FOURTH DIVISION
August 3, 2017

No. 1-16-2898

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re TAVARES J., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 16 JD 540
	)	
TAVARES J.,	)	Honorable
	)	William G. Gamboney,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County adjudicating the minor delinquent for unlawful possession of a handgun and sentencing him to three months' confinement in the Illinois Department of Juvenile Justice is affirmed; police had probable cause to arrest the minor for a violation of curfew laws and properly conducted a search incident to that arrest, and the trial court properly considered a Social Media Report and all sentencing factors when sentencing the minor.

¶ 2 The State filed a petition for adjudication of wardship of Tavares J., born May 31, 2000, alleging the minor was delinquent in that on or about March 7, 2016, he committed the offense of aggravated unlawful use of a weapon and unlawful possession of firearms. Tavares filed a motion to quash arrest and suppress evidence. Following a hearing the trial court denied the motion and the cause proceeded to a bench trial. The parties stipulated to incorporating testimony from the hearing on the motion to suppress into the trial. After brief additional testimony from the police officer who testified at the hearing on the motion to suppress, the parties waived closing argument and the court found Tavares guilty of aggravated unlawful use of a weapon and unlawful possession of a firearm. The trial court committed Tavares to the Illinois Department of Juvenile Justice (DJJ) for three months and continued the matter for the minor to be brought back to court. Tavares filed a motion to reconsider his sentence. The trial court held a second hearing including new information relevant to sentencing from the defense. Following the second sentencing hearing the court denied the motion to reconsider.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Tavares filed a motion to quash arrest and to suppress a handgun discovered on his person after police stopped him for a curfew violation. The motion argued police arrested him for a curfew violation without probable cause and conducted an illegal search by reaching into his pocket. Officer Mahadeo of the Chicago Police Department testified at the hearing on Tavares's motion to suppress. A few minutes before 12:05 a.m. on March 7, 2016, Officer Mahadeo and Officer Laurel observed Tavares walking southbound on Kedzie Avenue. Officer Mahadeo testified Tavares was with his cousin. The officers observed Tavares and his cousin for a couple of minutes, during which time the two "just walked," before driving up next to them. Officer Mahadeo testified they drove up to Tavares and his cousin because they looked young and the officer believed they were underage and violating curfew. Officer

Mahadeo testified they stopped their police car to determine if Tavares and his cousin were juveniles because if they were, they would be in violation of the curfew law and the officers would have to issue a notice and take them to their parents. The officers pulled up but did not exit their vehicle. They lowered their windows and asked Tavares and his cousin how old they were. Officer Mahadeo testified Tavares's cousin replied they were both 15-years old. The officers then asked where they were coming from, where they lived, and where they were going. Officer Mahadeo testified their response was "They came from the store to buy chips and pop for this—for themselves, and they were heading to [Tavares's] residence." Tavares's cousin was holding a black plastic bag containing chips and a bottle of pop. Officer Mahadeo did not ask Tavares and his cousin whether they had spoken with their parents about taking an errand. Officer Mahadeo was aware that being on an errand for a parent is a defense against a curfew violation.

¶ 6 Officer Mahadeo did not document in her report that she asked Tavares and his cousin why they were out that night and did not document the reason Tavares and his cousin gave for being out that night. At the hearing Officer Mahadeo testified that when Tavares and his cousin responded they were out buying chips and pop the officers informed the minors they were in violation of the curfew and the officers would drive them home. The curfew is 10:30 p.m. on weekdays and 11:00 p.m. on weekends. Officer Mahadeo testified the officers intended to exit the police vehicle to place the minors in the back to drive them home and fill out a curfew violation notice report. Officer Mahadeo testified the minors were not free to leave at that point. Officer Mahadeo testified Tavares was approximately 10 to 15 feet away from them because he had not immediately stopped when the officers pulled up to them. At that point Tavares had turned toward the officers and placed his hand in his left front jacket pocket. In response to Tavares putting his hand in his pocket, Officer Mahadeo "observed where *** the pocket was, and *** saw that there was a bulge and it was a heavy object because the jacket pocket on that side

sunk lower than the other side." Officer Mahadeo later testified the "part with the bulge was lower, carried lower on his body than the right side, so the jacket looked like a little—almost like it was lopsided." Officer Mahadeo informed Officer Laurel of the bulge, and Officer Laurel instructed Tavares and his cousin to put their hands up.

¶ 7 Officer Mahadeo testified Tavares's cousin complied with the officer's order but Tavares "placed his hands up and then slowly proceeded to put his hand back into his left jacket pocket." Officer Mahadeo continued to observe Tavares's movements and told Officer Laurel there was still a bulge in Tavares's pocket. Tavares raised his hands then put his hand in his pocket a second time. The officer instructed Tavares to put his hands up again. Tavares put his hands up and "began walking [toward them] and he began walking behind his cousin which concealed his body and his movements from *** view." Officer Laurel instructed Tavares to put his hands up a third time and Tavares "attempted to go back into his pockets for the third time." Officer Mahadeo testified that after Tavares raised his hands the third time, "he slowly lowers his hands again at the same time moving northbound towards *** his cousin" by stepping side-to-side going behind his cousin. Officer Laurel then detained Tavares and his cousin by grabbing their jackets and walking them to the back of the police vehicle and having Tavares and his cousin place their hands on the police vehicle's windows.

¶ 8 Officer Mahadeo testified "I did a pat-down of [Tavares's] jacket and I felt the weapon so I went inside the pocket and retrieved the handgun." Officer Mahadeo testified "What I did was I went directly to the pocket, felt the outside of the pocket, felt that it was a weapon, then went inside the pocket, retrieved that weapon." Officer Mahadeo "grabbed it" and felt "the handle and the trigger." Officer Mahadeo did not document performing a protective pat-down of Tavares in the police report. The report states only that Officer Mahadeo searched Tavares. Officer Mahadeo testified that what lead to the belief that Tavares had a weapon on his person was Tavares's "refusal to obey the commands, the

weight of the jacket, and his movement to conceal his body once [the officers] were trying to walk towards him." Officer Mahadeo testified the purpose of the pat-down was for weapons and that Tavares's movements and refusal to obey led Officer Mahadeo to believe Tavares was armed. Officer Mahadeo testified that after retrieving a handgun from Tavares's jacket pocket the officers placed Tavares in custody. Officer Mahadeo's police report states that the minors were placed in custody before the officers performed a search.

¶ 9 Following argument on the motion to quash arrest and suppress evidence the trial court denied the motion. The court stated it found Officer Mahadeo to be reliable and credible. The court acknowledged that the officer "was impeached by her police report not including certain items" but the court stated it did not find those "significant enough to detract from her ultimate credibility." The court found there was a valid stop for a potential curfew violation and a valid curfew arrest. The court found that the only fair inference to be drawn from the curfew statute was that "by being in a public place *** the minor was remaining because he was in a public place" and thus in violation of the curfew law. The court found that because "there was a valid curfew arrest *** the search of the minor would be a search incident to a valid arrest." The court further found that "assuming *arguendo* that there was some fault with the curfew arrest *** under the circumstances, there would, considering the totality of the circumstances, it would be a valid *Terry* stop and search incident to that."

