

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.C.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

March 17, 2023

Court of Appeals Case No.
22A-JV-2188

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge

Trial Court Cause No.
49D09-2105-JD-3805

Memorandum Decision by Judge Tavitias
Judges Vaidik and Foley concur.

Tavitias, Judge.

Case Summary

- [1] D.C. appeals the juvenile court’s order modifying his dispositional decree and placing him in the Department of Corrections (“DOC”). D.C. argues that the State failed to give sufficient notice of D.C.’s alleged probation violations and that D.C.’s due process rights were, therefore, violated. We find D.C.’s arguments without merit and affirm.

Issue

- [2] D.C. raises one issue on appeal, which we restate as whether the State gave insufficient notice of the specific alleged probation violations and violated D.C.’s due process rights.

Facts

- [3] On May 10, 2021, the State alleged that then-fifteen-year-old D.C. was a delinquent for committing: 1) auto theft, a Level 6 felony when committed by an adult; and 2) resisting law enforcement, a Class A misdemeanor when committed by an adult. On July 13, 2021, D.C. and the State entered into an admission agreement wherein D.C. agreed to admit to auto theft and to serve probation with a suspended commitment to the DOC, and the State agreed to dismiss Count II.
- [4] The juvenile court accepted the admission agreement and, at an August 20, 2021 dispositional hearing, the juvenile court placed D.C. on formal probation with a suspended commitment to the DOC. As a condition of D.C.’s probation, D.C. was prohibited from “possess[ing] or be[ing] around anyone in

possession of a gun, rifle, shotgun or other dangerous weapon, including ammunition and look-a-like weapons.” Appellant’s App. Vol. II p. 223.

[5] On July 7, 2022, the State filed a petition to modify the juvenile court’s dispositional decree¹ and alleged two violations of D.C.’s probation, specifically, that:

On or about Monday July 4th, 2022 [D.C.] posted a photo to social media depicting him in possession of a suspected rifle.

On or about Tuesday July 5th, 2022 [D.C.] posted a photo to social media depicting him in possession of a suspected rifle.

Id. at 225.

[6] The juvenile court held a hearing on the petition on August 15, 2022. The State presented testimony from IMPD Officer Nathan Lush, a member of the Violence Reduction Team. Officer Lush testified that he monitored D.C.’s social media due to D.C.’s previous violations² and that, on July 4 and 5, 2022, D.C. posted on his Instagram account photos and videos that depicted him in possession of an AR-style pistol.

¹ The July 7, 2022 petition to modify was the State’s third petition to modify the juvenile court’s dispositional decree.

² D.C. had previously violated the conditions of his probation and release by committing several new offenses, by failing to abide by the juvenile court’s no contact orders, and by possessing a firearm.

[7] The juvenile court admitted photos of five of the social media posts. The first photo depicts a person with the butt of a firearm protruding from the person's front right pocket.³ The second photo depicts "the right hand side of an AR pistol [with] the safety selector [] put to fire." Tr. Vol. II p.14. The third photo depicts the groin area of a person seated in a vehicle with "the handle of an AR style pistol in between the legs pointed towards the ground." *Id.* at 15. The fourth and fifth photos depict D.C. standing on the hood of a vehicle holding an AR-style pistol in his right hand. Officer Lush identified D.C. as the person holding the AR-style pistol in the fourth and fifth photos, as did D.C.'s Probation Officer, Nathan Dorsch.

[8] D.C.'s mother testified that she recognized D.C. in the photos but that D.C. had not worn several items of clothing depicted in the photos in approximately one year. She further testified that the apartment complex located behind D.C. in the fourth and fifth photos was her daughter's former apartment and that her daughter had not lived there for approximately one year. After the presentation of evidence, D.C., through counsel, argued that, regardless of when the photos and videos were posted to D.C.'s Instagram account, the State failed to prove that the photos were taken or that D.C. possessed the AR-style pistol during D.C.'s probationary period.

³ Officer Lush could not confirm that D.C. was the person in the photo.

[9] The juvenile court found that that the State met its burden of proof and that D.C. violated his probation.^{4,5} The juvenile court subsequently held a modification hearing and ordered D.C. placed under the guardianship of the DOC for a period of six months. D.C. now appeals.

Discussion and Decision

[10] D.C. argues that the State gave insufficient notice of D.C.'s alleged violations and that his due process rights were, therefore, violated. We disagree.

[11] Pursuant to Indiana Code Section 31-37-22-1(a)(2), a juvenile court may modify any dispositional decree upon the motion of the probation officer or prosecuting attorney. If the motion requests a modification other than an emergency change in the child's residence, "the probation officer shall give notice to the persons affected and the juvenile court shall hold a hearing on the question." Ind. Code § 31-37-22-3(b).

