2019 IL App (4th) 180815-U

NO. 4-18-0815

FILED
April 24, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re N.L., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 17JD116
v.	)	
N.L.,	)	Honorable
Respondent-Appellant).	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in adjudicating respondent delinquent and placing him on 48 months' probation.

¶ 2 In August 2018, the trial court found respondent, N.L., committed the offenses of aggravated criminal sexual assault and criminal sexual assault and adjudicated him a delinquent minor. Thereafter, the court made him a ward of the court and placed him on 48 months' probation with various conditions.

¶ 3 On appeal, respondent argues (1) he was denied a fair trial; (2) his adjudication for aggravated criminal sexual assault must be reversed for insufficient evidence; (3) his adjudication for criminal sexual assault must be vacated under the one-act, one-crime rule; (4) he is entitled to a new sentencing hearing; (5) the trial court erred in imposing certain probation conditions; and (6) the court erred in delegating its judicial function. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2017, the State filed a petition for adjudication of delinquency and wardship, alleging respondent committed the offenses of aggravated criminal sexual assault (count I) (720 ILCS 5/11-1.30(b) (West 2016)) and criminal sexual assault (count II) (720 ILCS 5/11-1.20 (West 2016)) on or between June 28, 2017, and July 5, 2017. In count I, the State alleged respondent, who was under 17 years of age, committed an act of sexual penetration with Al. W., who was under the age of 9 at the time of the offense and a family member of respondent, in that respondent placed his penis into her anus. In count II, the State alleged respondent committed an act of sexual penetration with Al. W., who was under the age of 18 at the time of the offense and a family member of respondent, in that respondent placed his penis in her anus.

¶ 6 Following a hearing on July 21, 2017, the trial court entered an order of temporary detention. The court released respondent from detention on August 15, 2017. On October 23, 2017, the court signed a warrant of apprehension after respondent failed to appear. On April 27, 2018, respondent was arraigned on a new juvenile petition (case No. 17-JD-171) for the offenses of theft and resisting a peace officer. The court entered an order of temporary detention. The court authorized respondent's release from detention on May 8, 2018.

¶ 7 Prior to respondent's trial, the State filed a motion to admit statements pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2016)). The State alleged Al. W. made statements about the offense to her mother and to forensic interviewer Mary Bunyard and asked that the statements be admitted pursuant to section 115-10.

¶ 8 At the hearing on the State's motion, As. W., Al. W.'s mother, testified Al. W. was born in September 2008 and was then nine years old. Al. W.'s father is named D.H., and his parents are R.L. and K.L. In late June and early July 2017, Al. W. went to visit D.H. at his

parents' house in Champaign. Respondent, D.H.'s younger brother and Al. W.'s uncle, was also present. On July 13, 2017, As. W., after having some concerns about her daughter's interaction with an individual who had once "touched on one of the other little girls," had a conversation with Al. W. regarding "good touches and bad touches." When asked if anyone had ever touched her, Al. W. said respondent had touched her. After being asked what happened, Al. W. said she was watching the boys play a game in their room. At the time, she was on the top bunk and respondent was on the bottom. After two individuals left the room, respondent "got on the top bunk with her, and stuck what she said was his body part in her butt." Al. W. stated respondent said if she told anyone, he would do the same thing to her sister.

¶ 9 Mary Bunyard, a child forensic interviewer with the Children's Advocacy Center, testified she conducted an interview of Al. W. on July 19, 2017. Bunyard found Al. W. to be an eight-year-old child who had age-appropriate awareness of body parts and sexual conduct. Further, the disclosures Al. W. gave to Bunyard were made in an age-appropriate way.

¶ 10 The trial court found the content and circumstances of the statements provided sufficient safeguards of reliability. The court granted the State's motion to permit As. W. and Bunyard to testify regarding statements made by Al. W.

¶ 11 In August 2018, respondent's bench trial commenced. The parties stipulated the trial court could consider Al. W.'s recorded interview as Bunyard's testimony and Al. W.'s medical records as substantive evidence.