¶ 10 The parties stipulated to incorporate the testimony from the motion to suppress into the trial. The cause proceeded to trial and the State recalled Officer Mahadeo. Officer Mahadeo took the weapon seized from Tavares to a police station and inventoried it. The weapon was small enough to be concealed on a person. Officer Mahadeo learned Tavares was 15-years old. Officer Mahadeo asked Tavares if he had a valid Firearm Owners Identification Card and Tavares responded he did not know what that was. The trial court took judicial notice of an order of probation against Tavares. Tavares was

on probation for aggravated unlawful use of a weapon at the time of this offense. The trial court found Tavares guilty, ordered a social investigation, set the matter for sentencing, and continued Tavares on electronic monitoring until the sentencing hearing.

¶ 11 At the sentencing hearing the trial court noted it received a social investigation report and a report from Intensive Probation Services (IPS). Two probation officers were present at the hearing and both recommended probation for Tavares. Probation Officer Kowal stated Tavares was "at low-level risk." The court inquired about a social media report. Probation Officer Kowal had a social media report but neither the court nor Tavares's attorney had received it. The court passed the matter to allow Tavares's attorney to review the social media report and confer with Tavares about the report. The social media report contains photographs of Tavares holding guns, displaying gang signs, and smoking what appears to be marijuana cigarettes. When the case was recalled Tavares's attorney argued it would be unfair to hold the photos against Tavares because the photos were undated and Tavares informed counsel the photos predate his first gun case and the guns in the photos were fake. The court stated "at best for Tavares, those are pictures of him with what look to be guns. They look to be gang signs; and they look to be smoking something—possible, it looks like marijuana cigarettes, maybe self-rolling something else." Tavares's attorney argued the least restrictive alternative would be probation or intensive probation.

¶ 12 Tavares stated on his own behalf that "if a second chance is possible, I will respect that." The trial court responded: "[T]he problem I see is that you've already had your second chance. [Your] first chance was in 2015, when *** you were placed on probation when the State was asking to send you on a straight-commit to [*sic*] a UUW." The court asked the State for the facts of the prior UUW, which the State provided. While responding to a report of shots fired police received a description of an offender.

Police saw Tavares, who ran. Police caught him and recovered a loaded handgun with four spent cartridges. The court then continued as follows:

> "THE COURT: And then so you were —I've got that you were placed on probation on November 19th, 2015.
>
> And then in March—less than four months later—you pick up another gun case when you were out past curfew. I think that was one of the issues in the case.
>
> I mean, I understand—I believe I understand the dictates of the Juvenile Court Act in trying to resolve this matter short of being incarcerated, but given the—and I don't want to start dwelling on the West Side of Chicago and South side of Chicago—over the past year, I've had three minors on probation that have been killed—this year, since January. I've had approximately 16 that have been shot.
>
> These guns on the street are a menace. The reports I'm having is that he's an active member of the gang, he smokes marijuana, now he's being caught for the second time with a gun.
>
> I don't believe he's a proper subject for probation or intensive probation at this time. The Court will make the following findings:
>
> * * *
>
> It is necessary to ensure that protection of the public from the consequences of the criminal activity of the minor that secured confinement is necessary after a review of the following individualized factors:
>
> The minor's age; criminal background; review and results of any assessments; educational background; physical, mental, and emotional health; viability of community based services. Services within DJJ will meet the needs of the minor.

Reasonable efforts have been made to prevent or eliminate the need for the minor to be removed from the home. Reasonable efforts cannot at this time prevent or eliminate the need for removal.

Removal from the home is in the best interest of the minor, the minor's family, and public.

Reasonable efforts were made to locate less-restrictive alternatives to secured confinement and were unsuccessful.

It is thereby ordered that the minor should be committed to the Illinois Department of Juvenile Justice. This case will be continued for a bring back."

¶ 13 Tavares filed a motion to reconsider the sentence. The motion to reconsider argued the social media report was not tendered to the defense three days prior to the sentencing hearing as required by statute, and there was no opportunity to object to the trial court seeing the report or to defend against it because it was immediately handed to the trial court before being shown to defense counsel who only had a brief opportunity to review the report with Tavares before the hearing continued. The motion also argued intensive probation was a less-restrictive alternative to DJJ for Tavares, but there was no evidence as to why intensive probation was not a viable alternative to DJJ and the trial court disregarded intensive probation. At the hearing on the motion to reconsider, the trial court read a letter it received that day from DJJ. Tavares's attorney stated she had received the social media report and that she wanted to make additional arguments concerning the report. Tavares's attorney also stated that "clinical was referred after sentencing and so that is also new information that I'd like to discuss today." The court responded "I'll allow you to make a presentation and then it's, I guess, somewhat in the form of a new sentencing hearing, if that's what you want to do." Tavares's attorney then proceeded to argue, in part, that the court is required to consider the minor's physical, mental, and emotional health. Tavares's

attorney referred to an evaluation of Tavares by clinical services conducted since his incarceration, which was provided to the court. Counsel summarized the findings in the report and stated the clinician recommended probation with community-based clinical services. Counsel also argued that even if the court believed Tavares had exhausted the opportunity for probation, he has never been given a chance on intensive probation.

¶ 14 Tavares's attorney additionally argued she had not received the social media report at least three days prior to the sentencing hearing as required by statute. The trial court inquired of Tavares's attorney "Do you want a new *** is this what we're having now is a new hearing?" Tavares's attorney responded that if the court would be willing to reconsider the sentence then "yes, this could be akin to a re-sentencing." The court responded "Well, I'm allowing you to file *** the motion, and I will reconsider the sentence." The court accepted that there could have been an error that would affect the propriety of the sentence and stated it wanted to solve that problem. The court stated it would consider the report in the hearing on the motion to reconsider because "it's way past the three days, and you've had a chance to review it and present whatever arguments you want to make." The court made clear it would consider arguments as to why the court should not consider the report. Tavares's attorney argued the primary reason the court should not consider the report is because it lacks foundation. The court passed the case to allow the probation officer who prepared the report an opportunity to testify. Probation Officer Keane testified the reports at issue were not originally intended for the court but "to provide officer safety information, gang information, information that probation officers could use in case planning, school situations of that nature."

¶ 15 Probation Officer Keane testified the report had been modified for use by the court, and it is assimilated from information available through the Chicago Police Department database. The social media aspect of the report is "open source on the internet." Tavares's attorney asked the probation

officer if the probation department had any means of validating when pictures posted on the internet were taken or what items depicted in those pictures actually were. There was no way to tell what items were or, for example, whether guns in photos where real or fake and no way to tell when photos were actually taken. The probation officer confirmed that the pictures appeared on what appeared to be Tavares's Facebook page. The probation officer also testified that gang information comes from the Chicago Police Department database and what the subject of the report posts on social media. Probation Officer Keane testified "we're saying based on the posts around his account and the people that he's associating with, this is his [gang] association." Tavares's attorney argued there was no information about what was actually depicted in the photos or whether hand gestures used in the pictures were actually a gang sign, and that Tavares stated the guns were fake, the substance being smoked was tobacco, and a name that could be construed as the name of a gang was actually used by a group of friends in solidarity after the loss of their friend.

¶ 16 The trial court found the original sentence was appropriate. The court acknowledged Tavares's support from family and Lawndale Christian Legal Center, which represented him, but stated it "also finds that the minor was on probation for a gun case and within a couple months, he picks up a second gun case. I find that almost inexcusable." The court stated it has reviewed the statutory requirements of least restrictive alternatives and it found there are no less restrictive alternatives. Regarding the Facebook pictures, the court stated "I don't know when these pictures were taken but they were posted to the public of him holding what appeared to be guns, appeared to be weed, and appear to [be] gang signs. You know, maybe they're not, but I think for whatever message the minor is trying to send out to the public by those pictures is contrary to the picture being painted of him as—all the things he has been doing." The court acknowledged that the letter from DJJ stated Tavares's behavior had been good. The

court stated it would "deny the Defense motion to reconsider the sentence and continue this commitment."

