2018 IL App (1st) 172059-U

FIRST DIVISION
June 29, 2018

No. 1-17-2059

IN THE INTEREST OF ELIJAH H., a Minor,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
(THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Petitioner-Appellee	)	No. 17 JD 00677
v.	)	
	)	
ELIJAH H., a Minor,	)	Honorable
	)	Stuart P. Katz,
Respondent-Appellant)	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Mikva dissented in part.

ORDER

¶ 1 *Held*: Respondent was adjudicated delinquent beyond a reasonable doubt. Respondent's probation conditions are not vague or overbroad and are therefore reasonable and do not amount to plain error. Respondent's adjudication of delinquency for unlawful possession of a firearm is vacated under the one-act, one-crime rule.

¶ 2 Respondent, Elijah H., was adjudicated delinquent for aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(d)(1) (West 2016)) and unlawful possession of a firearm

(UPF) (720 ILCS 5/24-3.1(b) (West 2016)). Respondent was sentenced to a one-year term of probation. On appeal respondent argues that the State failed to prove him guilty beyond a reasonable doubt, the juvenile court's probation order to avoid contact with gang members is overbroad and the court's order to "clear his social media" profiles violates his constitutional rights. Respondent also argues that his conviction for UPF should be vacated under the one-act, one-crime rule. For the following reasons, we affirm the juvenile court's delinquency adjudication on the AUUW count, and vacate the adjudication on the UPF.

¶ 3 BACKGROUND

¶ 4 On March 31, 2017, 17-year-old respondent, Elijah H., tossed a .40 caliber Glock 27 handgun loaded with 12 live rounds of ammunition into a residential backyard while fleeing from police. Respondent was charged in a petition for adjudication of wardship with three counts of AUUW and one count of UPF.

¶ 5 At trial, Chicago police officer Brogsdale testified that on March 31, 2017, he was on patrol riding in an unmarked police vehicle with his partner, Officer Mitchell. Both officers were wearing Chicago Police Department vests that were embroidered with their names, star numbers and the word "POLICE." At approximately 4:30 p.m., they were responding to a call when Officer Brogsdale saw respondent standing on the sidewalk with another male individual at 6956 South Wabash Avenue in Chicago. Respondent was wearing a blue and black Carolina Panthers hat.

¶ 6 When their vehicle stopped, Officer Brogsdale stepped out and told respondent, "Police, don't move." Respondent fled and Officer Brogsdale saw respondent clenching the right side of his waistband as he ran away. He chased respondent through a gangway and into the alley

behind 6956 South Wabash Avenue. Although Officer Brogsdale ordered respondent to "stop running," numerous times, respondent continued running while holding the right side of his waistband. Respondent turned southbound and ran down the alley and then climbed a six foot iron-linked fence and jumped into a yard located behind a residential property at 7014 South Wabash. Officer Brogsdale, who was approximately 20 feet behind respondent at that time, saw respondent toss his Carolina Panthers hat and a black object onto the ground.

¶ 7 Officer Brogsdale then jumped over a smaller fence on the side of the yard and chased respondent as he ran eastbound towards the gangway of the 7014 South Wabash property. Officer Brogsdale noticed that respondent was no longer holding his waistband. Officer Brogsdale lost sight of respondent when respondent ran through a gangway and out to the street. Officer Brogsdale stopped pursuing respondent when he heard over his radio that an assisting police unit spotted respondent and was chasing him. Officer Brogsdale then returned to the backyard of 7014 South Wabash where he saw respondent throw two objects onto the ground and recovered respondent's blue and black Carolina Panther's hat and a black .40 caliber Glock 27 pistol. Officer Brogsdale testified that nothing else was on the ground in the yard other than the hat and the firearm and that he recovered these items a minute to a minute and a half after respondent discarded them. Officer Brogsdale described the gun as being seven to eight inches long with a three inch barrel. It was loaded with twelve live rounds.

¶ 8 Officer Mitchell testified that he arrested respondent on March 31, 2017. Respondent was transported to the 3rd District Police Station where he was processed. Officer Mitchell learned that respondent's date of birth is March 16, 2000, and that he lived at 6733 South Perry Avenue in Chicago. The State then rested.

