2017 IL App (1st) 17-1072-U

THIRD DIVISION
December 6, 2017

No. 1-17-1072

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In the interest of Tyreese J., a Minor,	)	
(PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois,
Petitioner-Appellee,	)	Juvenile Division.
	)	
v.	)	No. 16 JD 1742
	)	
TYREESE J., a Minor,	)	The Honorable
	)	Kristal Royce Rivers,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

Held: The trial court's imposition of certain social media restrictions as the minor juvenile's probation conditions, while being reasonably related to the minor's rehabilitation, were overbroad and not narrowly tailored so as to constitute plain error and require vacature.

¶ 1 The minor respondent, Tyreese J., was adjudicated delinquent for armed robbery with a firearm and following a dispositional hearing, was sentenced to 36 months' probation with various conditions, including relevant to this appeal that he clear certain images from his social media accounts. On appeal, the respondent argues that the condition of his probation requiring him to clear his social media profiles of images of him posing with a gun or pretend gun or with

gang members or throwing gang signs, or with "anything that looks like drugs" violates his first amendment rights. For the reasons that follow, we affirm the judgment of the juvenile court in part and reverse and remand in part.

¶ 2 I. BACKGROUND

¶ 3 The record before us reveals the following facts and procedural history. On August 3, 2016, the State filed a petition for adjudication of wardship, charging the minor with armed robbery with a firearm (720 ILCS 5/18-2(a) (West 2014)), aggravated robbery (720 ILCS 5/18-1 (West 2014)), and robbery (720 ILCS 5/18-1 (West 2014)). The petition alleged that on August 2, 2016, while armed with a firearm, the minor respondent knowingly took property (*i.e.*, a cell phone, book bag, and laptop computer) from the person of the victim, Azeez Soberu, by use of force or threatening the imminent use of force.

¶ 4 On March 20, 2013, the minor respondent appeared for an adjudicatory hearing together with his cousin, and co-respondent, Omar F., also a minor. The State proceeded with a joint adjudicatory hearing against both minors, at which the following relevant evidence was adduced.

¶ 5 The victim, 23-year-old, Azeez Soberu, testified that he is originally from Nigeria, but that he has lived in Chicago for the past six years. Soberu stated that on August 2, 2016, he was headed to a friend's birthday party, where he was supposed to play music on his laptop. Soberu averred that to get to the birthday party he took the train, but mistakenly got off at the wrong stop. At about 2:40 p.m., he was near 7939 South Vernon Avenue, when he realized that he was lost and telephoned his friend. His friend told him that he was in the wrong neighborhood and texted him the correct address. Soberu stated that he typed the correct address into the GPS system on his cell phone and then looking and listening to the GPS instructions on his cell phone and with headphones in his ears, he proceeded to walk on South Vernon Avenue towards 79th Street to

catch a bus back to his friend's place. At this point, he also had his backpack with his laptop over his shoulder. Soberu testified that as he was walking, two individuals, one dark-skinned, and the other light-skinned, whom he later identified as the respondent and the co-respondent, approached him from the gangway between the apartments on 7939 South Vernon Avenue and walked in front of him. Soberu stated that both the respondent and the co-respondent were trying to cover their faces with their T-shirts.

¶ 6 According to Soberu, the co-respondent pointed a black pistol at him, and said, "get on the ground." Soberu stated that he did not get on the ground, but instead gave his cell phone to the respondent, who took it and ran off into an apartment building across the street. Soberu noticed that the co-respondent, who was still holding him at gunpoint, was distracted by the respondent's movements, so he took the opportunity to punch him and grab the gun. The co-respondent dropped the gun but continued to fight Soberu in an attempt to retrieve it. Soberu ran towards the busy corner of 79th Street and Vernon Avenue, to find help, but the co-respondent grabbed him, tearing his shirt, and pulling his backpack, with the laptop, to the ground. Still holding the gun, Soberu hit the co-respondent in the head with it. The co-respondent, however, refused to let go, and continued to struggle with Soberu even after he was punched and started bleeding.

