2016 IL App (2d) 160421 & 160422-U (cons.)
No. 2-16-0421 & 2-16-0422 (cons.)
Order filed November 1, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In the Interest of	)	Appeal from the Circuit Court
	)	of De Kalb County.
Kylen M., a minor	)	
	)	Nos. 14 JD 194 & 15 JD 34
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Kylen M., Respondent-Appellant).	)	Honorable
	)	Marcy Buick
	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ ~~1~~ *Held*: The trial court's order granting the State's motion to lift a stay on the minor's adult prison sentences was affirmed when: (1) the State's failure to properly notify the minor's noncustodial father was not plain error because the mother was properly notified and was present at the hearings, and the minor did not show how the proceedings would have been different had the noncustodial father been properly notified; and (2) the minor's constitutional right to testify was not violated when: (a) the minor did not contradict his attorney when his attorney informed the court that the defense would not be presenting any testimony at the hearing; (b) the minor's interjections during the State's closing argument were not requests to exercise his right to testify; and (c) the minor's alleged request to testify came too late when he questioned why he did not get to testify after the hearing had concluded.

¶ 2 Respondent Kylen M., appeals from the trial court's order granting the State's motion to lift the stay on his adult sentences for robbery (720 ILCS 5/18-1(a) (West 2014)) and attempt

aggravated robbery (720 ILCS 5/8-4, 18-1(b)(1) (West 2014)) that resulted in concurrent sentences of five years and three years, respectively, in the Department of Corrections. Specifically, he argues that he was deprived of his rights to due process: (1) when the State failed to serve notice and summons on his non-custodial father of these delinquency proceedings; and (2) when he was denied the right to testify at the hearing on the State's fourth amended motion to lift the stay on the adult sentences. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that a petition for the adjudication of wardship was filed on December 1, 2014, in juvenile case number 14 JD 194. In the petition the State alleged that Kylen, who was 15 years' old at the time, had committed the offense of attempt aggravated robbery in that while indicating that he had a firearm and threatening to use it, he took a cell phone and other property from two individuals on November 8, 2014. 720 ILCS 5/8-4, 18-1(b)(1) (West 2014). The State also filed a motion to designate this case as one prosecuted pursuant to the extended juvenile jurisdiction (EJJ) statute (705 ILCS 405/5-810 (West 2014)). On December 18, 2014, Kylen's mother informed the court that she was waiting for Kylen's father to send her money so that she could hire a private attorney for Kylen.

¶ 5 On February 5, 2015, a hearing was held on the State's motion to prosecute this matter as an EJJ case. On February 12, 2015, Kylen admitted to the petition. An agreed order was entered that this case was subject to EJJ. The court admonished Kylen as to the rights he would be waiving by virtue of his admission and reviewed the charge alleged in the petition as well as the potential juvenile and adult sentences. Kylen indicated that he understood what the court was telling him and the court found that Kylen was admitting to the charge of attempt aggravated robbery freely, voluntarily and knowingly. In exchange for his admission of guilt, petitions to

revoke probation were withdrawn in four other juvenile cases. A judgment order was entered indicating that Kylen would be sentenced to three years in the Department of Corrections but that the sentence was stayed pending his compliance with the juvenile disposition of five years' probation with conditions.

¶ 6 On March 4, 2015, the State filed another petition for the adjudication of wardship of Kyle in juvenile case number 15 JD 34. In that case, the State alleged that Kylen committed the offense of aggravated robbery in that, on March 3, 2015, he took money from an individual by force or threat of force while armed with a firearm. 720 ILCS 5/18-1(b)(1) (West 2014). On March 9, 2015, a second charge was added that Kylen was a juvenile habitual offender. See 705 ILCS 405/5-815 (West 2014).

¶ 7 On March 12, 2015, the trial court ordered that Kylen's admission in case number 14 JD 194 was withdrawn because of improper admonishments concerning jury waiver.[1] Kylen remained in detention from March 4, 2015, through May 21, 2015, when he was placed on homebound electronic monitoring (HEM).

¶ 8 On June 3, 2015, the State amended the petition to adjudicate in case number 15 JD 34 and added a charge of robbery under the same facts as the aggravated robbery. An amended petition to adjudicate Kylen as a habitual juvenile offender was also filed.