¶ 12 During Bunyard's interview, Al. W. said she was eight years old. While staying with her father at her grandfather's house, Al. W.'s brother, her cousins, and respondent were playing a video game in respondent's room. At some point, her brother and cousins left the room. Al. W. stated respondent then came behind her on the bottom bunk, pulled her pants

down, and "put his privates, like, in [her], um, bottoms." Al. W. told respondent to stop, but he did not do so. Al. W. tried to run, but respondent "held [her] back."

¶ 13 Al. W. stated "it happened twice," once when her grandfather was there but not her grandmother because she lives in Arizona. During the first incident, Al. W. stated her grandfather was "at the slot machines" and "Nana" was in Arizona. One incident occurred before the Fourth of July and the second incident occurred after the Fourth. During the second incident, her grandmother was "somewhere with family members" and her grandfather was "at the slot machines." One of the incidents occurred in respondent's room and the other occurred in her grandmother's room.

¶ 14 At the time of the second incident, Al. W. and her sister and cousins were watching a movie. Respondent came in, and Al. W. tried to pull away but he "kept doing it." Al. W. stated her sister and cousins were playing with "one of our dogs" in another room. Al. W. stated respondent had been following her everywhere she went and was "creeping [her] out and wouldn't stop." Respondent stopped when Al. W. said she was going to tell.

¶ 15 Bunyard stated, "You said this happened twice," and Al. W. responded, "Yes." Bunyard clarified: "You said he put his private in your bottom, right?" Al. W. said, "Yes." Bunyard later provided Al. W. with a picture and asked her to mark an X where respondent placed his private part. After Al. W. did so, Bunyard asked whether that was "on the outside of your bottom or the inside of your bottom." Al. W. stated it was "inside." Bunyard again stated: "And you said that that happened two times, and both times were essentially the same or was there anything different about those times?" Al. W. indicated they were the same, except for the fact that her cousin was not present during one of the incidents. Respondent told Al. W. not to tell because he would get in trouble and "he would do it again."

¶ 16 Al. W. stated one incident occurred in the morning. The other incident occurred "close to the night" when the sunlight "was all pretty." When asked how she felt when respondent put his private part in her "bottom," Al. W. said she felt upset because he did not stop. Once she told him "No," and the other time she said "Stop" and "It's not good to do that to little kids." Al. W. also stated her bottom "started to hurt."

¶ 17 In Al. W.'s medical records, the physician noted Al. W. alleged she had been lying on a bunk bed when respondent "pulled down her pants and put his private in her bottom." In the notes of the physical exam, the physician noted: "Normal anus. No fissures/tears." The physician also noted there were "[n]o abnormalities on [the] physical exam."

¶ 18 As. W. testified Al. W. went to visit her father, D.H., for approximately two weeks in July 2017. D.H.'s parents and respondent were also present in the house at that time. When Al. W. returned, her mother asked why she had trouble contacting Al. W. during her time away. Al. W. said As. W. needed to call a cousin because an individual named "Buca" had been at the house. This caused As. W. to become concerned, and she asked Al. W. if "Buca" had touched her. Al. W. stated he did not. When As. W. asked her daughter whether anyone touched her, Al. W. responded in the affirmative and said respondent had touched her. Al. W. stated she was on the "top bunk in the boys' room" watching them play a game. When her cousin and her brother left the room, respondent got on the top bunk and " 'stuck his body part into my butt.' " After calling D.H. and D.H.'s mother, As. W. called the police and then took Al. W. to the hospital. As. W. believed respondent to be 12 to 13 years old.

¶ 19 During the medical examination, the doctor told Al. W. to "sit on the bed and to open her legs." As. W. stated that as soon as the doctor "got close," Al. W. "started crying and he backed off." When asked if the doctor used "any instruments or anything to examine" Al. W.,

As. W. stated he did not.

¶ 20 On cross-examination, As. W. testified she asked Al. W. what particular body part respondent used to touch her. Al. W. pointed "in between her legs." Prior to sending Al. W. to her father for the visit, As. W. was aware "Buca" was staying at the residence. When questioned about the medical examination, As. W. stated the doctor "didn't examine [Al. W.] all the way," but he only "partially examined" her. The doctor also said he "did not see any tears or rips, but that does not mean that nothing happened."