¶ 7 Soberu testified that at that point he noticed the respondent return from the direction of the building that he had run off to with Soberu's cell phone. Soberu averred that at this time, the respondents' face was not covered with anything, and that he was wearing the same clothing Soberu had seen him in at the beginning of the attack. The respondent approached Soberu and punched him in the left eye. Soberu said he began to bleed and could not see, and was afraid he would lose consciousness. He wanted to make sure his attackers did not have the gun, so he flung it as far away from himself as possible.

¶ 8 Soberu testified that, at this point, both the respondent and co-respondent left, so he ran to Burger King on the corner of 79th Street to call the police. Soberu stated that the entire attack lasted no more than five minutes.

¶ 9 Soberu averred that soon thereafter the police arrived and he informed them about what had happened. Police Officer Chambers told Soberu that the police would start searching the area and she took Soberu back to Vernon Avenue where the incident took place. There, they found Soberu's backpack with the laptop inside, as well as his headphones. Soberu also found one of his shoes, which had fallen off in the struggle. Soberu testified that after picking up his belongings, he got into a police car and was driven about a block away. There, he saw the co-respondent sitting on the sidewalk with another police officer by him. Soberu immediately identified the co-respondent as the individual who attacked him with the gun. When, a few minutes later, the respondent walked out of a nearby building, Soberu immediately identified him as his other attacker—the one who had taken his cell phone.

¶ 10 At the adjudicatory hearing, Soberu pointed out on a map where the events occurred and also identified photographs depicting his injuries.

¶ 11 On cross-examination, Soberu denied that he was in the neighborhood because he intended to meet a girl from a dating website. He further denied that he ever harassed, approached or grabbed any girl. Instead, Soberu testified that he never saw any girls and that no girls were involved in the incident. He also denied that he called the police because he thought he was in trouble for beating a boy, and that he beat the co-respondent with a metal pipe.

¶ 12 Chicago Police Officer Arshanette Chambers next testified that at about 2:40 p.m. on August 2, 2016, together with her partner, Officer Joe Buckley, she responded to a call for an armed robbery victim at the Burger King located on 79th Street. Once there, Officer Chambers

encountered Soberu, who was bleeding from his arms, sweating profusely, and had a swollen head, ripped shirt, and missing shoe. Officer Chambers took Soberu back to Vernon Avenue where they found his backpack, headphones and missing shoe.

¶ 13 Soon thereafter, the police received a call over the radio indicating a possible second robbery victim on Eberhart Avenue, which was a block away. The officers drove to that location, bringing Soberu along. As soon as the officers turned the corner on Eberhart Avenue, however, Soberu pointed out the window to the co-respondent, who was sitting in front of a multi-flat building, bleeding from his head, and said, "that's the guy who robbed me. That's him right there." According to Officer Chambers, the respondent then came out of the building in front of which the co-respondent was sitting, and Soberu immediately identified him his other attacker. Both the respondent and co-respondent were arrested.

¶ 14 On cross-examination, Officer Chambers admitted that although Soberu had told her that his assailants had tried to cover their faces with their white T-shirts, she never included this fact in her incident report. Officer Chambers also admitted that her incident report reflected that when she spoke to Soberu, he told her that the respondent punched him in the head before co-respondent even ordered him to the ground at gunpoint.

¶ 15 After the State rested, the defense called Monique J., the respondent's sister and the co-respondent's cousin. Monique testified that on August 2, 2016, she lived with her mother, sisters and brothers, including the respondent, at 7942 South Eberhart Avenue. At about 2:40 p.m. that day, Monique and her sister, Erica, were walking back home from a gas station located at 79th Street and King Drive, when a man she had never met before grabbed her left arm and asked her if she was the girl from Meetme (a dating website). Monique identified the man as Soberu. Monique told Soberu that she was not the girl from the website, but he kept insisting that she

was. Monique then started yelling "stop" and "let me go." At the same time, Erica yelled for the co-respondent and the co-respondent came out of their home, with one of his friends, Armani. Monique denied that the respondent ever came out of the building or even saw Soberu.