¶ 9 On June 4, 2015, the State informed the court that Kylen had not yet indicated whether or not he was going to re-admit to the allegations in the State's adjudication petition from case number 14 JD 194. By agreement, the admission in case number 14 JD 194 was again vacated.

[1] The withdrawal of this admission put Kylen back to the position of facing the petition to adjudicate and the motion to proceed with the case as an EJJ prosecution in juvenile case number 14 JD 194.

¶ 10 On July 22, 2015, the State filed a notice of violation of Kylen's EHM. Later that week the State filed a motion to revoke the EHM. In the motion, the State alleged that Kylen had not attended school since July 7, 2015, and that he owed $1,040 in fees for the electronic monitoring. On July 28, 2015, Kylen was placed back in detention where he remained until August 20, 2015.

¶ 11 On August 20, 2015, Kylen executed a jury waiver in cases 15 JD 34 and 14 JD 194 and agreed that both of his cases would proceed as an EJJ case. He then admitted to committing robbery in case 15 JD 34 and to committing attempt aggravated robbery in case 14 JD 194. The trial court reviewed the charges and potential sentences as well as the rights Kylen was waiving by admitting to both petitions for adjudication. The State reviewed the factual basis for both offenses and the defense stipulated to those facts. Kylen was sentenced to concurrent terms of five years in the Department of Corrections for the robbery and to three years for the attempt aggravated robbery. The adult sentences were stayed pending completion of the juvenile sentence, in which Kylen was ordered to serve 60 months probations, with conditions. Kylen was admonished that if the State filed charges and established that he had committed a criminal offense by a preponderance of the evidence, the stay on the adult sentences *must* be lifted and Kylen would serve the adult sentences. He was also admonished that if he violated the terms of his probation by committing anything other than a criminal offense the court *may* order the stay on the adult sentences be lifted *or* that he remain on probation. Kylen indicated that he understood.

¶ 12 Eleven days later, the State filed a motion to revoke Kylen's probation and a motion to lift the stay on the adult sentences. In the motions the State alleged that Kylen committed criminal trespass to property and that he violated his curfew. He was put back in detention on September 8, 2015.

¶ 13 On September 17, 2016, Kylen's biological father, Kenyon Taylor, sent an email to Kylen's mother and requested that Kylen be placed in his custody. Kenyon also requested that Kylen be allowed to move to his home state of Washington. The email contained the father's home address and telephone number.

¶ 14 On October 1, 2015, a hearing was held on the State's motion to lift the stay on Kylen's adult sentences. The State informed the court that while the motion included an allegation that Kylen committed criminal trespass to property, it was only proceeding on the other charge, that Kylen violated curfew, an ordinance violation.

¶ 15 DeKalb police office Sonny Streit testified that on August 31, at 2:11 a.m., he stopped Kylen for two traffic violations, operating a bicycle with no lights and operating a bicycle with one hand while carrying an object in the other. Kylen then testified and admitted that he was on the street at that time but that he was returning home from visiting with a young woman who was pregnant with his baby. He had taken his medication, Seroquel, while at the young woman's house and had fallen asleep. Kylen said he was trying to do the right thing by getting home, which was only a couple of blocks away. At the conclusion of the hearing the trial court found that the State had proven that Kylen violated his probation by violating curfew. However, it ordered that he remain on the original sentence of probation and the State's motion to lift the stay was denied.

¶ 16 On October 29, 2015, the defense informed the court that Kylen's mother wanted to change custody of Kylen to his father who lived in the state of Washington. Kylen's mother said that Kylen had last seen his father in 2013, and Kylen used to visit with his father every summer. The father worked for a school district in an alternative school. The court told counsel to file a motion with regard to any change of custody. On November 5, 2015, at the request of Kylen's

mother, defense counsel filed a motion to transfer custody and guardianship to Kylen's father. The court held that before any change in custody could be made Kylen needed to be consulted and there had to be an exchange of information between Juvenile Court Services and the State of Washington. The motion was then continued until December 3, 2015.