¶ 9 The juvenile court granted respondent's motion for a directed finding as to one count of AUUW. Respondent rested without presenting any evidence

¶ 10 In its ruling, the juvenile court found respondent guilty of AUUW and UPF. The court stated that respondent's flight evidenced his consciousness of guilt. The juvenile court also found that respondent held his waistband as he fled from Officer Brogsdale and that Officer Brogsdale recovered the firearm only a minute after he observed respondent throw a black object in that same location. The juvenile court then ordered the juvenile probation department to conduct a social investigation and gang evaluation of respondent and continued the matter for sentencing.

¶ 11 On the date set for sentencing, the probation officer whom the juvenile court assigned to conduct respondent's social investigation informed the judge that respondent and his family did not participate in the investigation because they wanted to appeal the juvenile court's adjudication findings. The juvenile court informed respondent's mother and stepfather that respondent's social investigation must be completed regardless of whether respondent files an appeal. Before granting a continuance for the sentencing hearing, the judge showed the parties respondent's June 13, 2017, Gang Information Report generated by the juvenile probation department that included images from respondent's social media pages. This report showed that the Chicago Police Department considered respondent "as a self-admitted member of the Black Disciple street gang" and determined that respondent identifies with a faction of that gang called "Brick City/600." The report indicated that respondent's gang faction also goes by many other names, including "Shaq City," "Baldy World," "OTF," "SSR," "Frontstreet," and, most recently, "JMACC GANG," or "JMG". The report stated that respondent's faction was closely aligned

with many other Black Disciple gang factions, including two large factions called "O-Block" and "Lamron," and listed the numerous other names associated with Black Disciple factions. The report further listed the alliances the Black Disciples have with various other gangs and some of the various alternate names that those gangs go by, as well as the numerous rival gangs of the Black Disciples and some of the known alternate names of those rival gangs.

¶ 12 The report also stated that a search of "Open Source Social Media" identified two Facebook accounts that belong to respondent, which "confirm his affiliation and association with this faction of the Black Disciples BRICK CITY/600." The report attached screenshots from respondent's Facebook accounts. Respondent's "Eli Jmg" Facebook account showed a photo captioned "LONG LIVE J MACC" wherein respondent "tags" himself in this photo as "SgJmg Eli" and shows respondent wearing a hooded sweatshirt with a large, crowned "L.L.J.M." emblem on the front, while holding his right hand up, fingers pointed left with his middle and ring fingers on top of one another. Another screenshot from this same account, "Eli Jmg," shows a May 26, 2017, photo of respondent pointing a silver revolver directly at the camera with what appears to be a marijuana cigarette in his mouth. This photo was captioned "#PipeGang." Respondent also posted a photo on his Facebook account wearing a black ski mask, holding what appears to be a gun in his right hand. His left hand is extended up with three fingers extended and his palm facing inwards. Respondent captioned this image, "Nigga's kno [winking face emoji] wats going on [smiling face emoji].

¶ 13 Two more screenshots from respondent's "Eli Jmg" Facebook account show four photos of respondent holding his hands in a different position in each photo. In one of these photos, respondent is wearing a black t-shirt with a large, crowned "L.L.J.M." logo on the front, and in

another respondent is wearing a beanie-style hat that has the letters "L.L.J.M." in large print across the front. The report also includes a post from respondent's "Eli Jmg" account, dated May 14, 2017, that is a close-up photo of a hand holding what appears to be two prescription drug pills with the caption, "Yea buddy." Another post from respondent's Facebook account, dated June 11, 2017, has an image of a black handgun and an extended magazine with the caption, "Glock fa sell . . . $300." The juvenile court addressed respondent, "Our Probation Department already did a little check on you, and this is what they found on your social media pages. Guns with something about going to sell the glock, you wearing [a] gang shirt, flashing gang symbols on various pages, holding a gun with a blunt." The court then admonished respondent that, "this had better be off by the time you come back to court and that never goes back on your social media. Do you understand me?" Respondent indicated that he understood. The court then further admonished respondent that, "Clear as now, stays clear. Got it?" Respondent answered, "Mm hmm." The juvenile court then entered an order instructing respondent "to clear all social media" and continued respondent's sentencing hearing.