¶ 16 Monique testified that the co-respondent told Soberu to leave her alone, but Soberu refused and told the co-respondent to go back into the house. Soberu eventually let her go, but continued to argue with the co-respondent. At some point, he became angry and started pushing the co-respondent, and the co-respondent pushed him back. A fight ensued and punches were thrown, but Soberu eventually ran off, and the co-respondent chased him towards 79th Street and Vernon Avenue. Monique lost sight of both of them, and went into her house. When, a minute later, the co-respondent returned, his head "was busted," there was blood all over his face, he was "turning colors," and began vomiting. She stated that Erica then called for assistance. Instead of an ambulance showing up first, however, a police sergeant pulled up and asked what was wrong with the co-respondent.

¶ 17 On cross-examination, Monique admitted that Erica did not call for police after the co-respondent fought with and chased Soberu. Instead, Erica called for help only after the co-respondent returned injured. Monique also admitted that when the police sergeant arrived she never told him that she had been attacked or assaulted by Soberu.

¶ 18 After the attorneys finished questioning Monique, the trial court asked her whether she ever attempted, in any way, to have the man that grabbed her arrested, detained, or spoken to by the police, and she stated that she did not.

¶ 19 After closing arguments, the trial court found the respondent guilty of all three charged offenses and adjudicated him delinquent.

¶ 20 On May 2, 2017, the cause proceeded to a dispositional hearing. Prior to the hearing, the

court reviewed the April 17, 2017, social investigation report prepared by the respondent's probation officer. Among other things, that report reflected that the respondent, who was 17 years old at the time, had only one prior referral to juvenile court, for retail theft and battery, which was "screened out," and one previous police station adjustment for theft.

¶ 21 The social investigation report reflected that the respondent lived with his biological mother, and siblings (Eric, Erica, Monique, Thyidrus and Tion). According to the social investigation report, one of these siblings, Thyidrus, had an arrest history, was a self-admitted member of the Black P. Stone gang, and was currently on juvenile probation.

¶ 22 The report further revealed that the family resided in a Motel 8 and was awaiting Chicago Housing Authority (CHA) assistance. The respondent's mother explained that she had previously rented a home in Glenview from a relative, but that after the building was condemned for home occupancy she was forced to move her family. The respondent's mother also reported that she was frequently ill, unemployed, and had a prior criminal history for drug possession in Iowa. She stated that the respondent's biological father has not resided with them since about 2013 when he "accidentally suffocated" their infant grandson "by rolling onto the infant while they were asleep."

¶ 23 The social investigation report further revealed that the respondent was enrolled at Bloom Alternative High School in the ninth grade, but that he had been truant and had not received any grades for his high school career. The respondent last attended school in 2014. He did require special education services form the Illinois State Board of Education.

¶ 24 The respondent's mother described her relationship with the respondent as respectful, and stated that she does not need to discipline him because he is "old enough to know right from wrong." The respondent stated that he felt loved and supported by his family and knew that he

could go to any one of his relatives if he needed anything. He felt closest to his mother and stated that she was fair—"neither too lenient nor too harsh."

¶ 25 The respondent's mother stated that even prior to the juvenile court-imposed curfew, the minor had a 10 p.m. curfew, which he abided by. In addition, she averred that the respondent did not go out much, and that he was not allowed to have company over when she was not at home. The respondent's mother stated that she approved of her son's friends, and explained that most of them were relatives and cousins.

