

No. 1-14-1464

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 DISTRICT

<i>In re J.V., a Minor</i>)	Appeal from the Circuit Court
)	of Cook County.
)	
)	
)	No. 13-JD-02599
)	
)	Honorable
(The People of the State of Illinois, Petitioner-)	Terrance V. Sharkey,
Appellee v. J.V., Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to sustain the respondent's adjudication of delinquency based upon the offenses of aggravated unlawful use of a weapon, unlawful possession of a firearm, and aggravated assault.

¶ 2 After a bench trial, the respondent, J.V., was found guilty of aggravated unlawful use of a weapon (AAUW) (720 ILCS 5/24-1.6(a)(1)(3)(c) (West 2012)), unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 2012)), and aggravated assault (720 ILCS 5/12-2(c)(1) (West 2012)) and adjudicated a delinquent minor pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5 *et seq.* (West 2012)). The circuit court, however, chose not to enter a sentence

confining the respondent for these offenses, but instead entered a "finding and judgment of guilty to stand," and ordered the "case closed." The respondent appealed from this order, arguing that the State failed to prove him guilty of the offenses either directly or under an accountability theory. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 On June 17, 2013, the State filed a petition for the adjudication of wardship of 15-year-old J.V., alleging that, on May 14, 2013, he committed the offenses of AAUW, unlawful possession of a firearm, and aggravated assault. The matter proceeded to a bench trial at which the respondent was simultaneously tried with J.H., another minor involved in the offenses.

¶ 4 Chicago Police Officer Ruth Castelli testified that she responded to a call regarding an armed individual in the area of 44th Street and Wood Avenue. Officer Castelli met Jose Ramirez at the scene, and he told her that four male Hispanics in a beige, Ford Expedition approached him, and one of the males pointed a gun at him. As she spoke to Ramirez, the Expedition drove by, and Ramirez identified the vehicle. Officer Castelli activated her squad car's emergency lights and sirens and followed the Expedition. She testified that the driver of the vehicle tossed a handgun out of the window of the vehicle and the car did not stop in response to the police sirens. Eventually, Officer Castelli "curbed" the Expedition at 1735 West 46th Street. She testified that there were four occupants in the car, none of whom attempted to flee the scene, and all of whom were arrested. She identified the respondent as one of the backseat occupants, and she confirmed that neither J.Q. nor the respondent possessed a valid Firearm Owner's Identification Card (FOID) and none of the offenders were engaged in any activity under the

Wildlife Code. Officer Castelli testified that Ramirez was brought to the place of the arrest, and he identified J.Q.¹, as the person who pointed the gun at him and said "What's up Saints?".

¶ 5 Chicago Police Officer Chris Hackett testified that he and his partner responded to the arrest scene. Based on information provided by Officer Castelli, Officer Hackett and his partner recovered a loaded, 9 millimeter, semiautomatic Ruger handgun on the street at 4541 South Wolcott.

¶ 6 Ramirez testified that, on May 14, 2013, he was walking his wife, Daniella Rico, to work around 6:50 a.m., when a beige Ford Expedition approached them. He saw four people in the vehicle, and he heard them "saying gang things," such as "what's going on Saint?". Ramirez stated that the front passenger wore a black ski mask and all black clothing, and the occupant of the back seat on the driver's side, later identified as the respondent, seemed to be filming the scene with his cell phone. He overheard the respondent say "move out of the way," as he was moving the phone like a movie camera. After this initial confrontation, Ramirez told his wife to walk in a different direction. Ramirez saw the Expedition again, about two blocks away, near 46th and Wolcott. The doors of the vehicle opened, and Ramirez saw the legs of some occupants, dangling out of the car. The occupants continued to say "bad words" to him, and he then observed that the occupant of the front passenger seat had a black shiny object, which appeared to be a gun. Ramirez ran away and a squad car stopped him. He told the officer what had occurred and pointed out the Expedition as it drove by. The officer sped away, but one officer stayed with him. Approximately 15 minutes later, the officer brought Ramirez to the

¹ J.Q. pled guilty to the offenses; the fourth offender, Erick Herrejon, was an adult and his charges proceeded in the criminal court.

arrest scene, and he identified the individuals, stating that at the time, he was 100% certain in his identifications. Rico testified consistently with Ramirez regarding the initial confrontation.

¶ 7 The respondent presented no evidence in his defense, and the circuit court found him guilty. The court stated that there was evidence showing that the respondent was "not only involved, but actively participating in aiding and [abetting]" in the crime because Rico and Ramirez observed the respondent filming the events with his cell phone. The court further stated that the respondent's conduct in filming the events provided the "linkage to the actual crime."

¶ 8 On May 20, 2013, the court conducted a sentencing hearing on the case at bar and an unrelated AAUW offense in case no. 12-JD-2309. As to case no. 12-JD-2309, the respondent entered a blind guilty plea, and the circuit court sentenced him to the Department of Corrections for an indeterminate period of time not to exceed three years. As to the case at bar, the court stated that "it will be a finding to stand case closed. I don't see the point of sending him to jail on two cases. He's going to do the same amount of time that he would do on one case as he would on two cases is my belief, State. They're both Class 4 felonies. I don't think they—they double the time because he's got two gun cases."

¶ 9 At the outset, the State contends that, because the circuit court did not impose a sentence as to the case at bar, we lack jurisdiction to entertain the respondent's appeal. The respondent counters that, in juvenile cases, the circuit court has the discretion to adjudicate a minor a ward of the court and, if so, "determine the proper disposition best serving the interests of the minor and the public." In this case, the respondent contends that the court was within its authority to enter a guilty finding without a corresponding sentence, and close the case, especially given that the court essentially determined that any sentence it would impose would be served concurrently with the sentence rendered in the respondent's other case.