¶ 14 At respondent's July 19, 2017, sentencing hearing, the juvenile probation department submitted respondent's Social Investigation Report to the juvenile court, wherein respondent claimed that he is not a member of the Black Disciples' Brick City/600 faction and "denied being involved in a gang or being approached to join a gang[.]" Respondent told the probation officer that he used to know people who were gang involved but that "they are all dead now." With respect to the instant offense, respondent maintained his innocence, claiming that the gun "was not his." The report also indicated that respondent denied using drugs, claiming that he had not used marijuana since the previous year. Before imposing respondent's sentence, the judge gave

respondent an opportunity to address the juvenile court. In allocution, respondent stated, "he had just been going through a lot of stuff." He further stated, "I really just made a bad choice with my pictures and the stuff that I put on social media and stuff, but I did take it down as you said. And then I just – I just be making bad choices, but – and whatever you do, I'll accept what you do." Respondent was then sentenced to one year probation with 25 hours of community service and DNA testing, fee waived. The court further ordered respondent to: "school every day, every class; no gang activity; no guns; no drugs that includes alcohol and marijuana; clear all social media and keep it clear." The sentencing order shows that respondent is sentenced to one year probation with 25 hours of community service with mandatory school, "no gang contact or activity" and "no guns/no drugs/ clear all social media." It is from this order that respondent now appeals.

¶ 15 ANALYSIS

¶ 16 Respondent first argues that the State failed to prove him delinquent beyond a reasonable doubt when the only evidence connecting respondent to the gun recovered was the uncorroborated testimony of an officer who did not see respondent throw the gun.

¶ 17 On appeal, when the defendant challenges the sufficiency of the evidence, the reviewing court must determine, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "A reviewing court affords great deference to the trier of facts and does not retry the defendant on appeal." *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). "A reviewing court must allow all reasonable inferences from the record in favor of the State." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A criminal

conviction will not be reversed "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *People v. Graham*, 392 Ill. App. 3d 1001, 1009 (2009).

¶ 18 "It is within the function of the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *Id*. It is not the duty of the trier of fact to accept any possible explanation that favors the defendant's innocence and "elevate it to the status of reasonable doubt." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). "A reviewing court will not substitute its judgment for that of the trier of fact." *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 19 Respondent is essentially requesting this court to reweigh the evidence presented at trial. Respondent claims that Officer Brogsdale's testimony was incredible and not believable, and that his in court identification of respondent was not sufficient to prove that respondent was the same individual that Officer Brogsdale saw discard the illegal handgun. Here, the court heard Officer Brogsdale's testimony and found respondent guilty of both charges. Given the deferential rules of appellate review, we will not reassess the witnesses' credibility and cannot say that the court's findings are so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007).

¶ 20 Respondent claims that certain conditions of his sentence are unconstitutional. First he claims that the "no contact" with gang order is unconstitutionally vague, or alternatively, unreasonably applied in a vague and overbroad way. Second, respondent claims that the social-media related condition violates his first amendment right to free speech because, although the content-specific restrictions are geared toward a compelling state interest, they are not narrowly

tailored to survive constitutional scrutiny.

¶ 21 At the forefront, we must address the State's argument that respondent has forfeited review of his alleged errors. Respondent admits that he did not preserve these issues for appeal by failing to object to the terms when sentenced (*In re Samantha V.*, 234 Ill. 2d 359, 368 (2009) (minors are excused from filing a post-adjudicatory motion to preserve issues for appellate review)) and asks this court to consider his claimed errors under plain error analysis.

¶ 22 Normally, to obtain relief under the plain error rule, a defendant must first show that a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). After establishing that an error occurred, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hall*, 195 Ill. 2d 1, 18 (2000). Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008); *People v. Herron*, 215 Ill. 2d 167, 187 (2005). If the defendant fails to meet his burden, the procedural default will be honored. *Naylor*, 229 Ill. 2d at 593. We will first review the respondent's claims to determine if there was any error before considering it under plain error.

¶ 23 Section 5-715 of the Juvenile Court Act of 1987 (Act) sets out conditions that the juvenile court may impose as conditions of juvenile probation and states in relevant part:

> "(2) The court may as a condition of probation or of conditional discharge require that the minor:
>
> (a) not violate any criminal statute of any jurisdiction;
>
> * * *

(g) refrain from possessing a firearm or other dangerous weapon, or an automobile;

(j) attend school;

(r) refrain from entering into a designated geographic area except upon terms as the court finds appropriate. The terms may include consideration of the purpose of the entry, the time of day, other persons accompanying the minor, and advance approval by a probation officer, if the minor has been placed on probation, or advance approval by the court, if the minor has been placed on conditional discharge;

(s) refrain from having any contact, directly or indirectly, with certain specified persons or particular types of persons, including but not limited to members of street gangs and drug users or dealers." 705 ILCS 405/5-715 (2016).