¶ 17 One day before the motion to transfer custody was up for status the State filed a motion to revoke Kylen's probation and a motion to lift the stay on the adult sentence. In the motions the State alleged that Kylen committed the offense of unlawful contact with gang members on November 21, 2015. On December 11, 2015, the State filed an amended motion to revoke probation and an amended motion to lift the stay on the adult sentences. In the amended motion the State alleged that in addition to committing unlawful contact with gang members Kylen had also committed the offense of criminal trespass to property on the same date. The State also noted that Kylen had 22 unexcused absences from school.

¶ 18 Because of new counsel being appointed, and either Kylen, his mother, or both not appearing at the proceedings, the case was continued to March 10, 2016, when a warrant was issued for Kylen's arrest for his failure to appear in court. On March 14, Kylen was picked up on the warrant and, over the State's objections, he was released from detention. Kylen's mother indicated that they were moving to Cook County on March 21, 2016. The warrant was later vacated and the court was informed of Kylen's new address in Chicago.

¶ 19 On April 14, 2016, the State filed a second amended motion to lift the stay on the adult sentence and a second motion to revoke Kylen's probation. In the motions the State alleged that Kylen committed unlawful contact with a gang member, criminal trespass to property, retail theft, resisting and obstructing a peace officer, unlawful possession of cannabis, and unlawful possession of another person's debit card. Again, the State alleged that Kylen had 22 unexcused

absences from school.

¶ 20 On April 26, 2016, the State filed a third amended motion to revoke probation and a third amended motion to lift the stay. In these motions the State included the allegations from its April 14, 2016 motion. Additionally, it alleged that on April 20, 2016, juvenile court services came into possession of a photograph of Kylen holding what looked like a handgun. Kylen and his mother did not appear at the hearing on these motions and the court issued another warrant for Kylen's arrest.

¶ 21 Kylen was located and placed in detention on May 2, 2016, and he remained there for the remainder of the prosecutions of the State's petition. On May 5, 2016, the court found probable cause that Kylen was a delinquent minor in three additional juvenile cases.

¶ 22 On May 9, 2016, the State filed a fourth amended motion to lift the stay. In that motion the State alleged that Kylen committed the offense of resisting and obstructing a police officer. At the hearing on that motion police officer Sonny Streit testified that on February 21, 2016, he was on patrol at 2:44 a.m. when he received a dispatch call regarding a fight at 808 Ridge in Aurora. When he arrived on the scene Officers Cicchetti and Benthusen were already present. As he used a flashlight to see people who were walking away from the fight, he recognized Kylen and three other individuals. He ran Kylen's name though dispatch and confirmed that he was 17 years old at that time. After Kylen's age was confirmed, Streit tried to find him by first walking and then driving around the area. Streit called Kylen's mother, who said she had not given Kylen permission to be out with anyone. Streit told her that he going to try to find Kylen and arrest him.

¶ 23 While he was driving on West Hillcrest Drive Streit saw a white car backing out of a driveway. He recognized Kylen in the passenger seat. He followed the car, and when the driver

turned without using a turn signal Streit pulled the car over. Kylen's mother was the driver. When Streit informed Kylen that he was out past curfew he responded that he was with his mother. Streit told Kylen that he had already spoken to his mother and he knew that Kylen was out without his mother earlier and that his mother had told Streit that he did not have permission to be out. Streit asked Kylen to step out of the car. Kylen locked the doors. The passenger window was open, and Streit reached in and unlocked the doors. Kylen pushed his hand away and locked the doors again. At that point Officer Cicchetti had arrived on the scene and was standing behind Streit.

¶ 24 Streit testified that he again told Kylen to get out of the car. Kylen shoved his hands into his pockets and removed a pack of cigarettes from his left pocket. Streit was then able to unlock the door and open it. After he opened the door Streit saw that Kylen had a large bulge in his front right pocket, and when he took his hand out of his pocket a bunch of plastic bags fell out. Streit again ordered Kylen out of the car. This time, he tried to pull Kylen out of the car. He grabbed onto Kylen's wrist and Kylen was refusing to let Streit pull him out of the car. Eventually, Streit and Cicchetti took hold of Kylen's arms and pulled him out of the car. On cross examination Streit said that it took about 5 minutes from the time of the stop until he got Kylen out of the car.