¶ 17 This appeal followed.[1]

¶ 18 ANALYSIS

¶ 19 In this appeal, Tavares attacks both the adjudication of wardship and the order confining him to DJJ for three months on a bring-back. As to the adjudication, Tavares argues police lacked probable cause to arrest him for a curfew violation, thus any search incident to that arrest was unconstitutional and the trial court should have granted the motion to suppress the gun. Tavares also argues the seizure of the gun cannot be justified under *Terry* stop principles because police did not have a reasonable suspicion he was involved in criminal activity and lacked a reasonable suspicion he was armed. "A reviewing court applies a two-part standard of review to a trial court's ruling on a motion to quash arrest and suppress evidence. [Citation.] We defer to a trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. [Citation.] However, a reviewing court is free to undertake its own assessment of the facts in relation to the issues presented and draw its own conclusions in deciding what relief, if any, should be granted. [Citation.] We review *de novo* the trial court's ultimate legal ruling on a motion to suppress. [Citation.]" *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 16.

[1] The notice of appeal lists the date of judgment as October 11, 2016, the date the trial court denied Tavares's motion to reconsider sentence. The notice of appeal does not list the date of the judgment adjudicating Tavares a ward of the court. Nonetheless, the notice of appeal "identifies the offense and sentence and states [Tavares] is appealing no orders 'other than conviction.' " *People v. Lewis*, 234 Ill. 2d 32, 39 (2009). (The notice of appeal in this case asks for the nature of the order appealed from, if the appeal is *not* from a conviction. Tavares's notice of appeal states "N/A" in this field.) Tavares's notice of appeal, "considered as a whole and liberally construed, adequately identifies the complained-of judgment and informs the State of the nature of the appeal. Accordingly, the notice was sufficient to confer jurisdiction on the appellate court to consider this appeal." *Id.*

¶ 20 As to the sentence, Tavares argues the trial court failed to adequately consider sentencing factors, considered improper evidence at sentencing, and failed to sentence him to the least-restrictive alternative (intensive probation) possible. "A court's dispositional order will not be overturned on appeal unless it is against the manifest weight of the evidence. [Citation.] An order is against the manifest weight of the evidence if the opposite result is clearly apparent. [Citation.]" *In re Darren M.*, 368 Ill. App. 3d 24, 38-39 (2006). "When determining the appropriate disposition, the circuit court may choose as it sees fit, among the various alternatives, and need not defer to any particular recommendation. [Citation.] However, because delinquency proceedings are protective rather than punitive in nature, [c]ommitment is to be used only when less severe placement alternatives would not be in the best interests of the minor and the public. [Citations.]" (Internal quotation marks omitted.) *Id.*, at 39.

¶ 21 I. Adjudication of Wardship

¶ 22 Although the trial court adjudicated Tavares delinquent based on a violation of sections 24-1.6(a)(1) and 24-3.1(a)(1) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/24-1.6(a)(1), 24-3.1(a)(1) (West 2016)), his challenge on appeal is to the search resulting from being arrested for a curfew violation. The parties agree the record leaves uncertain whether police stopped Tavares for a suspected violation of the curfew offense statute in the Criminal Code or the curfew offense ordinance in the Chicago Municipal Code. They also agree the two provisions are almost identical, therefore which provision was at issue in the proceedings below is immaterial. We agree. We will refer to both provisions as "the Curfew Law" and our analysis would be the same under either provision. The relevant portions of both laws are identical. A minor commits a curfew violation when he or she "remains in any public place or on the premises of any establishment *** during curfew hours." " 'Remain' means to (A) linger or stay; or (B) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises." "It is a defense to prosecution

*** that the minor was *** on an errand at the direction of the minor's parent or guardian, without any detour or stop" or "exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly."

¶ 23 A. Probable Cause—Meaning of "Remain"

¶ 24 Tavares asserts police lacked either probable cause to arrest or reasonable suspicion to stop him for a curfew violation because he did not "remain" in a public place under the Curfew Law. Tavares argues he did not "remain" in a public place for purposes of the Curfew Law because when police observed him and his cousin they were walking, and walking in a public place is not "remaining" in a public place. ("Because Tavares was walking during the entire time he was observed by the police and up until the time they stopped him, he was not 'remaining' in a public place as that term is defined in the Curfew Law.") Tavares argues "[i]n the absence of evidence [he] was 'lingering' or 'staying' on the sidewalk *** there was no reasonable basis for the officers to conclude that Tavares was violating the Curfew Law, so no probable cause to arrest him under that law." The State responds Tavares's argument "goes against common usage and plain meaning and would lead to an absurd result." The State focuses on the definition of the word "linger" (which the Curfew Law uses to define "remain"). The dictionary defines linger as "to be slow in parting or in quitting something." The State argues that had the legislature (or city council) intended the Curfew Law to apply only to those "standing" in public, it would have defined "remain" as meaning only to "stay" and not included "linger" in the definition, and that it would be absurd to conclude otherwise because it would be absurd "to read into the statute an exception that would allow a minor to escape the purpose of the curfew statute merely because he was walking." Tavares replies the State may not rewrite the Curfew Law, which does not say that "simply being outside after hours, or *** walking outside after hours" is a violation of the Curfew Law, and

asserts that if the State finds this absurd, "it should take up its concerns with the General Assembly and the Chicago City Council."

¶ 25 "When construing a statute, this court's primary objective is to ascertain and give effect to the legislature's intent, keeping in mind that the best and most reliable indicator of that intent is the statutory language itself, given its plain and ordinary meaning." *People v. Perez*, 2014 IL 115927, ¶ 9. "In determining the plain, ordinary, and popularly understood meaning of a term, it is entirely appropriate to look to the dictionary for a definition." *People v. Bingham*, 2014 IL 115964, ¶ 55. "But if the clear language, when read in the context of the statute as a whole or of *** other real-world (as opposed to law-world or word-world) activity that the statute is regulating, points to an unreasonable result, courts do not consider themselves bound by 'plain meaning,' but have recourse to other interpretive tools in an effort to make sense of the statute. [Citations.]" (Internal quotation marks omitted.) *People v. Hanna*, 207 Ill. 2d 486, 499 (2003). "If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. [Citations.]" (Internal quotation marks omitted.) *Id.* at 498. "[I]n seeking legislative intent, the court will *always* have regard to existing circumstances, contemporaneous conditions, the object sought to be attained by the statute and the necessity or want of necessity for its adoption. [Citations.]" (Emphasis in original.) *Id.* at 502. "The primary interest advanced by the State to justify the restrictions of the statute as to time, place and circumstance is the traditional right of the State to protect its children. The statute proceeds upon the basic assumption that when a child is at home during the late night and early morning hours, it is protected from physical as well as moral dangers." *People v. Chambers*, 66 Ill. 2d 36, 42 (1976).