¶ 21 Al. W. testified she was nine years old. She stated she went to her grandparents' house and respondent was present. She slept on the top bunk with her sister and her cousin. In the morning, her sister and cousin went to eat breakfast. Alone with respondent, Al. W. stated respondent then "got to the top bunk, pulled my pants down, and put his private part in my bottom." Al. W. did not do anything because she "was too scared to go tell anybody."

¶ 22 Al. W. also testified regarding a second instance, which occurred in her grandparents' room with her cousins present. Al. W. stated respondent "didn't pull my pants down or anything," but he "got behind" her and she "kept scooting forward." Her cousin then fell off the bed, and Al. W. "kept scooting over." She got out of bed because her cousin was crying. They then finished watching a movie.

¶ 23 Al. W. testified she eventually told her mother about the bunk-bed incident "[b]ecause it was something she had to know." When asked how it made her "bottom feel" when the incident happened, Al. W. stated "[i]t didn't feel good."

¶ 24 On cross-examination, Al. W. stated the incident occurred "a couple days" before the Fourth of July. When asked if she remembered talking with anybody about the incident, Al. W. stated she told "Miss Julie" and As. W. She did not remember talking with Bunyard.

¶ 25 R.L. testified on respondent's behalf. He stated Al. W. came to his house to visit from approximately June 22, 2017, to July 8, 2017. R.L. stated "Buca" was not staying at the home. He stated Al. W. did not act unusual during the visit. When R.L. took Al. W. and two other children back to As. W.'s, he stated the three children were crying because they did not want to leave.

¶ 26 Following closing arguments, the trial court noted Al. W.'s testimony indicated "respondent made contact with her bottom and his boy part, male part, however she described it, and that it hurt." Although the medical report showed no injury, the court stated the absence of injury did not mean the incident did not happen. The court found the issue a matter of credibility, and it concluded the State proved respondent committed the offenses alleged in counts I and II.

¶ 27 In November 2018, the trial court conducted the sentencing hearing. The court noted the social investigation report and an addendum had been filed. The court sentenced respondent to 48 months' probation and imposed various conditions. In its order of conditions, the court prohibited respondent from having any contact with Al. W. or any unsupervised contact with minors under the age of 13. This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 A. Fair Trial

¶ 30 Respondent argues he was denied a fair trial when the State stipulated to the admission of Al. W.'s medical records but then elicited testimony from As. W. to suggest she did not undergo an examination. In the alternative, respondent argues he was denied the effective assistance of counsel where counsel failed to object and move for a continuance in response to the State's conduct. We find respondent failed to establish error and thus has forfeited his fair

trial issue. Because of this finding, we need not address his claim of ineffective assistance of counsel.

¶ 31 In *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772 (2009), our supreme court stated:

> "In a criminal case, a defendant forfeits review of a claimed error if she does not object at trial and does not raise the issue in a posttrial motion. [Citation.] 'This principle encourages a defendant to raise issues before the trial court, thereby allowing the court to correct its errors *** and consequently precluding a defendant from obtaining a reversal through inaction.' [Citation.] This same forfeiture principle applies in proceedings under the Juvenile Court Act [citation], although no postadjudication motion is required in such cases [citation.]"

See also *In re Samantha V.*, 234 Ill. 2d 359, 368, 917 N.E.2d 487, 493 (2009) (stating that although minors are not required to file postdispositional motions, they must "object at trial to preserve a claimed error for review"). As respondent concedes, his counsel did not object to As. W.'s testimony and has thus forfeited this issue on appeal. However, respondent raises a claim of ineffective assistance of counsel and, in his reply brief, also asks this court to review the issue under the plain-error doctrine.

¶ 32 The first step in a plain-error analysis is to determine whether error occurred. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773. If a clear or obvious error exists, the requested relief will be granted: "(1) if 'the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant,' or (2) if the error is 'so serious that it affected

the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). Under both prongs, the respondent bears the burden of persuasion. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773.