¶ 25 After the State rested the trial court asked defense counsel if he had any evidence he wished to present. Counsel said, "[j]udge, I have no testimony I want to put." Kylen remained silent. Closing arguments then began. As the State ended its arguments the following exchange occurred:

> "MS. GOOD [Assistant State's Attorney]: We believe that we have proved not only that [Kylen] obstructed by refusing to get out of the vehicle multiple times but then

that he also resisted a peace officer for refusing to put his hands behind his back and, in fact, actively working against the officers the entire time they were trying to remove him from the vehicle.

So for all these reasons, Judge, we would ask that you find that Kylen did commit a new offense and, therefore, we would ask that the stay be lifted.

[KYLEN]: Which is a lie.

THE COURT: Kylen, do you want to remain in this courtroom?

KYLEN: I'm just stating several facts.

THE COURT: Kylen, I'm going to warn you again you do not have the right to say whatever you want to say in the courtroom."

¶ 26 Defense counsel then made his closing arguments followed by the State's rebuttal argument. At the conclusion of the hearing, the trial court found that Kylen had committed the offense of resisting and obstructing a peace officer. It then granted the State's motion to lift the stay. Kylen then said, "[s]o why didn't I have no testimony?" The court replied, "[g]ood luck, Kylen." On May 26, 2016, the adult sentences were imposed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, Kylen argues that he was deprived of his rights to due process when: (1) the State failed to serve notice and summons on his father; and (2) he was denied the right to testify at the hearing on the motion to lift the adult sentences.

¶ 29 A. Failure to Serve Kylen's Father

¶ 30 On appeal, Kylen first argues that his due process right to parental notice was violated when the State made no attempt to serve his father with notice and summons of the petition for adjudication or the motion to prosecute this case as one pursuant to the extended juvenile

jurisdiction statute. 705 ILCS 405/5-810 (West 2014). This act was especially egregious, he claims, because during the prosecution of these actions Kylen's mother asked that custody be changed to his father, and the mother indicated that there was consistent contact between Kylen and his father up until around a year before these two juvenile cases were filed. Kylen argues that the State's failure to engage in any inquiry as to his relationship with his father, or to determine his father's location or even provide minimal notice by publication, requires that this case be remanded for a new hearing on the State's supplemental motions to revoke probation and lift the stay on his adult sentences.

¶ 31 Kylen admits that he forfeited a challenge to the State's failure to notify his father of the proceedings against him by not objecting at the trial court level. However, he notes that our supreme court has specifically held that the State's failure to provide proper notice of juvenile proceedings to parents constitutes plain error. See *In re M.W.*, 232 Ill. 2d 408, 432 (2009). He acknowledges that the supreme court did *not* find plain error in *M.W.*, but in that case: (1) the minor's mother was present and had received all critical notices; (2) the minor's father *had* received notice of the initial petition, just not the supplemental petition; and (3) there was no showing that the lack of notice on the additional charge in the supplemental petition would have made a difference. *Id*. at 440. In contrast, he argues, his father received no notice at any time of these proceedings. Contrary to *M.W.*, though, he then claims that the lack of notice to adult co-respondents who thereafter fail to appear is the type of error that "undermines the fairness and integrity of the juvenile court system."

¶ 32 In response, the State admits that it failed to provide notice to Kylen's non-custodial father, but it also notes that Kylen forfeited this error on review. It acknowledges that the plain error doctrine applies in juvenile court proceedings, but it asserts that Kylen has also forfeited his

plain error review on appeal because in his opening brief he failed to present an argument regarding how either prong of the plain error doctrine was satisfied in this case. Specifically, it argues that Kylen asserts there is plain error here simply because his father had not been given notice or summons of these proceedings. Therefore, it contends, Kylen's argument that the lack of notice itself "undermines the fairness and integrity of the juvenile system" makes the lack of notice itself a structural error. However, the State claims, the *M.W.* court had the opportunity to hold that the failure to given notice to a parent alone was structural error, but it declined to do so. *Id.* at 430-440. The State then points out that Kylen does not argue in his opening brief that the fairness of the proceedings was undermined by his father's absence, and there is nothing in the record that indicates the proceedings would have been fairer had Kylen's father been given proper notice. Finally, the State argues that like in *M.W.*, there is no indication here that if Kylen's father had received notice and attended these proceedings the outcome would have been any different.