¶ 10 Delinquency proceedings are separated into three phases—a findings phase, an adjudicatory phase and a dispositional phase. *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 451 (2007). The findings phase involves a trial and a determination of guilt whereas the later phases occur at a sentencing hearing and involve a determination of wardship and a sentencing disposition. *Id.* If the court adjudicates the minor a ward of the court, the court shall determine the proper disposition best serving the interests of the minor and the public. *Id.* at 453; see also 705 ILCS 405/5-7(1) (West 2012). The Act provides for numerous possible sentencing dispositions, including probation, conditional discharge, placement in legal custody or guardianship, or commitment to the Juvenile Division of the Department of Corrections. *Id.* "While a dispositional order is considered a final judgment for purposes of appeal (***) , it is yet subject to modification until closing and discharge of the minor (***) ." *In re W.C.*, 167 Ill. 2d 307, 326 (1995); see also *Stralka*, 226 Ill. 2d at 453 (citing 705 ILCS 405/5-710(3) (West 2012)).

¶ 11 Here, the circuit court found the respondent guilty of the charged offenses after a bench trial, and then subsequently adjudicated him a ward of the court. However, the court determined that no penalty or punishment was necessary in this matter to serve the best interests of the minor or the public since it had just ordered the respondent committed for three years in his other gun case. The court further indicated in its dispositional order that it was a final order and that the State's petition was closed. The Act affords the court discretion to fashion an appropriate sentence which best serves the "interests of the minor and the public," and we find no provision in the Act which prohibits the court from entering no penalty in the sentencing disposition. In considering the court's comments, the court essentially determined that any sentence it would impose would merely be served concurrently with the respondent's other sentence. See *Stralka*, 226 Ill. 2d at 455 (2007) (Emphasis added.) (stating that "the statute gives the court discretion to

decide whether or not to adjudicate the minor a ward of the court and the proper sentence to be imposed, *if any*"). Under these circumstances, we agree with the respondent that we have jurisdiction to entertain his appeal of the court's determination of his guilt on all three offenses.

¶ 12 "In delinquency proceedings, as in criminal cases, when evaluating a challenge to the sufficiency of evidence, the relevant question is '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 crime beyond a reasonable doubt.'" *People v. Austin M.*, 2012 IL 111194, ¶ 107, (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The determination of the weight to be given the testimony, witnesses' credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Austin M.*, 2012 IL 111194, ¶ 107; *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 16. When considering the sufficiency of the evidence, it is not the function of the reviewing court to retry the respondent, and we will reverse a conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt. *Austin M.*, 2012 IL 111194, ¶ 107 (citing *People v. Collins*, 214 Ill.2d 206, 217 (2005)).

¶ 13 While the respondent first argues that the State failed to prove that he had actual or constructive possession of the firearm, we need not address that argument as the State correctly asserts that we may affirm his adjudications under an accountability theory. As the State points out, the circuit court specifically found that the respondent's conduct in filming the confrontation with Ramirez was proof of his shared criminal intent with the other occupants.

¶ 14 In order for a defendant to be found guilty under an accountability theory, the State must first establish a *prima facie* case against the principal. *People v. McIntyre*, 2011 IL App (2d) 100889, ¶12. "Once the State has done so, the State must then prove that the accomplice, either

before or during the commission of the offense, and with the intent to promote or facilitate such commission, solicited, aided, abetted, or agreed or attempted to aid the principal in the planning or commission of the offense." *Id.* In order to prove that the respondent possessed the intent to promote or facilitate the crime, the State must present evidence which establishes beyond a reasonable doubt that either: (1) the respondent shared the criminal intent of the principal, or (2) there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). "Intent may be inferred from the character of [respondent's] acts as well as the circumstances surrounding the commission of the offense." *Id.* Further, "accountability may be established through a person's knowledge of and participation in the criminal scheme, even though there is no evidence that he directly participated in the criminal act itself." *Id.* at 267.

¶ 15 Thus, in order to prove the respondent guilty beyond a reasonable doubt under an accountability theory of the AAUW offense, the State needed to prove that the respondent somehow helped the principal offenders commit the following offenses. For AAUW, the State needed to prove that a principal offender knowingly carried a firearm in his vehicle without possessing a valid FOID card or was under the age of 21 and not engaged in a lawful wildlife activity. 720 ILCS 5/24-1.6(a)(1)(3)(c), (a)(1)(3)(i) (West 2012). For the unlawful possession offense, the State needed to prove that a principal offender knowingly possessed a firearm while under the age of 18. 720 ILCS 5/24-3.1(a)(1) (West 2012). For the aggravated assault offense, the State needed to prove that a principal offender intentionally or knowingly placed another in reasonable apprehension of receiving some sort of harmful physical contact while using a firearm. (720 ILCS 5/12-2(c)(1) (West 2012).

¶ 16 Regarding the AAUW offense, the State presented evidence that the front seat passenger, J.Q., pointed the gun at Ramirez, without possessing a valid FOID card and while under the age

of 21 and not engaged in a lawful activity under the Wildlife Code. Likewise, the State established that J.Q., a minor, pointed the gun at Ramirez, satisfying the elements for unlawful possession, and that, when he did so, J.Q. knowingly placed Ramirez in reasonable apprehension of being physically harmed, satisfying the elements of aggravated assault. Further, the evidence showed that the occupants yelled gang slogans at Ramirez and that the respondent filmed the confrontation on his cell phone. The court, as was its duty as the fact-finder, found the respondent's conduct in recording the events on his cell phone as evidence of his effort to aid and abet or otherwise promote or facilitate these crimes.

¶ 17 Based on the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.