¶ 33 "A stipulation is an agreement between parties or their attorneys with respect to an issue before the court." *People v. Nelson*, 2013 IL App (3d) 110581, ¶ 13, 987 N.E.2d 1047; see also *People v. Woods*, 214 Ill. 2d 455, 468, 828 N.E.2d 247, 256. "A stipulation signed by attorneys for both parties is binding." *People v. Pablo*, 2018 IL App (3d) 150892, ¶ 18, 110 N.E.3d 319. Moreover, " '[i]t is obvious that one of the parties to a stipulation cannot withdraw from the binding force of such stipulation unless he has the consent of the other party or leave of the court [citation].' " *Pablo*, 2018 IL App (3d) 150892, ¶ 18, 110 N.E.3d 319 (quoting *Kazubowski v. Kazubowski*, 93 Ill. App. 2d 126, 134, 235 N.E.2d 664, 668 (1968)).

¶ 34 In this case, the joint stipulation provided, in part, as follows:

> "The parties stipulated that the Court may consider medical records of [Al. W.], attached hereto, documenting [Al. W.'s] July 13, 2017 to July 14, 2017, examination at Carle Hospital as substantive evidence at trial, and that if the witnesses listed in said record were to testify they would testify substantially as outlined in said record."

¶ 35 On direct examination, As. W. testified she took Al. W. to the hospital for a medical exam on July 13, 2017, and was in the room during the exam. During the examination between the prosecutor and As. W., the following exchange occurred:

> "Q. Can you describe to the Court what happened when the

doctor tried to examine [Al. W.]?

A. We went into the room. I forgot the doctor's name. He came in. He asked what was going on a little bit. We told him a little bit of what was going on. I told him what she had told me, and he told her to sit on the bed and to open her legs. And as soon as he got close, she started crying and he backed off.

Q. Did the doctor use any instruments or anything to examine her?

A. No, ma'am."

¶ 36 Respondent claims that, although the State stipulated the witnesses listed in the medical records would testify substantially as outlined in the records, the prosecutor elicited testimony that the physician did not conduct an examination of Al. W. Thus, respondent claims the State "reneged on its stipulation 'at the eleventh hour' and undermined the defense's ability to present its case."

¶ 37 We find As. W.'s testimony did not conflict with the stipulation that the trial court could consider the medical records as substantive evidence. It also did not conflict with the part of the stipulation that indicated the witnesses listed in the medical records would testify substantially as outlined therein. Instead, As. W. simply gave her description of her time with Al. W. at the hospital. The medical records offered detailed notes of the physical exam, and the court did not find that an examination did not occur. Instead, it stated, "according to [As. W.]," "the examination was conducted at some distance." Thus, the State did not withdraw or renege on its stipulation, as As. W.'s testimony went only to her subjective view of the examination, which respondent's counsel articulated in his closing argument. As As. W.'s testimony did not

conflict with the stipulation, respondent has not established error for purposes of the plain-error doctrine. Thus, we hold respondent to his forfeiture. Because respondent has failed to establish error, his claim of ineffective assistance of counsel also fails.

¶ 38 B. Sufficiency of the Evidence

¶ 39 Respondent argues this court should reverse his adjudication for aggravated criminal sexual assault because the State did not prove beyond a reasonable doubt that he committed two separate acts of sexual penetration. We disagree.

¶ 40 Illinois Supreme Court Rule 660(a) (eff. Oct. 1, 2001) explicitly provides that delinquent minor appeals shall be governed by the "rules applicable to criminal cases." It is well accepted that no person, adult or juvenile, may be convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *In re O.S.*, 2018 IL App (1st) 171765, ¶ 34, 112 N.E.3d 621. "The reasonable doubt standard applies in all criminal cases, whether the evidence is direct or circumstantial." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47, 958 N.E.2d 227.

¶ 41 When a minor respondent challenges the sufficiency of the evidence to sustain an adjudication of delinquency, a court of review must "determine whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *In re Malcolm H.*, 373 Ill. App. 3d 891, 893-94, 869 N.E.2d 916, 918 (2007); see also *Jonathon C.B.*, 2011 IL 107750, ¶ 47, 958 N.E.2d 227.

