

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).

2017 IL App (4th) 150446-U

NO. 4-15-0446

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 14, 2017
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
MARCUS LASHAWON WINLOW,)	No. 14CM1233
Defendant-Appellant.)	
)	Honorable
)	Scott D. Drazewski,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Absent any evidence that a condition of defendant’s probation was to “refrain from direct or indirect contact with” street-gang members, the State failed to prove the offense of unlawful contact with a street-gang member (720 ILCS 5/25-5(a)(1) (West 2014)).

¶ 2 A jury found defendant, Marcus Lashawon Winlow, guilty of one count of unlawful contact with a street-gang member (720 ILCS 5/25-5(a)(1) (West 2014)), and the trial court sentenced him to 100 days of confinement in the McLean County jail.

¶ 3 Defendant appeals on four grounds. First, he argues the State failed to prove, beyond a reasonable doubt, all the elements of the offense. Second, he argues the trial court erred by admitting some police records, *i.e.*, street-gang contact cards, under the business-records exception to the hearsay rule. Third, he argues the court erred by giving an argumentative, non-pattern jury instruction. Fourth, he argues the statute defining the offense of which he was

convicted (720 ILCS 5/25-5(a)(1) (West 2014)) is unconstitutional in that it is excessively vague and broad and it circumvents the probable-cause requirement of the fourth amendment (U.S. Const., amend. IV).

¶ 4 Because we agree with defendant’s first argument, we do not reach his remaining arguments. See *In re E.H.*, 224 Ill. 2d 172, 178 (2006) (“[C]ases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort.”). As the State candidly admits, it presented no evidence that “refrain[ing] from direct or indirect contact with a streetgang member or members” was a condition of defendant’s probation. 720 ILCS 5/25-5(a)(1) (West 2014). Instead, the State presented evidence that “not be[ing] a member or knowingly associat[ing] with a member of a criminal street gang” was a condition of his probation. Absent the condition of probation that section 25-5(a)(1) requires, that section is inapplicable. Therefore, we reverse the trial court’s judgment.

¶ 5

I. BACKGROUND

¶ 6 On July 12, 2014, while on patrol, Bloomington police officer Curtis Squires saw a group of about 10 men standing on a sidewalk. Among these men were defendant and Mario Burley, and defendant was talking to Burley. On the basis of his encounters with Burley the previous year, Squires had documented him as being a member of two street gangs, the Gangster Disciples and the Black Out Mafia. Also, Squires knew that defendant was on probation, and by his understanding, a standard condition of probation was to refrain from having contact with members of street gangs. So, he arrested defendant for unlawful contact with a member of a street gang (720 ILCS 5/25-5(a)(1) (West 2014)).

¶ 7 Defendant’s probation officer, Tammy Corbin, testified that defendant was indeed on probation on July 12, 2014, and that a “condition of the probation order reads that the defendant shall not be a member or knowingly associate with a member of a criminal street gang.” That was “a standard condition of McLean County probation.”

¶ 8 II. ANALYSIS

¶ 9 When reviewing a challenge to the sufficiency of the evidence, we regard all the evidence in the light most favorable to the prosecution and ask whether any rational trier of fact could have found the elements of the charged offense to be proved beyond a reasonable doubt. *People v. Lozano*, 2017 IL App (1st) 142723 ¶ 28.

¶ 10 The charged offense in this case is “[u]nlawful contact with streetgang members,” and the statute defines that offense as follows:

“(a) A person commits unlawful contact with streetgang members when he or she knowingly has direct or indirect contact with a streetgang member as defined in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act [(740 ILCS 147/10 (West 2014))] after having been:

(1) sentenced to probation, conditional discharge, or supervision for a criminal offense with a condition of that sentence being to refrain from direct or indirect contact with a streetgang member or members[.]”
720 ILCS 5/25-5(a)(1) (West 2014).

¶ 11 Thus, the threshold element of that offense is a probation, conditional discharge, or supervision that is conditional on the defendant’s “refrain[ing] from direct or indirect contact with a streetgang member or members.” *Id.* The record appears to be devoid of evidence that

defendant's probation included that condition. Rather, his probation was conditional on his refraining from "be[ing] a member or knowingly associat[ing] with a member of a criminal street gang." There is a difference. Forbidding a defendant to be a member of a street gang or to *associate* with any member of a street gang is not to forbid the defendant from having direct or indirect *contact* with any member of a street gang. To "associate" with someone means "to come or be together [with that person] as partners, friends, or companions." Merriam-Webster's Collegiate Dictionary 70 (10th ed. 2000). There can be knowing contact without association.

¶ 12

III. CONCLUSION

¶ 13

For the foregoing reasons, we reverse the trial court's judgment.

¶ 14

Reversed.