¶ 33 In reply, Kylen attempts to distinguish *M.W.* on the grounds that in that case, both parents appeared at the first proceeding and both had received copies of the petition to adjudicate wardship. It was only when the State amended the petition that it failed to give notice to the father, and the amended petition contained a less serious charge than the original petition. *Id*. at 439-440. Kylen argues that when the State *knows* of the existence or whereabouts of a minor's parent, the failure to serve that parent should be considered an error affecting due process. What makes the State's error reversible in this case, Kylen claims, is that when his mother informed the court, in the presence of the State, that she was awaiting money from his father so that they could hire a private attorney, this reference to his father "should have been enough notice to the [State] or to the court to at least question whether service had been obtained on his father."

Kylen refers to as bothersome the fact that later in the proceedings his father sent an email (to his mother) that he wanted custody of Kylen and he wanted to have Kylen come live with him in the state of Washington. He then states,

¶ 34 "Contrary to the State's argument the desire of Kylen's father, and of Kylen's mother, to change custody to the father and put Kylen in a situation that could provide him more structure, more direction, and into an environment away from a community filled with temptation shows that the failure to serve Kylen's father and obtain his presence for the proceedings would have affected the outcome of the proceedings on the motions."

¶ 35 Kylen argues that had his father been present, it is "more than possible" that negotiations could have taken place that could have assured the State that the father could provide a more stable lifestyle for Kylen. With regard to the State's "structural error" claim, Kylen responds that the currently recognized categories of structural errors are not a closed group. Finally, he claims that he gave several reasons in his opening brief as to why the State's failure to notice his father satisfied the second prong of the plain error test. Specifically, he refers to the "lack of due diligence by the [State] in the face of information regarding Kylen's father, violation of the statutory obligation to serve notice upon a known parent, and violation of Kylen's due process because of those failures by the prosecution."

¶ 36 Barring an exception not relevant to this appeal, the parent of a minor who is the subject of a proceeding under the Act is entitled to notice pursuant to section 5-525(1)(a) of the Act. 705 ILCS 405/5-525(1)(a)(West 2014). The Act provides that at the commencement of a delinquency prosecution the clerk of the court shall issue a summons directed to the minor's parent with a copy of the petition attached. 705 ILCS 405/5-525 (West 2014). If the State

chooses to present a supplemental or amended petition during the proceeding, it shall provide the other parties with a copy of that petition and file proof of service of that petition. 705 ILCS 405/5-530(1) (West 2014).

¶ 37 Due process requires that notice in juvenile delinquency proceedings be the same to that which in constitutionally required in civil and criminal cases. *In re Application of Gault,* 387 U.S. 1, 33 (1967); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1124 (2006). Constitutionally adequate notice is notice, in writing, to both the parents and the minor of the specific charge to be considered at the adjudicatory hearing on delinquency. *Gault*, 387 U.S. at 33; *In re C.R.H.*, 163 Ill. 2d 263, 268-69 (1994), *overruled on other grounds by In re M.W.*, 232 Ill. 2d 408, 426 (2009). Where a court has held that a minor's fundamental due process rights have been violated, the failure to provide notice to a minor's parents has been held to require a remand to the trial court so that procedural requirements of the Act may be followed. See *In re Marcus W.*, 389 Ill. App. 3d 1113, 1128 (2009). Violations of constitutional rights present a legal question that this court reviews *de novo*. *In re Rolandis G.*, 232 Ill. 2d 13, 23 (2008).

¶ 38 When a minor fails to object to the State's failure to properly notice a parent pursuant to the Act he has forfeited this issue on appeal. *M.W.*, 232 Ill. 2d at 431. However, such a forfeiture is subject to a plain error analysis. *Id*. In that case, a reviewing court will grant relief in one or two circumstances: (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.'" *Id*. (quoting *People v. Piatkowski*, 225 Ill. 2d 551 564 (2007)). The minor has the burden of persuasion on both the threshold question of plain

error and the question as to whether he is entitled to relief as a result of the forfeited error. See *M.W.*, 232 Ill. 2d at 431.