> "Because the trier of fact is in the best position to evaluate the credibility of the witnesses, draw reasonable inferences from the

> evidence, and resolve any inconsistencies in the evidence [citations], a reviewing court may not substitute its judgment for that of the trier of fact and will not reverse a respondent's delinquency adjudication unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt [citation]." *O.S.*, 2018 IL App (1st) 171765, ¶ 34, 112 N.E.3d 621.

See also *In re Nasie M.*, 2015 IL App (1st) 151678, ¶ 23, 45 N.E.3d 347 (stating "[a] delinquency finding will only be reversed when the proof was so improbable, implausible, or unsatisfactory that reasonable doubt exists as to the respondent's guilt").

¶ 42 A person commits the offense of aggravated criminal sexual assault if he is under 17 years of age and commits an act of sexual penetration with a victim who is under 9 years of age. 720 ILCS 5/11-1.30(b)(i) (West 2016). A conviction for aggravated criminal sexual assault under section 11-1.30(b)(i) is a Class X felony. 720 ILCS 5/11-1.30(d)(1) (West 2016).

¶ 43 A person commits the offense of criminal sexual assault if he commits an act of sexual penetration and he is a family member of the victim, and the victim is under 18 years of age. 720 ILCS 5/11-1.20(a)(3) (West 2016). A conviction for criminal sexual assault under section 11-1.20(a)(3) is a Class 1 felony. 720 ILCS 5/11-1.20(b)(1) (West 2016).

¶ 44 In this case, As. W. testified she was talking with her daughter about "good touches and bad touches" when Al. W. stated respondent had touched her. Al. W. stated she was in the boys' room on the top bunk bed when respondent got on the top bunk and stuck his "body part in my butt." As. W. testified she asked what body part respondent used in touching her, and Al. W. pointed in between her legs.

¶ 45 In her recorded interview, Al. W. told Bunyard that respondent "came behind me

and pulled my pants down and puts his privates, like, in my, um, bottoms." Al. W. stated "[i]t happened twice, one, Granddad was there, Nana wasn't, cuz [*sic*] she lived in Arizona." When asked what room this took place in, Al. W. stated it was in respondent's room. Al. W. told Bunyard that she was on the bottom bunk when respondent "pulled my pants down and put his privates inside my bottoms." When Bunyard stated "you said that it happened two times," Al. W. answered "Yes" and later stated "[i]t happened one before the Fourth of July and then it happened one after the Fourth of July." The following exchange took place between Bunyard and Al. W.:

> "Q. And you said this happened twice?
>
> A. Yeah (nodding).
>
> Q. And you said he put his private in your bottom, right?
>
> A. Yes."

¶ 46 Al. W. complied with Bunyard's request to put an X on a picture "where he put his private." The following exchange then occurred:

> "Q. OK, and when he did that was that on the outside of your bottom or the inside of your bottom?
>
> A. Inside.
>
> Q. And you said that that happened two times?
>
> A. Yeah.
>
> Q. And both times were, were essentially the same? Or was there anything different about those two times?
>
> A. It was the same.
>
> Q. The same? OK. And did—

A. The only difference about it is, one of them, um, Uncle Bucci, I mean cousin Bucci wasn't there.

* * *

Q. Was anybody else in the room with you, when it happened?

A. No.

* * *

Q. You said this happened twice?

A. Yes.

Q. And both times, did it happen *** when you were staying with your dad for the six days, or was there a time other than during the six days that that happened?

A. No, I was staying with my dad for six days.

Q. Okay, so like over the Fourth of July time that you were there, that happened twice?

A. [Nods].

Q. That's what happened there?

A. [Nods].

Q. Okay and, do you remember, was that, like, during the day, in the evening, at night time? Or . . .?

A. Tryin' to think about it.

Q. I mean, if I go back, you said something about the kids flying the drone.

A. Yeah so, one, it was in the morning.

Q. In the morning?

A. One was in the morning, and then the other day, when *** like, close to the night *** when the sunlight and stuff *** was all pretty."