[12] A juvenile has a due process right to adequate notice of the charges against him. *K.S. v. State*, 114 N.E.3d 849, 853 (Ind. Ct. App. 2018) (citing *K.A. v. State*, 938 N.E.2d 1272, 1274 (Ind. Ct. App. 2010), *trans denied*), *trans. denied*. "The standard for determining what due process requires in a particular juvenile proceeding is 'fundamental fairness.'" *Id.* (quoting *D.A. v. State*, 967 N.E.2d 59,

⁴ The juvenile court's written order erroneously states that it found that the State's probation violation allegations were not true. On appeal, D.C. does not contest the fact that the juvenile court, in fact, entered a true finding. We find, therefore, that the juvenile court entered a true finding.

⁵ D.C. filed a motion to reconsider on September 1, 2022, which the juvenile court denied.

64 (Ind. Ct. App. 2012)), *trans. denied*. “A juvenile charged with delinquency is entitled to the ‘common law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial.’” *Id.* (citing *K.A.*, 938 N.E.2d at 1274).

[13] We have held in the context of juvenile probation revocation proceedings that notice must be “sufficiently detailed to allow the probationer to prepare an adequate defense” and that “[i]t is error for a probation revocation to be based upon a violation for which the probationer did not receive notice.” *J.H. v. State*, 857 N.E.2d 429, 432 (Ind. Ct. App. 2006) (citing *Bovie v. State*, 760 N.E.2d 1195, 1199 (Ind. Ct. App. 2002)), *trans. denied*. We review claims of due process violations de novo. *Hilligoss v. State*, 45 N.E.3d 1228, 1230 (Ind. Ct. App. 2015); *accord Bruder v. Seneca Mortgage Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022) (“We review questions of law de novo.”).

[14] D.C. argues that the State failed to give sufficient notice that D.C. violated the conditions of his probation by “being around or possessing firearms”; rather, D.C. contends that the State only gave notice that D.C.’s alleged violations were “posting photos on social media depicting him with a firearm” and that the conditions of D.C.’s probation did not prohibit him from posting on social media. We are not persuaded.

[15] In its petition to modify the dispositional decree, the State specifically alleged that D.C. had “possession of” a firearm. Appellant’s App. Vol. II p. 225. During the hearing, moreover, D.C. argued that the State failed to prove that

the photos were taken during D.C.'s probationary period and, thus, that the State failed to prove that D.C. possessed the AR-style pistol during his probationary period when such conduct was proscribed. The juvenile court, evidently, was simply not persuaded.

[16] D.C. relies on *J.H.*, 857 N.E.2d 429, which we find distinguishable. In that case, J.H. was adjudicated a delinquent child for committing an act that would be child molesting, a Class C felony if committed by an adult, and was placed on probation. *Id.* at 430. Nearly two years later, while J.H. was still on probation, the State alleged J.H. was a delinquent child for committing theft, a Class D felony if committed by an adult. *Id.* at 431. The juvenile court released J.H. to home detention pending an adjudication of the theft allegation. *Id.* A condition of J.H.'s release, but not of his probation, was that J.H. "have no contact with any computers." *Id.*

[17] The State later filed a petition in which it alleged that J.H. violated the conditions of his probation in the child molesting case by accessing a computer, which the juvenile court found to be true. *Id.* On appeal, we held that the State failed to give sufficient notice of the alleged probation violation because none of the conditions of J.H.'s probation prohibited him from accessing computers. *Id.* at 433.

[18] Here, the State alleged that D.C. had "possession of" a firearm, and it was a condition of D.C.'s probation that he not "possess or be around anyone in possession of a gun, rifle, shotgun or other dangerous weapon, including

ammunition and look-a-like weapons.” Appellant’s App. Vol. II pp. 223, 225. D.C.’s reliance on *J.H.* is, thus, misplaced. We find, therefore, that the State gave sufficient notice of D.C.’s violations and that D.C.’s due process rights, accordingly, were not violated.⁶

Conclusion

[19] The State gave sufficient notice of D.C.’s alleged violations, and D.C.’s due process rights, therefore, were not violated. Accordingly, we affirm.

[20] Affirmed.

Vaidik, J., and Foley, J., concur.

⁶ D.C. argues only in his Reply Brief that the State failed to prove that D.C. possessed the AR-style pistol during his probationary period. It is well settled that an appellant may not raise an argument for the first time in his or her reply brief, and we, therefore, find that this argument is waived. See *Lockerbie Glove Co. Town Home Owner’s Ass’n, Inc. v. Indianapolis Historic Pres. Comm’n*, 194 N.E.3d 1175, 1184 (Ind. Ct. App. 2022). Moreover, this argument is merely a request that we reweigh the evidence, which we cannot do.