respondent's final contention is that his five year probation term must be modified so that it does not extend beyond his 21st birthday. The State agrees. We agree with the parties that respondent's probation term must be modified. See *In re Jaime P.*, 223 Ill. 2d 526, 533 (2006) ("It is clear that the circuit court in juvenile proceedings maintains jurisdiction only until the minor turns 21 years of age."). Upon remand, the circuit court is directed to modify respondent's probation order so that it does not extend beyond respondent's 21st birthday.

¶ 53

CONCLUSION

¶ 54 The judgment of the circuit court of Cook County is affirmed and the cause is remanded to allow the circuit court to determine which of respondent's two findings of guilt for aggravated battery should be vacated. Upon remand, the circuit court shall also modify respondent's probation order to end on respondent's 21st birthday.

¶ 55 Affirmed and remanded with directions.