¶ 39 Here, we agree with Kylen that the State did not use due diligence in attempting to notify his father, at least from the point in the proceedings where Kylen's mother informed the court and the State that she had been in contact with Kylen's father and the father was sending her money to obtain private counsel, and later when Kylen's mother informed the court that she had an email from Kylen's father indicating that he was willing to take physical custody of Kylen and have him live with him in the state of Washington. However, the State *has already conceded this point*, and Kylen has conceded that he forfeited the issue of proper notice to his father on appeal. Our supreme court has specifically held that if the State fails to properly notify a parent in a juvenile delinquency hearing, and the minor fails to object to that error at the trial court level, the reviewing court should engage in a plain error analysis. *M.W.*, 232 Ill. 2d at 431.

¶ 40 We initially note that Kylen has not argued that the first prong of the plain error analysis has been met, *i.e.*, that the evidence in this case was so closely balanced that the notice error alone threatened to tip the scales of justice against him. Accordingly, we will not review this prong of the test. Instead, we will review whether this error was so serious that it affected the fairness of Kylen's trial and challenged the integrity of the judicial process. *Id*.

¶ 41 As we have noted, in his opening brief Kylen argues that "[t]he lack of notice to adult co-respondents who thereafter fail to appear is the type of error which undermines the fairness and integrity of the juvenile court proceedings." In his reply brief, however, Kylen argues that plain error occurred here when the lack of notice to his father *under the specific circumstances of this case* constituted the type of error that undermines the fairness and integrity of the juvenile court system.

¶ 42 We initially note that the State makes a strong argument for forfeiture here when it contends that Kylen has forfeited his plain error issue on review for his failure to explain *how* the State's failure to notify his father undermined the fairness and integrity of the judicial system in his opening brief. Although Kylen certainly fleshes out this argument in his reply brief in response to the State's claim that he made a "structural error" argument in his opening brief, Kylen should have made these specific arguments in his opening brief. Instead, in his opening brief Kylen goes into much detail about how the State did not use due diligence in notifying his father of these proceedings. Nevertheless, forfeiture "is a limitation on the parties, not the reviewing court, and we will relax the forfeiture rule to address a plain error affecting the fundamental fairness of a proceeding, maintain a uniform body of precedent, and reach a just result." *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 30.

¶ 43 We agree with the State that our supreme court had the opportunity in *M.W.* to hold that the State's failure to notify a parent, in and of itself, constituted structural error, and it did not do so. See *In re M.W.*, 232 Ill. 2d at 430-440. We also disagree with Kylen's arguments in his reply brief that under the facts of this case the State's failure to notify his father was plain error. Here, Kylen is inappropriately using the facts surrounding lack of notice in this case (his mother informing the court that she was in contact with the father, and the father's email that he was willing to take custody of Kylen) as a basis for plain error. Instead, *those facts are used to determine whether the State failed to use due diligence in giving notice to a parent*. If no due diligence was used, then the State's inaction constitutes error. That determination has already been made; instead, we now need to determine if that error constitutes plain error.

¶ 44 We also disagree with Kylen that this case is distinguishable from *M.W.* Unlike this case, the parents in *M.W.* were initially given notice of the proceedings, but the father was not given

notice of an amended petition. However, that fact is less compelling than the other facts in *M.W.* that are similar in this case. Here, like in *M.W.*, the mother was properly given notice of all of the delinquency proceedings and she was present whenever a hearing was held. Also, like the minor in *M.W.*, Kylen did not demonstrate how proper notice to his father would have changed the outcome of these proceedings.

¶ 45 We reject Kylen's claim that if his father had been present it was "more than possible" that negotiations could have taken place and the State would have been assured that Kylen's father could have provided a more stable environment for him. This claim is rank speculation. Here, Kylen had already pled guilty to two very serious criminal charges and was facing five and three year concurrent terms of imprisonment in the Department of Corrections if the State could prove that he committed the offense of resisting or obstructing a peace officer. Kylen's claim that had he been properly notified, his father would have been present in court and the State would have negotiated with his father for a different outcome here is simply untenable. For all these reasons, Kylen cannot establish that the error was so serious that it affected the fairness of the hearing and challenged the integrity of the judicial process. Therefore, we find no plain error.