¶ 47 At trial, Al. W. testified she was nine years old. She discussed two incidents that occurred during the relevant time period. During the first instance, she was alone with respondent when he "got to the top bunk, pulled my pants down, and put his private part in my bottom." As to the second instance, she stated she and her cousins were in her grandparents' room when respondent "didn't pull my pants down or anything," but he "got behind" her and she "kept scooting forward."

¶ 48 Here, Al. W.'s statements in the interview with Bunyard were sufficient to support the trial court's finding that respondent sexually assaulted her on a bunk bed in respondent's room and another time in her grandparents' room. Al. W. stated "it happened twice," and the "it" she described referred to respondent putting his "privates" inside her "bottoms." Al. W. described how the two incidents occurred at different times of the day and one occurred before the Fourth of July and the other after. In response to Bunyard's question as to whether both incidents were essentially the same, Al. W. stated they were except for who was present in the rooms.

¶ 49 While Al. W. stated "it happened twice" in the interview with Bunyard, her trial testimony appeared to offer a contradiction as to what occurred in one of the instances. However, the trier of fact was in the best position to evaluate the credibility of the witnesses and resolve any inconsistencies in the evidence. *O.S.*, 2018 IL App (1st) 171765, ¶ 34, 112 N.E.3d

621. The trial court was able to assess Al. W.'s credibility through the video and on the witness stand and could then conclude her statement to Bunyard was more complete and believable than her trial testimony, given its proximity in time to the incident. See *People v. Lara*, 2011 IL App (4th) 080983-B, ¶ 42, 958 N.E.2d 719. Viewed in the light most favorable to the prosecution, we find the evidence was sufficient to allow a rational trier of fact to find respondent guilty of both counts beyond a reasonable doubt. See *In re Q.P.*, 2015 IL 118569, ¶ 24, 40 N.E.3d 9 (stating "[a] reviewing court must draw all reasonable inferences in favor of the prosecution").

¶ 50 C. One-Act, One-Crime Rule

¶ 51 In his opening brief on appeal, respondent argues the State did not apportion which act supported which offense when it filed the petition for adjudication of delinquency or at trial. In its brief, the State contends it did apportion the two offenses based on two separate acts of sexual penetration. In his reply brief, respondent concedes the State is correct in its assertion and withdraws the argument. Accordingly, we need not address it.

¶ 52 D. Probation Officer's Recommendation

¶ 53 Respondent argues this court should order a new sentencing hearing because probation officer Heidi Hewkin abandoned her duty to be objective and neutral in the analysis and recommendation section of the social investigation report. We disagree.

¶ 54 Here, respondent acknowledges his counsel failed to object to the social investigation report, thereby forfeiting review of the issue on appeal. *Samantha V.*, 234 Ill. 2d at 368, 917 N.E.2d at 493. However, he asks this court to review the matter under the plain-error doctrine.

¶ 55 Section 5-701 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-701 (West 2016)) provides for the preparation of a social investigation report, stating, in

part, as follows:

> "The written report of social investigation shall include an investigation and report of the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, personal habits, minor's history of delinquency or criminality or other matters which have been brought to the attention of the juvenile court, information about special resources known to the person preparing the report which might be available to assist in the minor's rehabilitation, and any other matters which may be helpful to the court or which the court directs to be included."

¶ 56 In the analysis/recommendation portion of the social investigation report, Hewkin stated, in part, as follows:

> "This officer cannot even fathom how frightened the victim must have been when this occurred. The respondent minor chose to victimize this young girl, not once but twice. And, while there may not be any lasting physical injuries to the victim, [I] can only imagine the lifelong mental trauma the victim will have to endure.
>
> * * *
>
> [T]his officer hopes that this young man realizes the life-long pain he has inflicted on another human being. He violated the personal space of another human being for his own personal gratification, and that is something that cannot be overlooked by this officer. No

one should ever have to feel that their body was violated for the personal gratification of another."

Respondent argues Hewkin abandoned her duty to provide objective information and a neutral analysis. See *People v. Blanck*, 263 Ill. App. 3d 224, 237, 635 N.E.2d 1356, 1366 (1994) (noting a "presentence investigation must be conducted by a neutral party").