¶ 24 Our supreme court held that in the context of juvenile delinquents, "a condition of probation, which impinges on fundamental constitutional rights is not automatically deemed invalid." *In re J.W.*, 204 Ill. 2d at 78. Rather, "[e]ven fundamental constitutional rights are not absolute and may be reasonably restricted in the public interest." *Id.* With respect to this analysis, "the overriding concern is reasonableness." *Id*. To be reasonable, a condition of probation must not be overly broad when viewed in the light of the desired goal or the means to that end. *Id*. (citing *In re J.G.*, 295 Ill. App. 3d 840, 843 (1998)). In other words, "[w]here a condition of probation requires a waiver of precious constitutional rights, the condition must be narrowly drawn; to the extent it is overbroad it is not reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights. [Citations]" (Internal quotation marks and emphasis omitted.)

In re J.W., 204 Ill. 2d at 78.

¶ 25 When assessing the reasonableness of a probation condition it is appropriate to consider whether the restriction is related to the nature of the offense or the rehabilitation of the probationer. *Id*. (citing *People v. Meyer*, 176 Ill. 2d 372, 378 (1997); *People v. Pickens*, 186 Ill. App. 3d 456, 460 (1989)). Other considerations are: (1) whether the condition of probation reasonably relates to the rehabilitative purpose of the legislation, (2) whether the value to the public in imposing this condition of probation manifestly outweighs the impairment to the probationer's constitutional rights, and (3) whether there are any alternative means that are less subversive to the probationer's constitutional rights but still comport with the purposes of conferring the benefit of probation. *In re J.W.*, 204 Ill. 2d at 79. A probationary condition is overbroad and therefore unreasonable when there is no valid purpose for the restriction, and there is no means by which the probationer may obtain exemptions from the restriction for legitimate purposes. *Id.* at 80-81.

¶ 26 Respondent argues that section 5-715(s) does not define "contact" nor does it define what a "street gang" is and therefore fails to give respondent the necessary guidance to tailor his behavior accordingly and permits law enforcement to enforce the term arbitrarily and without guidance. Therefore, respondent argues, his sentence is void for vagueness.

¶ 27 We reject respondent's argument that the term "street gang" needs definition. The juvenile court was presented with an extremely detailed, two-page gang information report regarding respondent's involvement in the Black Disciples street gang. The court went through the report on the record, sharing the information with respondent, and admonishing him about the gang related activity respondent had displayed on his social media accounts. This report

included instances of respondent flashing gang signs, wearing gang insignia and posting comments identifying his gang affiliation. Respondent was clearly involved in a street gang, evidence of which was available in the report and on respondent's social medial accounts. Respondent was aware of what a street gang was.

¶ 28 Respondent relies on *In re Omar F.*, 2017 IL App (1st) 171073, to support his argument that the court's no contact order is void for vagueness. Omar F., a minor, was charged with armed robbery with a firearm, aggravated robbery, and robbery and was adjudicated delinquent. *Id*. ¶¶ 3, 21. The social investigation revealed similar past charges, and Omar admitted that his friends were "gang involved," though he denied being in a gang himself. *Id*. ¶¶ 23, 25. The trial court sentenced Omar to probation and told him to " 'stay away from gangs, guns, and drugs' " and to " 'clear those from [your] social media.' " *Id*. ¶ 31. Omar appealed and argued that the gang related conditions were unconstitutional as applied to him because they were overbroad and unreasonable.