¶ 46 B. Kylen's Right to Testify

¶ 47 Next, Kylen claims that he was denied his constitutional right to due process at the hearing on the State's motion to lift the stay on his adult sentences when during that hearing he interjected the comments "[w]hich is a lie" and "I'm just stating several facts" during the State's closing argument, and when he questioned why he was not allowed to testify at the conclusion of the hearing and the trial court simply said, "[g]ood luck, Kylen." He also argues that the trial

court erred when it said that that he did not have the right to say whatever he wanted to say in the courtroom after Kylen interjected that it was a "lie" during the State's closing argument.

¶ 48 While proceedings under the Act are not criminal, juveniles are nevertheless afforded some due process rights, which include the right to counsel, to confront witnesses, to cross examination, and the right to remain silent. *In re W.C.*, 167 Ill. 2d 307, 320-21 (1995). Related to the right to remain silent is the right to testify, which is held solely by the individual, regardless of their counsel's advice. *People v. Whiting*, 365 Ill. App. 3d 402, 407 (2006). "However, a defendant who claims on appeal he was precluded from testifying at trial must have contemporaneously asserted his right to testify by informing counsel at the time of trial." *Id*. We review allegations of constitutional violations *de novo*. *Id*. at 406.

¶ 49 We find no constitutional violation here. A review of the record indicates that Kylen's right to testify was not violated since he never indicated that he wanted to testify during the hearing to lift the stay on his adult sentences. After the State rested its case the trial court asked Kylen's counsel whether he had any evidence he wished to present. Counsel then said, "[j]udge, I have no testimony I want to put." Kylen did not speak up at that point and say that he wanted to testify. It was only during the State's closing arguments for the first time that Kylen interjected and said that the State's comment was a "lie" and that he was just "stating several facts." Kylen argues that it would have been proper, albeit not required, for the court to determine whether Kylen was waiving his right to testify or if he instead wished to testify at the time he said the State's arguments were a "lie." We disagree. The time for Kylen to testify had passed when he inappropriately interjected during the State's closing argument.

¶ 50 We also disagree with Kylen that the trial court erred when it said that that he did not have the right to say whatever he wanted to say in the courtroom after Kylen interjected that it

was a "lie" during the State's closing argument. In his reply brief Kylen argues that the trial court erred when it said that Kylen did not have the right to say "whatever" he wanted to say in the courtroom because Kylen *could* have said whatever he wanted to if he had testified. We find no error. Here, the trial court was clearly informing Kylen that he could not just speak *whenever* he wanted to during the hearing. The trial court's misstatement regarding the word *whatever* instead of *wherever* is of no import since Kylen could not assert his right to testify after the defense had rested.

¶ 51 Finally, Kylen's constitutional rights were not violated when he said, "[s]o why didn't I have no testimony?" after the trial court found that he had committed the offense of resisting and obstructing a police officer. Even if the statement could be construed as Kylen's assertion of his right to testify, it was not contemporaneous because it occurred after the proceeding concluded. We agree with the State that this would be similar to a criminal defendant asking to testify after the jury had given its verdict after giving no indication beforehand that he wanted to testify. For all these reasons, we hold that Kylen's constitutional right to testify was not violated at this proceeding.

¶ 52 III. CONCLUSION

¶ 53 In sum, the State's failure to serve Kylen's father was not plain error when his mother was present and had received notice of the proceedings, and Kylen did not show how the result of the proceedings would have been different had his father been properly notified of these proceedings. Also, Kylen's constitutional right to testify was not violated because he did not contradict his counsel when counsel informed the court that the defense was not presenting any testimony at the hearing. Kylen's comments during the State's closing argument were not requests to testify, and the trial court's misstatement that Kylen could not say whatever he

wanted is immaterial since Kylen never exercised his right to testify. Finally, Kylen's question to the court about why he was not allowed to testify, even if considered a request to testify, was too late because Kylen only questioned the court after the proceedings had concluded.

¶ 54 Accordingly, the judgment of the circuit court of De Kalb County is affirmed.

¶ 55 Affirmed.