¶ 57 We find respondent has failed to show error resulting from the social investigation report. The report provided information about respondent and his family, his prior court involvement and police contacts, his education, and his health. Respondent has not shown the report contains unreliable information or that Hewkin failed to conduct an independent investigation or relied on inappropriate materials. Moreover, respondent has not shown the trial court relied on the allegedly offensive comments from Hewkin to impose a harsher sentence. Instead, the record indicates the prosecutor believed the recommendation of the court services department for a term of probation was appropriate given respondent's age and low-to-moderate risk to reoffend. Respondent's counsel stated "[w]e would join with the recommendations of court services and the state." The court indicated it reviewed the report and agreed with counsel and the court services department that probation was appropriate, although it concluded a 48-month period was appropriate rather than Hewkin's recommended 60-month period. We find no error and hold respondent to his forfeiture of this issue.

¶ 58 E. The Trial Court's Probation Condition

¶ 59 Respondent argues the trial court erred in imposing the blanket probation condition that respondent have no unsupervised contact with persons under 13 years of age because it does not include exceptions for legitimate purposes and is, thus, unreasonable. We find this issue forfeited.

¶ 60 As in the previous issue, respondent acknowledges his counsel did not object to the imposition of the probation condition prohibiting his unsupervised contact with minors under the age of 13. However, he asks this court to review the issue as a matter of plain error. As stated, the first step in a plain-error analysis is to determine whether error occurred. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773.

¶ 61 Delinquency proceedings are protective in nature; they are intended to correct and rehabilitate the minor, not to punish him. *Jonathon C.B.*, 2011 IL 107750, ¶ 94, 958 N.E.2d 227. Pursuant to section 5-715(2)(s) of the Juvenile Court Act (705 ILCS 405/5-715(2)(s) (West 2016)), a trial court may impose as a condition of probation that the minor "refrain from having any contact, directly or indirectly, with certain specified persons or particular types of persons ***." The minor may also be required to "comply with other conditions as may be ordered by the court." 705 ILCS 405/5-715(2)(u) (West 2016).

> "It has been recognized that courts have broad discretion to impose probation conditions, whether expressly allowed by statute or not, to achieve the goals of fostering rehabilitation and protecting the public. [Citations.] Of course, the wide latitude given to courts in setting conditions of probation is not boundless. [Citation.] The court's discretion is limited by constitutional safeguards and must be exercised in a reasonable manner. [Citation.] 'The constitutional safeguards, which circumscribe a trial court's exercise of its discretion to impose conditions, are the basic constitutional rights of the probationer.' [Citation.]" *In re J.W.*, 204 Ill. 2d 50, 77, 787 N.E.2d 747, 763 (2003).

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." *J.W.*, 204 Ill. 2d at 79, 787 N.E.2d at 764. The constitutionality of a probation condition presents a question of law that we review *de novo*. *In re Omar F.*, 2017 IL App (1st) 171073, ¶ 56, 89 N.E.3d 1023.

¶ 62 In the case *sub judice*, respondent argues the trial court erred in imposing the probation condition that prohibits his unsupervised contact with minors under the age of 13 because it impacts his right of association protected by the first amendment to the United States Constitution. U.S. Const., amend. I. He also contends the probation condition is overly broad because the trial court did not identify any commonsense exceptions to the condition. More specifically, respondent argues "there are no exceptions based on familial or educational relationships, and no explanation as to what type of contact, no matter how innocuous, will result in a probation violation."

> "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. [Citation.] 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.]" *J.W.*, 204 Ill. 2d at 78-79, 787 N.E.2d at 764.

¶ 63 Courts may also consider whether (1) the probation condition reasonably relates

to the rehabilitative purpose of the legislation; (2) the public value in imposing the condition "manifestly outweighs the impairment to the probationer's constitutional rights"; and (3) "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." *J.W.*, 204 Ill. 2d at 79, 787 N.E.2d at 764.

¶ 64 In this case, respondent's offenses involved the sexual assault of his eight-year-old niece, and the probation condition is reasonable to prohibit him from having unsupervised contact with a similar-aged minor. The value to the public in imposing this probation condition is to prevent respondent from committing sexual acts against another minor, thereby advancing the goal of rehabilitation, and to protect minors, which is achieved by prohibiting him from having contact or attempting to have unsupervised contact with those minors.