¶ 29 On appeal, this court found that the conditions imposed were overbroad and not narrowly tailored. *Id*. ¶ 60. Although restricting Omar's contact with gang members was reasonably related to rehabilitative goals, the restrictions did not allow for any exceptions for legitimate purposes or provide enough guidance to avoid violating the orders. *Id*. ¶ 63. The court stated:

> "There is no exclusion for people based on familial, employment, or educational relationships, and no explanation as to what type of contact (physical or online), no matter how innocuous, will result in a probation violation. This is particularly troubling where, according to the social investigation report, the respondent reported that the person he looks up to the most is his brother, who 'has been in the system but has turned

> his life around.' Accordingly, we find that in the present case, the trial court's imposition of the aforementioned gang-related conditions of probation constituted error. See I*n re J.W.*, 204 Ill. 2d 50, 272 Ill. Dec. 561, 787 N.E.2d 747 (vacating as unconstitutional a condition of juvenile probation limiting a minor's freedom of movement because that condition, while valid as reasonably related to the offense of sexual assault, was overbroad and therefore unreasonable because it failed to make any provisions that would have permitted the minor respondent to enter the geographic area for legitimate purposes)." *Id.* ¶ 63.

¶ 29 As respondent acknowledges, *Omar F.*, is contradictory to our holding in *In re H.G.*, 322 Ill. App. 3d 727, 739 (2001), where we upheld conditions of the respondent's probation that prohibited him from associating with gang members, loitering on the corners of 27th and 28th and Kedvale, and imposing a 7 p.m. curfew. H.G. had argued that these conditions were overbroad and infringed on his constitutional rights. We found that the probation conditions that were imposed were reasonable, and therefore were not overbroad and did not infringe on the respondent's constitutional rights, where the court took into consideration the testimony of the respondent's probation officer, who witnessed respondent associating with known gang members. *Id.* "We hold that respondent's commission of armed robbery and battery dictates that restrictions be placed upon his liberty for the safety of the public and for the advancement of the rehabilitation of respondent, who was 14 at the time the offenses occurred." *Id.* This court found that 'the value to the public of the imposition of these conditions of probation far outweighs any impairment of respondent's constitutional rights." *Id.* at 740.

¶ 30 We find *H.G.*, to be better reasoned than *Omar F.* Similar to the respondent in *H.G.*,

respondent's aggravated use of a firearm at 17-years-old, coupled with his gang involvement, dictated that a no gang contact condition of probation be placed on his liberty for defendant's safety, the safety of the public and for advancement of his rehabilitation. The condition's value to defendant and the public far outweigh any infringement on respondent's constitutional rights. No error occurred here.

¶ 31 Respondent also argues that the probation condition "clear social media" is an unconstitutional content-based restriction that fails for lack of sufficiently narrow tailoring and fails the strict scrutiny test. Although respondent now claims that he is unsure what exactly the court intended when it ordered this condition, the record is clear that respondent was made aware of, and acknowledged that he understood, exactly the type of posts the court wanted taken down: gangs, guns and drugs. Respondent even admits in his appellate brief that although the court's written probation order simply states, "clear all social media," it is "logical to presume the trial court's social media order pertained to posts about gangs, guns or drugs, even if the court did not articulate as such."

¶ 32 A government regulation of speech is content-based if the regulation applies to particular speech due to "the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015). A regulation targeting specific subject matter is content-based even if it does not discriminate among viewpoints within that subject. *Id*. at 2230. The probation order at issue in this case qualifies as a content-based restriction because it restricts respondent's social media postings that involve or reference gangs, guns or drugs.

¶ 33 This court considered the exact same argument respondent makes here in *In re R.H.*, 2017 IL App (1st) 171332. In *R.H.*, the respondent was sentenced to probation with the

condition that he refrain from posting about gangs, guns or drugs on social media. The respondent challenged this condition on appeal, arguing that the condition was an unconstitutional content-based restriction that failed due to lack of sufficiently narrow tailoring.

¶ 34 This court found that because the condition was a content-based restriction, strict scrutiny applied and therefore the regulation must be narrowly tailored to serve compelling state interests. *Id*. at ¶13. With respect to whether the State had a compelling interest in restricting R.H.'s social medial activity, we noted that courts may impose restrictions outside those listed in the statute so long as the condition (i) is reasonable and (ii) has some connection between it " 'and either (a) the underlying crime or (b) the behavior or attitude of the defendant that the trial court thinks needs adjusting.' " *Id*. ¶ 17 (quoting *In re M.P.*, 297 Ill. App. 3d 972, 977 (1998)). We found that the State had a compelling interest in restricting R.H. from posting on his social media content relating to gangs, guns and drugs because the restriction was reasonable "as a means of preventing him from further criminal acts," given R.H.'s past actions, and the fact that these "three related and insidious topics," were closely related to the crimes he was convicted of. *Id*. We also found that the restriction was sufficiently narrow, where the condition did not prevent R.H. from using social media but rather focused on the goal of reforming R.H.'s behavior and steering him away from involvement with gangs, guns and drugs. We found that the "order limits its reach to the matters specifically related to the exact behavior for which R.H. was adjudicated delinquent." *Id*. ¶ 25. We further stated:

> "R.H.'s social media activity is not incidental to the goal of rehabilitation, since adolescents often use social media to communicate with each other about their activities (including their illegal activities, as R.H. demonstrated). If the juvenile court has any

> hope of steering R.H. toward a new direction and productive life, it would be absurd to target only real-world behavior and ignore online activity. And if the trial court tried to restrict only postings that glorified guns, gangs, or drugs, R.H.'s probation officer would be in the impossible position of parsing each of his social media posts to determine a violation. For the restriction to be effective, it must be practical, it must be feasible, and it must be enforceable." *Id.* ¶ 26.

¶ 35 Based on the record before us and for all of the reasons stated in *R.H.*, we uphold the court's imposition of the "clear all social media" condition of his probation. We find that the State had a compelling interest in restricting respondent from posting on his social media content relating to gangs, guns and drugs. The restriction was reasonable, given the fact that respondent was 17-years-old, was charged with the aggravated use of a firearm and that these "three related and insidious topics," are closely related to the crimes he was convicted of. *Id*. We also find that the restriction was sufficiently narrow, where the condition did not completely prevent respondent from using social media but prevented him from posting items relating to three specific topics, with the goal of reforming his behavior and attempting to steer him away from involvement with gangs, guns and drugs. The interaction between the juvenile court and respondent throughout the sentencing phase as reflected in the record clearly demonstrates the respondent understood the type of postings the juvenile court was restricting was limited to the topics of guns, gangs and drugs. Consequently, we decline to conduct plain error analysis and the procedural default is honored. See *Naylor*, 229 Ill. 2d at 593.

¶ 36 Finally, respondent argues that his two adjudications for possessing a single firearm violates the one-act, one-crime rule. The State agrees. See *People v. Johnson*, 237 Ill. 2d 81, 97

(2010) (one-act, one-crime rule prohibits multiple convictions "that are based upon precisely the same single physical act"). Under the one-act, one-crime rule, if a defendant is convicted of more than one offense arising from the same single physical act, the conviction for the less serious offense must be vacated. *Id*. The rule applies equally in juvenile delinquency proceedings. See *In re Samantha V.*, 234 Ill. 2d 359, 375 (2009). Because respondent did not raise this issue in the trial court, we review this claim for plain-error. *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009).

¶ 37 Both offenses are class 4 felonies with the same punishments. It is therefore impossible to differentiate which of these offenses is the more serious. *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 23. The parties both agree that respondent's UPF conviction should be vacated. For the sake of judicial economy, we vacate respondent's adjudication on the UPF charge.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we vacate respondent's adjudication on the UPF count and affirm the judgment of the juvenile court on the AUUW..

¶ 40 Affirmed in part; vacated in part.

¶ 41 JUSTICE MIKVA, dissenting in part:

¶ 42 I dissent with respect to two of the probation conditions imposed on Elijah in this case—that he engage in "no gang contact" and that he "clear all social media" and "keep it clear"—for reasons already so well-articulated by other justices of this court. See *In re J'Lavon T.*, 2018 IL App (1st) 180228; *In re Omar F.*, 2017 IL App (1st) 171073; *In re R. H.*, 2017 IL App (1st) 171332, ¶¶ 48-56 (Neville, J. dissenting).

¶ 43 The courts in *J'Lavon T.* and *Omar F.* followed our supreme court's guidance in *In re*

J.W., 204 Ill. 2d 50, 78 (2003), in which the court cautioned that, "[t]o be reasonable, a condition of probation must not be overly broad when viewed in the light of the desired goal or the means to that end." *Id.* at 78; *J'Lavon T.*, 2018 IL App (1st) 180228, ¶ 10; *Omar F.*, 2017 IL App (1st) 171073, ¶ 57. The "no gang contact" and social media conditions imposed on Elijah in this case were similar to provisions that were found to be so overbroad as to be unreasonable in *J'Lavon T.*, 2018 IL App (1st) 180228, ¶ 15, and *Omar F.*, 2017 IL App (1st) 171073, ¶ 63.