¶ 26 We hold that a minor simply walking the streets during curfew hours, without the presence of one of the enumerated defenses, would be in violation of the curfew law. Although we agree it would be absurd to deny the protection of the law to a minor who wandered the streets as opposed to one who

stopped on a street corner, we do not need to resort to the "absurd results" doctrine of statutory construction to reach this conclusion. See *Hanna*, 207 Ill. 2d at 498 (citing V. Dougherty, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 Am. U.L.Rev. 127, 127–28 (1994) ("The absurd result principle in statutory interpretation provides an exception to the rule that a statute should be interpreted according to its plain meaning")). One dictionary definition of "stay" (which is also used in the Curfew Law to define "remain") is "to continue in a place or condition: remain." "It is the responsibility of the court when utilizing a dictionary to choose that definition that most effectively conveys the intent of the legislature. [Citation.]" (Internal quotation marks omitted.) *Bingham*, 2014 IL 115964, ¶ 55. We believe this definition most effectively conveys the intent of the legislature in prohibiting minors from remaining in a public place during curfew hours. Tavares's focus on "the activity engaged in"—walking—as conduct that is not prohibited by the Curfew Law is misplaced. Whether the Curfew Law applies does not depend upon the nature of the activity engaged in by the minor, as Tavares's argument suggests. Rather, the Curfew Law is a restriction "as to time, place, and circumstance." *Chambers*, 66 Ill. 2d at 42. See also *Hutchins v. D.C.*, 188 F.3d 531, 559-60 (D.C. Cir. 1999) (Rogers, J. and Tatel, J., concurring in part and dissenting in part.)[2]; *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 943–44 (9th Cir. 1997)[3].

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[2] "For the reasons discussed, the conduct at issue should be more generally defined to encompass the activity of movement rather than how particular minors engage in it. The plurality's limited definition of the contested right appears to flow from an unarticulated perception of what minors might be doing while 'freely wander[ing] *** at night.' [Citation.] How minors exercise, and whether they abuse, their right to movement is relevant in weighing the constitutionality of a contrary state burden, but should not be part of the definition of the right itself. Plaintiffs in this case contend that the curfew prevents them from using public streets as a means of conveyance from one place to another. [Citation.] They do not seek to linger in any one location, or to access any particular area, such as a park, that the District of Columbia might have a special reason to close. Rather, they protest a blanket restriction on their movement. Whether they plan to 'wander' [citation],—or amble, stroll, sashay, or saunter—is irrelevant; the only question under the Constitution is whether the District's action burdens a fundamental right to be on and to use public streets. When one chooses to walk, how one does so, where one goes, and what one does once there are factors relevant to reviewing burdens on the right, but

¶ 27 In other words, what the minor is doing is not as important as where he is doing it. Applying the dictionary definition of "stay" to the Curfew Law, a minor is in violation of the Curfew Law if he or she continues in the condition of being in public. This would include simply walking around in public during curfew hours in the absence of a statutory defense to the Curfew Law. We acknowledge Tavares may not have been simply wandering in public because his cousin told the officer they were going home. However, it was after midnight, well after curfew hours had begun, and Tavares's cousin also told police they had gone to the store for themselves. The Curfew Law does not list as a defense that a minor, having violated the Curfew Law, is attempting to cure the violation by voluntarily returning home. Thus, it was reasonable to conclude that a curfew violation had occurred and, for the reasons explained in the next section, that no defense to the Curfew Law was present.

¶ 28 B. Probable Cause—Determination of Affirmative Defense

¶ 29 Next, Tavares argues police lacked probable cause to arrest him for a curfew violation because they did not carry out their duty under the Curfew Law to determine if any defenses were present. The Curfew Law states that "[b]efore taking any enforcement action *** [police] shall ask the apparent [offender's] age and reason for being in the public place. The Officer shall not issue a citation or make an arrest *** unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense *** is present." Tavares admits the officers asked him

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not to defining the right itself. Therefore, the question before the court should be defined as whether there is a fundamental right to walk in public without thereby subjecting oneself to police custody; in short, a right to free movement." *Hutchins v. D.C.*, 188 F.3d 531, 559-60 (D.C. Cir. 1999) (Rogers, J. and Tatel, J., concurring in part and dissenting in part.).

[3] "Despite the vagueness of the phrase 'loiter, wander, idle, stroll or play,' the ordinance might avoid being rendered unconstitutional on vagueness grounds if the ordinance is treated as prohibiting all juvenile nocturnal presence and if that broad interpretation does not unconstitutionally burden the rights of minors and their parents. [Citations.] This broader reading may make it more difficult for the statute to pass constitutional muster on substantive grounds, but it is required for the ordinance to meet the Constitution's guarantee of fair notice." *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 943-44 (9th Cir. 1997).

and his cousin how old they were, where they were coming from, where they lived, and where they were going. Their response was that they had come "from the store to buy chips and pop for this—for themselves, and they were heading to [Tavares's] residence." On appeal, Tavares argues the officers did not ask if he and his cousin "were on an errand at the direction of their parents," and "there is no evidence that the officers attempted to determine whether any of the defenses enumerated in the Curfew Statute applied to Tavares." Tavares asserts "[t]he simplest inquiry could easily have revealed that Tavares told a parent that he and his cousin wanted chips and pop, and that the parent sent the youths on an errand to buy them," but since the officers did not ask "whether the trip was at the direction of their parents," the officers did not carry out their investigatory duty under the Curfew Law.

¶ 30 First, there is no authority for the proposition that police must "go through the checklist of defenses" enumerated in the Curfew Law. The officers' duty under the Curfew Law is narrower than Tavares suggests. A police officer may only take enforcement action under the Curfew Law if the officer "reasonably believes" an offense has occurred and no defense is present. The "reasonable belief" formulation "is precisely how the Supreme Court has defined probable cause." *Hutchins*, 188 F.3d at 548 (citing *Ker v. California*, 374 U.S. 23, 34 (1963) (holding D.C. curfew law, which contained an enforcement provision identical to the Curfew Law, conformed to requirements of the fourth amendment)). Thus, the standard for determining whether the officers reasonably believed a curfew violation had occurred and that no defenses were present is the probable cause standard.

> "A police officer has probable cause to arrest when 'the facts and circumstances within the officer's knowledge *** are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense. [Citation.] *** Once a police officer discovers sufficient facts to establish probable cause, she has no

> constitutional obligation to conduct any further investigation in the hope of discovering exculpatory evidence. [Citations.] A police officer may not ignore conclusively established evidence of the existence of an affirmative defense, [citation], but the officer has no duty to investigate the validity of any defense. [Citation.]" (Internal quotation marks omitted.) *Hodgkins ex rel. Hodgkins v. Peterson*, 355 F.3d 1048, 1060-61 (7th Cir. 2004) (citing *Baker v. McCollan*, 443 U.S. 137, 145-46 (1979)).

¶ 31 We find the information Tavares's cousin provided to the officer was sufficient to give the officers a reasonable belief a curfew violation had occurred and that no defenses were present. In *Hodgkins ex rel. Hodgkins*, the court held that to pass constitutional muster, a curfew law must require a law enforcement officer to look into whether an affirmative defense applies before making an arrest. *Id.* at 1061. The *Hodgkins* court did not require a greater degree of scrutiny into whether an affirmative defense applies than is required for an officer to have probable cause to arrest. The Curfew Law itself sets out the inquiry police are required to make. Section 12C-60(c) of Illinois' curfew statute (which is in all pertinent respects identical to the Chicago curfew ordinance) reads as follows:

> "Enforcement. Before taking any enforcement action under this Section, a law enforcement officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (b) is present." 720 ILCS 5/12C-60(c) (West 2016).