¶ 65 Respondent relies, in large part, on the First District's decision in *Omar F*. In that case, the trial court imposed a probation condition on the respondent, who had been found guilty of armed robbery with a firearm, that ordered him to " 'stay away' and have 'no contact' with gangs" and "clear and not appear in any social medial posts with gang members." *Omar F.*, 2017 IL App (1st) 171073, ¶ 50, 89 N.E.3d 1023. Although the First District found the no-gang-contact provision was a valid probation condition because it was reasonably related to the respondent's rehabilitation, the court found it was overly broad. *Omar F.*, 2017 IL App (1st) 171073, ¶¶ 60-61, 89 N.E.3d 1023. The court found as follows:

> "The trial court's blanket order requiring the respondent to 'stay away' from and have 'no contact' with gangs and to clear and not appear in any social media posts with gang members did not contain a means by which the respondent could obtain an

> exception from the restrictions for legitimate purposes. 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 now 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." *Omar F.*, 2017 IL App (1st) 171073, ¶ 63, 89 N.E.3d 1023.

The First District found the probation condition in that case was "simply too general and overbroad to provide a juvenile with clear parameters about how to comply with the conditions of his probation" and the respondent could be found in violation of the condition "in a number of scenarios, including when conducting himself in a constitutionally protected manner." *Omar F.*, 2017 IL App (1st) 171073, ¶ 68, 89 N.E.3d 1023.

¶ 66 We find *Omar F.* distinguishable, in large part because the probation condition in that case dealt with guns, robbery, and gangs. Here, respondent was found guilty of sexually assaulting a family member, and the probation condition preventing his unsupervised contact with minors under the age of 13 serves to foster his rehabilitation as well as protect those most vulnerable, including the minors in his own family. The purpose of the no-contact-with-gangs condition in *Omar F.* was not to protect a vulnerable class of potential victims from being sexually assaulted by Omar F. Here, the condition was reasonable on two fronts—the protection

of the public, most especially the class of potential victims respondent had been found guilty of assaulting, and respondent's own rehabilitation. Thus, we find no error and hold respondent to his forfeiture of this issue.

¶ 67 F. The Trial Court's Additional Conditions

¶ 68 Respondent argues the trial court erred in delegating its judicial function to the Champaign County Court Services Department to impose "additional conditions of sex-offender probation/high risk probation." We find respondent is not entitled to relief in this case.

¶ 69 Our supreme court has noted "the power to impose sentence is exclusively a function of the judiciary." *People v. Phillips*, 66 Ill. 2d 412, 415, 362 N.E.2d 1037, 1039 (1977). Moreover, "[d]etermination of the terms and conditions of probation is a judicial function." *People v. Jones*, 185 Ill. App. 3d 208, 218, 541 N.E.2d 161, 167 (1989). "Because the imposition of probationary conditions is part of sentencing, the trial court must impose any such conditions at the sentencing hearing and may not delegate that authority to any third party, including the court services department." *People v. Morger*, 2016 IL App (4th) 140321, ¶ 57, 59 N.E.3d 219.

¶ 70 At sentencing, the prosecutor stated the recommendations of the court services department "with regards to a general term of probation and the additional requirements under the Sex Offender Probation Act and requirements would be appropriate." Respondent's counsel stated "[w]e would join with the recommendations of court services and the state." Thus, respondent affirmatively waived his challenge to the trial court's order that he cooperate with all additional conditions of sex-offender probation and high-risk probation. *People v. Scott*, 2015 IL App (4th) 130222, ¶ 24, 25 N.E.3d 1257 (stating "[w]here a defendant acquiesces to the actions taken by the trial court, he waives his right to challenge those actions on appeal").

¶ 71 While we have found respondent's counsel acquiesced in this case, we note the necessity of raising the issue of whether additional probation conditions were improperly delegated could have been alleviated if the trial court had been presented with the additional conditions, signed off on them, and the list of conditions included in the record.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we affirm the trial court's judgment.

¶ 74 Affirmed.