¶ 44 The restriction on gang contact in this case is, in fact, identical to that restriction in *J'Lavon T.*, 2018 IL App (1st) 180228, ¶ 5, and *Omar F.*, 2017 IL App (1st) 171073, ¶¶ 31-32. This restriction is a preprinted option on the form sentencing order for the Cook County Juvenile Justice Division, on which the trial court can check off the probation conditions it chooses to impose. The preprinted restriction as a whole provides "no gang contact or activity." While the trial court can certainly completely restrict "gang activity," the restriction of "gang contact" raises the concern of overbreadth. As the *J'Lavon T.* court stated, this condition is overbroad because—although gang-related restrictions on a minor's contacts are valid conditions of probation—the condition as imposed in these cases allows "no exceptions" for contact related to a legitimate purpose such as contact with "family, classmates, or coworkers." *J'Lavon T.*, 2018 IL App (1st) 180228, ¶ 15; see also *Omar F.*, 2017 IL App (1st) 171073, ¶ 63 ("The trial court's blanket order *** did not contain a means by which the respondent could obtain an exception from the restrictions for legitimate purposes.").

¶ 45 In addition, I believe that the social media condition imposed on Elijah in this case is so vague that it violates his right to due process.

¶ 46 The social media restriction imposed on Elijah is written on the sentencing order as "clear

all social media" with an addition by the court at the sentencing hearing to "keep it clear." According to the majority, the trial court clearly meant to impose a limit on social media that "pertained to posts about gangs, guns and drugs." *Supra* ¶ 31. I do not see how this conclusion necessarily flows from the words of the sentencing order. As worded, this social media restriction is exceedingly vague—much more so than the restriction in *J'Lavon T.*, 2018 IL App (1st) 180228, ¶ 1, prohibiting posting "anything related to a gang on social media," or the restriction in *Omar F.*, 2017 IL App (1st) 171073, ¶ 32, that the juvenile "clear social media of gangs[,] drugs." Thus, a strong argument could be made that the social media condition imposed on Elijah in this case is void for vagueness.

¶ 47 This social media restriction is even more vague than the one at issue in *R.H.*, which restricted the juvenile there from posting to his social media accounts any "references to gangs." *R.H.*, 2017 IL App (1st) 171332, ¶ 2. And, as Justice Neville pointed out in his dissent, due process requires that a probation condition must be "sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated." (Internal quotation marks omitted.) *Id.* ¶ 50. The social media condition as articulated by the trial court in this case is not tailored enough to let Elijah know what is required of him going forward or allow a court to determine if a probation violation has occurred.

¶ 48 Assuming that this condition is not hopelessly vague and means what the majority in this case says it means—that Elijah must keep his social media clear of posts about gangs, guns, and drugs—then it is overbroad for the same reasons the courts found the restrictions to be overbroad in *J'Lavon T*, 2018 IL App (1st) 180228 ¶ 12, and *Omar F.*, 2017 IL App (1st) 171073, ¶ 63. The restriction contains no means for Elijah to get an exception if, for example, he wanted to post a

statement about the issues surrounding gangs or drugs or guns, or warn others to stay away from such influences. It makes no distinction between what Elijah himself posts and what others may post on his site. It is, in short, a probationary condition that is so "overbroad and not narrowly tailored so as to be unreasonable." *Omar F.*, 2017 IL App (1st) 171073, ¶ 63.

¶ 49 Finally, I would find that Elijah's claim that these restrictions are improper is not subject to forfeiture. As the courts in *J'Lavon T.* and *Omar F.* found, these kinds of probation conditions qualify as plain error under the second prong of plain-error review, because such overbroad restrictions undermine the integrity of the dispositional hearing. *J'Lavon T.*, 2018 IL App (1st) 180228, ¶ 20, and *Omar F.*, 2017 IL App (1st) 171073, ¶ 68.

¶ 50 I would accordingly vacate these provisions in the sentencing order and remand the case so that the trial court can, if it wishes to, impose probation conditions that are more narrowly tailored and comply with due process.