Read as a whole, the only inquiry that is *required* is (1) the apparent offender's age, and (2) the reason for being in the public place. Based on the responses to those two questions, and any other circumstances, if the officer reasonably believes a curfew violation has occurred and no defense is

present the officer may take enforcement action. Any other construction of this subsection would require reading the second sentence of the statute in isolation, which would be inappropriate. See generally *In re R.L.S.*, 218 Ill. 2d 428, 443 (2006). In this case, the officers asked Tavares's cousin for their ages and reason for being in public. The circumstances and their response effectively eliminated most of the statutory defenses. The minors were not accompanied by an adult or in a motor vehicle. They said they went to buy snacks for themselves; not that there was an emergency, they were going to or returning from an employment activity or a school, church, of civic activity. They also said they were going to Tavares's house, which was over a block away. Therefore, they were not on the sidewalk abutting their residence and they did not say they were going to or returning from a protest, political rally, or any other exercise of a first amendment right. The officer did not specifically ask if the trip to purchase chips and pop was an errand at the direction of a parent or guardian; but the statement that they were buying them "for themselves" was sufficient to warrant a reasonable person in believing it was not. At that point, the officers had no obligation to investigate further. To hold otherwise would be to hold the officers to a higher standard than the one imposed by the Curfew Law and to require something more akin to proof that no defenses were present when all that is required is probable cause. In this case, we hold the officers had probable cause to arrest Tavares for a curfew violation and, consequently, the search of his person would be valid as a search incident to that arrest.

¶ 32 C. Constitutional Vagueness

¶ 33 Tavares asserts that construing the Curfew Law to include "walking" within the definition of "remain" renders the law unconstitutionally vague.

> "The notion that an Ordinance is void for vagueness is a concept derived from the notice requirement of the due process clause. The concern animating the doctrine is twofold: (1) whether the law fails to provide people of ordinary intelligence a reasonable

> opportunity to understand what conduct it prohibits so that one may act accordingly; and (2) whether the law provides reasonable standards to law enforcement to ensure against authorizing or even encouraging arbitrary and discriminatory enforcement. [Citations.] Additionally, in determining the clarity that the Constitution demands of a law, we are cognizant that in the context of first amendment freedoms the Supreme Court has expressed that [u]ncertain meanings inevitably lead citizens to steer far wider of the unlawful zone *** than [they would] if the boundaries of the forbidden areas were clearly marked. [Citation.] Thus, in cases where the law threatens to inhibit a first amendment right it has been said that the Constitution requires a greater degree of specificity. [Citation.] However, perfect clarity and precise guidance have never been required. [Citations.]
>
> * * *
>
> In construing the validity of the ordinance, we begin by applying the same rules that govern the construction of a statute. [Citation.] Thus, as with a statute, the first step in a vagueness inquiry is to examine the plain language of the ordinance in light of its common understanding and practice. [Citation.] If the plain text of the ordinance sets forth clearly perceived boundaries, our inquiry is ended. [Citation.]" (Internal quotation marks omitted.) *Wilson v. County of Cook*, 2012 IL 112026, ¶¶ 21-24.

¶ 34 Specifically, Tavares asserts that "if the term 'remain' as defined in the Curfew Law includes the activity of 'walking' it is unconstitutionally vague" because persons of ordinary intelligence would not understand from the language of the statute what conduct is prohibited and police would have broad discretion "to determine that an individual who is walking down the street *** 'remains' in a public place." In support of this argument, Tavares relies on a decision from the supreme court of the state of

Washington.[4] In *City of Sumner v. Walsh*, 148 Wash. 2d 490 (2003), the Washington supreme court held the city of Sumner's curfew ordinance was unconstitutionally vague. *Walsh*, 148 Wash. 2d at 492. In *Walsh*, a father was charged with violating the curfew ordinance for allowing his son to be in a public place during curfew hours. *Id.* at 494. The ordinance in *Walsh* contained similar provisions to the Curfew Law. See *id.* at 492-93. The father argued the ordinance, which made it "unlawful for juveniles to 'remain' (*i.e.*, linger or stay) in a public place during curfew hours" was unconstitutionally vague "because the terms do not provide ascertainable standards for locating the line between innocent and unlawful behavior." (Internal quotation marks omitted.) *Id.* at 498. The *Walsh* court found that the issue was whether the words "linger or stay" are "sufficiently precise so that ordinary people can understand what conduct is prohibited and police officers will know how to enforce the law in a nonarbitrary, nondiscriminatory manner." *Id.* at 499. After stating the dictionary definitions of "linger" and "stay" the court held the terms "are not, in our judgment, sufficiently precise so that a person of ordinary intelligence is accorded fair notice of what conduct is prohibited. Neither do these terms provide sufficient guidance to officers endeavoring to determine if a juvenile's conduct is exempt from the ordinance." *Id.*

¶ 35 However, we note that the *Walsh* court's determination that the term "remain" (*i.e.*, "linger" or "stay") was vague was based on the meaning of those terms when a juvenile was engaged in one of the activities listed in the affirmative defenses. See *id.* The *Walsh* court wrote:

> "As noted, the Sumner ordinance makes it unlawful for a juvenile to 'remain' in a public place unless the juvenile's actions fall within the listed exemptions. Consistent with that

[4] "The Appellate Court, First District, is not bound to follow decisions *** by courts of any state other than Illinois. [Citation.] Decisions of the reviewing courts of foreign jurisdictions are not binding on Illinois courts [citation], although decisions of courts of the respective states, where relevant, should be examined for such value as Illinois courts may find in them when out-of-state courts have construed certain language and the Illinois courts have not. [Citation.]" *Skipper Marine Electronics, Inc. v. United Parcel Service, Inc.*, 210 Ill. App. 3d 231, 239 (1991).

> notion, a juvenile who is not engaged in exempted activity does not violate Sumner's ordinance if he or she does not 'remain' (*i.e.*, linger or stay) in a public place. Unfortunately, it cannot be easily determined from the terms employed by the city whether and when a juvenile is engaged in an activity which runs afoul of the ordinance." *Id.* at 499-500.

The *Walsh* court hypothesized situations in which a juvenile could be engaged in an exempted activity and then perform some act the court believed might subject him or her to liability under the ordinance, such as stopping to tie one's shoes while returning from a school activity. The *Walsh* court found that the "ordinance simply does not provide sufficient guidance to answer these questions and many more and thereby prevents unconstitutionally arbitrary discretion by law enforcement." *Id.* at 500. The *Walsh* court's finding, that the ordinance did not "provide 'ascertainable standards for locating the line between innocent and unlawful behavior' that this court requires [citation]" (*id.*), was in the application of its defenses, not the curfew offense. In this case, it is not the application of the defenses in the Curfew Law that Tavares argues is unconstitutionally vague; rather, it is the portion of the Curfew Law defining the violation itself which he asserts is vague. Thus, *Walsh* is unavailing.

¶ 36 Moreover, we find the dissent in *Walsh* more persuasive than the majority opinion. First, the dissenting justice found the meaning of "remain" in defining the violation was not constitutionally vague.

> "Although 'remain' is sufficiently clear as defined, there is no doubt as to its meaning when it is examined in the context of the entire ordinance. There are numerous specific exemptions that describe when, despite the general prohibition, a juvenile may nevertheless 'remain' in a public place or at an establishment. The court in *Ramos*

cogently explained the following with regard to use of the word 'remain' (along with 'idle, wander, stroll or play') in a juvenile curfew ordinance:

> [W]hat was intended and is clearly prohibited by the curfew ordinance is the presence of minors on the streets or in a public place unless they satisfy one of the ordinance's numerous exceptions. No reasonable person can seriously claim that they do not understand that such activity is what the ordinance generally proscribes. Minors undoubtedly have fair warning in regard to what the ordinance prohibits. Further, the simple determination of whether a minor is present on the streets or in a public place after the start of curfew is not one that vests excessive discretion in police officers. [Citation.]"

(Internal quotation marks omitted.) *Id.* at 515 (Madsen, J., dissenting).

Second, the dissenting justice found the majority's concerns about application of the defenses were not well grounded and imposed too high a burden on legislative drafting.

> "The majority asks, however, what about a juvenile stopping to tie a shoe or purchase gasoline following exempted activity. I do not believe the question is as difficult as the majority proposes. The ordinance plainly allows participation in a number of curfew-period activities and events under specified circumstances. It is clear that the juvenile will have to travel home from such activities and events. A person of ordinary intelligence who reads the exemptions along with the requirement that one not 'remain' in a public place or any establishment would have no trouble concluding that one who stops briefly to tie a shoe on the way to run an errand or who purchases gasoline on the

> way home from an educationally sponsored event is not staying or lingering, as opposed to proceeding or leaving.
>
> Of course, a juvenile who stops to purchase gasoline at an all night convenience store might remain and so violate the curfew ordinance. I do not believe that the discretion required of law enforcement officers under the ordinance is the unfettered discretion that is proscribed. As the Fourth Circuit reasoned when upholding a juvenile curfew ordinance quite similar to the one at issue here, '[e]very criminal law, of course, reposes some discretion in those who must enforce it. The mere possibility that such discretion might be abused hardly entitles courts to strike a law down.' [Citation.] Law enforcement officers must always make a decision as to whether conduct violates a law—there is always some measure of discretion required.
>
> Unfortunately, the majority requires impossible standards of specificity—a standard that few, if any, statutes or ordinances could meet." *Id.* at 515-16.

¶ 37 Because a person of ordinary intelligence would understand what the Curfew Law prohibits as well as what it allows, and establishes standards that permit law enforcement to enforce the law in a nonarbitrary and nondiscriminatory manner, we hold the Curfew Law is not unconstitutionally vague.

¶ 38 D. Constitutional Overbreadth

¶ 39 Tavares also argues the trial court's construction of the Curfew Law renders it unconstitutionally overbroad because it would chill minors' rights under the first amendment to the United States Constitution, specifically their right to move freely in public places. This argument fails for two reasons. First, "juveniles do not have a fundamental right to be on the streets at night without adult supervision." *Hutchins*, 188 F.3d at 538-39.

> "The Supreme Court has already rejected the idea that juveniles have a right to come and go at will because juveniles, unlike adults, are always in some form of custody, [citations], and we see no reason why the asserted right here would fare any better. That the rights of juveniles are not necessarily coextensive with those of adults is undisputed, and unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. [Citation.]" *Id.*

¶ 40 Second, Tavares's specific argument is premised on the presumption the trial court's judgment in this case means the trial court interpreted the Curfew Law to "not require a law enforcement official to determine whether an affirmative defense applies before making an arrest." Thus, Tavares relies on a decision from the United States Court of Appeals for the Seventh Circuit in which that court held an Indiana curfew law, which contained an affirmative defense for first amendment activities, was nonetheless facially unconstitutional as an undue chill on the exercise of a minor's first amendment rights because "the defense imposes no duty of investigation on the arresting officer." *Hodgkins ex rel. Hodgkins*, 355 F.3d at 1062-64. The court noted that "because the defense imposes no duty of investigation on the arresting officer, as a practical matter it protects only those minors whom the officer has actually seen participating in protected activity." *Id.* at 1062. The *Hodgkins* court held that "[a] legislature can draft a curfew law which specifies that a law enforcement official must look into whether an affirmative defense applies before making an arrest" but Indiana had failed to do so. *Id.* at 1061. Illinois (and the City of Chicago), however, does impose a duty of investigation on police before any enforcement action under the Curfew Law may be taken. We have already addressed Tavares's argument the officers who stopped him and his cousin failed to determine if any defenses were present, and we found the officers "reasonably believ[ed] an offense [had] occurred and that, based on [their]

response and other circumstances, no defense [was] present." See 720 ILCS 5/12C-60(c) (West 2012); Chicago Municipal Code § 8-16-020(d) (added Apr. 10, 2013). Tavares's argument the trial court's construction of the Curfew Law renders it unconstitutionally overbroad fails. The Curfew Law is "no more restrictive than necessary" because it requires police to "look into whether an affirmative defense applies before making an arrest" (*Hodgkins ex rel. Hodgkins*, 355 F.3d at 1060-62); and police carried out that duty before taking Tavares into custody for a curfew violation.

¶ 41 Having found that the Curfew Law is not unconstitutionally vague or overbroad and that police had probable cause to arrest Tavares for a curfew violation and subsequently search him incident to that arrest, we have no need to address Tavares's arguments police lacked a reasonable articulable suspicion to conduct a *Terry* stop or a protective pat down for weapons. The trial court properly denied Tavares's motion to quash arrest and suppress evidence. Accordingly, Tavares's adjudication of delinquency is affirmed.

¶ 42 II. Sentence

¶ 43 Tavares argues several errors with regard to his sentence. Tavares argues the trial court did not consider the individualized characteristics it was required to consider under the Juvenile Court Act in imposing sentence. Next, Tavares argues the court did not properly find that he was a danger to the community. Tavares also argues the trial court considered improper evidence at sentencing, specifically referring to the social media report containing pictures of Tavares depicting what could be the name of a street gang, holding what appear to be guns, and smoking what appears to be marijuana. Finally, he argues the trial court failed to determine that confinement was the least restrictive sentence available. "A trial court's decision to send a minor to DOJJ is reviewed for an abuse of discretion. [Citation.] The question of whether the court complied with statutory requirements is a question of law we review *de novo*. [Citation.]" *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22.

¶ 44 A. Individualized Characteristics

¶ 45 Tavares argues the trial court's sentence to the DJJ must be reversed because the court failed to adequately consider Tavares's individual characteristics—merely stating it had considered those factors in determining the sentence—and specifically that the court failed to address the services in the DJJ that would meet Tavares's individualized needs. The State points to the trial court's oral pronouncements at sentencing and responds the record demonstrates the trial court considered the required individualized factors in compliance with the Juvenile Court Act. Tavares replies the trial court erred "when it made only a *pro forma* statement as to the factors." Tavares relies on *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 50 in support of his argument. In *Raheem M.*, the Fourth District wrote the requirement that a court have before it evidence of efforts made to locate less restrictive alternatives to secure confinement and reasons why said efforts were unsuccessful "is not some *pro forma* statement to be satisfied by including the language of the statute in a form sentencing order." *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 50; the *Raheem M.* court was not addressing, and did not address, the trial court's consideration of the factors listed in section 5-750(b)(A)-(b)(G) of the Juvenile Court Act (705 ILCS 405/5-750(b)(A)-(b)(G) (West 2016)) before confining a minor to the DJJ. Regardless, in *In re Ashley C.*, the minor argued that her sentencing hearing "failed to comport with the statutory requirements for committing minors to DOJJ." *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 1. The minor asserted that "there was insufficient evidence regarding programming available in DOJJ." *Id.* ¶ 29. Although the *Ashley C.* court noted that the State presented a summary of programs available at the DJJ without objection, which the trial court considered, the court held that the minor "did not include this issue in her motion to reconsider her sentence" and, therefore, "forfeited this issue." *Id.* In this case, Tavares did not argue in his motion to reconsider that the trial court did not have adequate evidence regarding

programming available to him in the DJJ. Therefore, that issue is forfeited. *Id.* Even if the issue were not forfeited, Tavares's argument would fail.

¶ 46 To determine whether the trial court complied with the statute we may look to the record for evidence concerning the statutorily required factors. See *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 30 (citing *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 47). We will find compliance with section 5-750(1)(b)(A)-(G) if the record contains evidence pertaining to every statutorily required factor and the trial court's sentencing order indicates the court considered those factors. *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 32. In this case, Tavares concedes the trial court stated it considered each of the statutory factors. We find no requirement in the statute for the court to explicitly evaluate on the record the individualized factors required by the Juvenile Court Act. See 705 ILCS 405/5-750(1)(b) (West 2016) ("Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a *review* of the following individualized factors." (Emphasis added.)). Therefore the only question is whether "the record contained sufficient information on these factors for the court to consider before sentencing [Tavares]." *Javaun I.*, 2014 IL App (4th) 130189, ¶ 32.

¶ 47 The record contains a Chicago Public Schools Student Progress Report and a Juvenile Temporary Detention Center (TDC) Court Report, both from March 2016. The TDC report states that Tavares "attends groups on a daily basis and has high participation." The record also contains an Electronic Monitoring Progress Report and a Gang Information Report (or GSST Report) that includes the social media report. The Gang Information Report states that the Chicago Police Department has documented Tavares "as a self-admitted and documented gang member." Some of the pictures in the social media report have a month and day listed but no year. The record also contains a letter from DJJ written after his commitment for the instant offense, and a Juvenile Court Supplemental Social

Investigation prepared by his probation officer. Tavares's attorney requested a Clinical Report on Tavares. The trial court's comments indicate the court carefully considered the Clinical Report. The Clinical Report concludes that Tavares is "a known gang member whose gang involvement has been documented in social media pictures and posts." The clinician reported that Tavares's needs for treatment included individual therapy and involvement in prosocial activities, and recommended "probation with conditions related to community based services." The clinician opined on commitment to the DJJ and expressed concern that "ongoing commitment to IDJJ may increase his contact with delinquent peers or ties to his gang, which may in turn influence his behavior once released." However the clinician also noted that one benefit of commitment to the DJJ "would be that his short-term risk of reoffending (by controlling his access to guns and keeping him away from gang members in the community) will be lowered." The clinician concluded that if Tavares were committed to the DJJ, "it is respectfully recommended that when released, he receive services in the community in line with those recommend."

> "Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:
>
> (A) Age of the minor.
>
> (B) Criminal background of the minor.
>
> (C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.
>
> (D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

(G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor." 705 ILCS 405/5-750(b) (West 2016).

¶ 48 The record in this case contains Tavares's age and criminal background. The trial court specifically addressed Tavares's prior adjudication and sentence for AUUW as a factor in its current sentencing order. The court also received and considered several reports concerning Tavares. At the second sentencing hearing, Tavares's attorney submitted a clinical services report that the court considered. The court referenced a letter written after the first sentencing hearing which noted that Tavares was attending school and that his behavior has been good. The court also referenced the clinical report and noted that Tavares "doesn't appear to be diagnosed with any major mental illness." The court found the community based services provided to Tavares were unsuccessful because Tavares was placed on probation, started receiving those services, and "less than four months later—you pick up another gun case when you were out past curfew." The trial court stated what services within the DJJ will meet Tavares's needs. The trial court is only required to "review *** [s]ervices within the [DJJ] that will meet the individualized needs of the minor." 705 ILCS 405/5-750(1)(b)(G) (West 2016). The trial court complied with this requirement. The court stated that the DJJ "has facilities and programs for assessments substance abuse, treatment, mental health treatment, individual and group counseling, case management, health care, education, chaplaincy, volunteer services, [and] leisure time services. And I recommend that you avail yourself of these opportunities because I will get a report on whether you

participate in those."[5] The clinical assessment states that while Tavares was detained at the TDC in March 2016 he met with mental health staff on two occasions, participated in group therapy, and received "three certificates for participation in programs." Additionally, at the second sentencing hearing, the trial court was presented with a letter from the DJJ stating that while committed Tavares received a psychological exam, was enrolled in academic programming, had a counselor, and could have but did not participate in groups. We find the record contains sufficient information on each statutory factor for the trial court to consider before sentencing Tavares, and the trial court's oral sentencing ruling states the court considered those factors prior to sentencing Tavares to the DJJ. The trial court complied with the requirements of section 5-750(1)(b) of the Juvenile Court Act. See *id.*

¶ 49 B. Danger to the Community

¶ 50 Next, Tavares argues the trial court "did not adequately state its reasons for finding that Tavares posed a danger to the community." On appeal, Tavares complains that the trial court, "after a preamble about the state of violence on Chicago's west side," effectively concluded that "Tavares not being committed to detention posed a danger to Tavares himself." Tavares argues "the court's preamble before identifying the factors as applied to Tavares indicate that the court failed to provide Tavares with the individualized sentencing required by the [Juvenile Court Act.]" In his reply brief, Tavares argues the trial court "improperly considered Chicago's ongoing violence problems as a factor in Tavares's sentence." We construe Tavares's argument on appeal to be that the trial court's alleged reliance on the general level of violence establishes that the trial court failed to comply with section 5-750(1)(a)'s

[5] Although not part of the record on appeal, we note that the DJJ website lists the types of programming provided to youth. The website lists the same services in the same order recited by the trial court. "[W]e may take judicial notice of matters that are readily verifiable from sources of indisputable accuracy." *People v. Chambers*, 2016 IL 117911, ¶ 94 n 3. In *In re Ashley C.*, the court found that the trial court's reliance on a "summary of programs available at DOJJ based on conversations with four program administrators and the DOJJ website" was sufficient to show compliance with the statutory requirements for sentencing the minor to the DJJ. *In re Ashley C.*, 2014 IL App (4th) 131014, ¶¶ 29-30.

requirement that the court not commit a juvenile to the DJJ unless the court finds commitment "is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent." 705 ILCS 405/5-750(1)(a) (West 2016).

¶ 51 Tavares's attorney did not object to the trial court's ancillary comments about gun violence in the motion to reconsider. "Any issue not raised at trial and in a posttrial motion is forfeited on appeal. [Citation.] However, we can consider the issue if it falls within the plain-error doctrine." *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 38. Tavares has not argued on appeal, and we do not find, that the evidence was closely balanced or that this alleged error was so serious that it deprived Tavares of a fair sentencing hearing. Based on our review of the record, the trial court did not commit Tavares to the DJJ based on the level of gun violence in his community. Rather, the sentence was based on the seriousness of the offense and the fact it occurred while Tavares was on probation. We find that no clear or obvious error occurred by the trial court's brief comment about the effects of gun violence generally. Therefore, this argument is forfeited. *Id.* ¶¶ 38-39.

¶ 52 C. Improper Evidence

¶ 53 Tavares argues the trial court considered improper evidence at sentencing. Tavares argues the trial court improperly relied on social media pictures to find that he was involved in a gang and smoking marijuana. He asserts that even if the pictures were of what the trial court thought they were, the pictures "would have little probative value *** because they predated even Tavares's first incident." Tavares's opening brief asserts the social media report was received in violation of the Juvenile Court Act because the report was not provided to the parties at least three days in advance for their review. See 705 ILCS 405/5-701 (West 2016). The trial court conducted a second sentencing hearing more than three days after Tavares's attorney received the report and allowed counsel to make any arguments concerning the report. Thus Tavares's reply brief specifies that his claim is that the photographs were

unreliable and therefore had no probative value and argues the "*pro forma* hearing days later" did not cure the mistake in according probative weight to the photos because nothing "altered the court's preconceived conclusions." We find that the trial court's findings regarding the pictures prove otherwise.

¶ 54 At the second hearing the court acknowledged that when the pictures were taken was unknown and that what was actually depicted in the pictures could not be ascertained. The trial court inquired of the Probation Officer who prepared the report if, when the officer conducted a search within the past several months from the date of the hearing, the pictures at issue appeared on what appears to be Tavares's Facebook account. The officer replied that they did. The court found the pictures "were posted to the public of him [(Tavares)] holding what appeared to be guns, appeared to be weed, and appear to [be] gang signs." The court continued: "You know, maybe they're not, but I think for whatever message the minor is trying to send out to the public by those pictures is contrary to the picture being painted of him ***." Later the court remarked about the pictures:

> "And I don't want to harp on this social media, but in the clinical report, he was asked about that. When asked what the purpose of taking pictures with a gun was, he said, 'For clout. People enjoy seeing that kind of stuff.' And said clout meant a lot of people know you.
>
> When asked if this was how he wanted people to know him, he said, 'Not like that,' and said he copied it because he saw it on Facebook. And attributed it to, I guess, to peer pressure."

¶ 55 When determining the disposition which best serves the interests of both the minor and the public, "the trial court may rely on any evidence that it considers helpful, 'to the extent of its probative value, even though [it is] not competent for the purposes of the trial,' including any oral or written

reports." *In re N.H.*, 2016 IL App (1st) 152504, ¶ 79. "Evidence is probative when to the normal mind it tends to prove or disprove a matter at issue. [Citation.]" *Camco, Inc. v. Lowery,* 362 Ill. App. 3d 421, 433 (2005). We believe the court properly found the pictures were probative of the question of whether secure confinement was necessary to lower Tavares's short-term risk of reoffending. The clinical report concluded that "Tavares needs to manage his social relationships and reduce the amount of time he spends with delinquent peers. He is a known gang member whose gang involvement has been documented in social media pictures and posts." The clinician commented that commitment to the DJJ could lower his risk of reoffending in the short term by "keeping him away from gang members in the community." The trial court could properly consider the pictures for the purpose of the effects of Tavares's environment on the need for secure confinement.

¶ 56 D. Least Restrictive Sentence

¶ 57 Tavares also argues the trial court failed to properly determine that a custodial sentence was the least restrictive alternative because the court did not state why less restrictive alternatives, such as the intensive probation program, were inadequate. Specifically, with regard to the least restrictive alternative, Tavares argues the trial court "did not state the reasons to conclude that the intensive probation program was inadequate to meet the interests of Tavares, his family, and the public at large." Tavares asserts the court may not simply recite the statutory factors but instead must set forth the actual efforts undertaken to identify less restrictive alternatives and explain why those efforts were unsuccessful. Tavares relies on *In re Raheem M.* in support of this argument. There, the court held that

> "a juvenile shall not be sentenced to the DOJJ without evidence before the sentencing judge of less restrictive alternatives ***. The court must have evidence efforts were made to locate a less restrictive alternative and must also have evidence of the reasons

> why the efforts made were unsuccessful." *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 53.

In that case, the court "had no evidence of less restrictive alternatives to a DOJJ sentence, nor did it require any evidence of efforts made to find less restrictive alternatives to a DOJJ sentence before sentencing [the] respondent to the DOJJ. Even at the hearing on the motion to reconsider sentence, the trial court failed to explain why the alternative to incarceration presented by defense counsel was not acceptable." *Id.* ¶ 34. The court concluded, "considering the facts in this case, where the trial court received no evidence about alternatives to confinement prior to sentencing respondent to the DOJJ, as required by statute, we have no choice but to vacate respondent's commitment to the DOJJ." *Id.* ¶ 61.

¶ 58 This case is distinguishable. The trial court made an express finding that reasonable efforts were made to locate less-restrictive alternatives to secured confinement that were unsuccessful. In the motion to reconsider sentence Tavares's attorney acknowledged that reasonable efforts were made to identify the least restrictive alternative but asserts "the alternative was disregarded." The trial court did receive evidence about alternatives to confinement prior to sentencing Tavares to the DJJ. The court received a report from Tavares's Probation Officer recommending that Tavares receive probation. The court also had the IPS Intake Sentencing Report. The IPS Probation Officer testified that Tavares was acceptable for the IPS program. The IPS Probation Officer appeared again at the second sentencing hearing following Tavares's motion to reconsider and "could not argue" with the earlier recommendation.[6] Nonetheless, at the second sentencing hearing, the court found there were no less-restrictive alternatives to secure confinement.

[6] Before being confronted with the transcript of the first sentencing hearing, the IPS Probation Officer stated: "I believe after I saw the GSST reports as [the trial judge] did on the same day, I found him—I think I said I would not find him appropriate [for IPS.]"

¶ 59 In this case, unlike in *Raheem M.*, the record before this court contains evidence regarding efforts to identify a less restrictive alternative to secure confinement: the reports prepared by Tavares's Probation Officer and the IPS Probation Officer. The court in this case explained why efforts to find a less restrictive alternative to confinement were unsuccessful. The court found that Tavares was not a proper subject for probation or intensive probation and explained why. Tavares argues that nothing in the court's on-the-record discussion indicates the court's basis for rejecting the probation officers' recommendations for probation. We disagree. At the original sentencing the court found that Tavares's first probation was his "second chance" but less than four months after getting a second chance he was out past curfew and illegally carrying a gun. After the second sentencing hearing the court again stated why alternatives to incarceration were not acceptable. The court again stated its reasoning was that "the minor was on probation for a gun case and within a couple months, he picks up a second gun case." The court elaborated, stating that was a serious crime, Tavares "was given the services of probation" and he "failed those services. He failed probation by picking up a second gun case within a short period of time." The court noted "the purpose and policy of the Juvenile Court Act" included "a system that will protect the community, impose accountability for violations of the law and equip juvenile offenders with competencies to live responsible and productively." The court further noted that an important purpose of the law was to protect citizens and to hold juvenile offenders accountable for their acts. The court went on to note that the law states that to accomplish these goals, juvenile justice policies shall be designed to, *inter alia*, provide secure confinement for minors who present a danger to the community and make those minors understand that sanctions for serious crimes should be commensurate with the seriousness of the offense and merit strong punishment. See 705 ILCS 405.5/101(1) (West 2016).

¶ 60 The trial court did not have to specifically find that IPS was also not an acceptable alternative. The court's findings make evident its reasons for finding that either probation or intensive probation was

inadequate and that confinement was the least restrictive alternative under the facts of this case, where probation services in the community had not prevented Tavares from committing a serious offense that presented a danger to the public and where his associations put him at risk to reoffend. We hold the trial court complied with the statutory requirements of the Juvenile Court Act as a matter of law. See generally *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 43 ("the trial court was presented with alternatives to incarceration. We cannot say the trial court did not consider those less restrictive alternatives to incarceration. We also cannot say the trial court abused its sentencing discretion in finding DOJJ was the least restrictive alternative based on the facts in this case. Respondent was convicted of serious offenses, and this was not his first encounter with the juvenile court."). Tavares does not argue the court's findings are against the manifest weight of the evidence nor do we find that they are. Accordingly, Tavares's sentence is affirmed.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 63 Affirmed.