¶ 26 The respondent denied any gang affiliations and stated that none of his friends, cousins and uncles were gang affiliated. According to the social investigation report, the respondent's cousin and co-respondent in the instant matter, was a self-admitted Gangster Disciple.[1]

¶ 27 The respondent denied consuming any illicit drugs or alcohol. He also denied that he committed the offense for which he was adjudicated delinquent and stated that he was mistakenly identified by the victim.

¶ 28 The probation officer concluded that the respondent was a good candidate for probation, and recommended 36 months' probation (possible early termination in 18 months if all court orders were completed and no supplemental petitions against the minor were filed), 30 days' Juvenile Temporary Detention Center (JTDC), 35 hours' community service, mandatory school or

[1] We note that this information conflicts with the information in the social investigation report prepared by the co-respondent's probation officer, which was part of the record in the related case of *Omar F.*, 2017 IL App (1st) 171073. The social investigation report that was part of that record reflected that the co-respondent was not a gang member but had stated that some of his friends were "gang involved" and that he was "an associate" of the Black P. Stones. See *Omar F.*, 2017 IL App (1st) 171073, ¶ 25 .

General Education Degree (GED) program or other educational program or employment, and "no gang, guns or drugs."

¶ 29 At the dispositional hearing, the probation officer made and the State adopted the probation officer's recommendations. The respondent's counsel argued for "something less than three years' probation," noting that the respondent was already 17 years old, and that he had no prior juvenile adjudications.

¶ 30 After hearing arguments, the trial court vacated the aggravated robbery and robbery counts and sentenced the respondent only on the armed robbery with a firearm count. The court sentenced the respondent to 36 months' probation and 35 hours' community service, a 30-day stay of electronic monitoring, and mandatory school or GED program. The court also ordered that the respondent not have any contact with gangs, guns or drugs, and that he clear all social media with images referencing those. In that respect, the court explained:

> "No gangs, guns or drugs. I need you to clear your social media.
>
> So go in your social media. If you have pictures with you and gang members, if you have pictures with you throwing gang signs, pictures of you even pointing your finger at the screen and looking as if you have a gun, anything that looks like drugs. Remove all of that from you social medial. Do not put that back up."

Consistent with the trial court's statements from the bench, as part of the sentencing order, the trial court placed a checkmark next to "no gang contact or activity." In addition, as part of the respondent's probation order, the court wrote "no gangs, guns or drugs, clear social media." The respondent now appeals.

¶ 31 II. ANALYSIS

¶ 32 On appeal, the respondent argues that the condition of his probation that he clear his social

media profiles of images dealing with gangs, guns and drugs, violates his first amendment rights. The respondent acknowledges that he failed to object to this condition of his probation below, but argues that we should nevertheless address it under the second prong of the plain error doctrine. In the alternative, he argues that we should address this issue in the context of ineffective assistance of counsel for counsel's failure to object to the imposition of this probation condition at the dispositional hearing. For the reasons that follow, we find that we may proceed under the plain error doctrine.

¶ 33 The plain error doctrine "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (citing *People v. Averett*, 237 Ill. 2d 1, 18 (2010)); see also *People v. Fort*, 2017 IL 118966, ¶ 18 (citing *People v. Herron*, 215 Ill. 2d 167, 186-87) (2005). Specifically, the plain error doctrine permits "a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *Herron*, 215 Ill. 2d at 186-87); see also *Thompson*, 238 Ill. 2d at 613; see also *People v. Adams*, 2012 IL 111168, ¶ 21. In the sentencing context, this means that a defendant must 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. Hillier*, 237 Ill. 2d 539, 545 (2010). Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29 (citing *People v. Lewis*, 234 Ill. 2d 32, 43 (2009)).

¶ 34 "The first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43; *Thompson*, 238 Ill. 2d at 613; see also *People v. Wilson*, 404 Ill. App. 3d 244, 247 (2010) ("There can be no plain error if there was no error at all."). This requires "a substantive look" at the issue raised. *People v. Johnson*, 208 Ill. 2d 53, 64 (2003). We will therefore first review the respondent's claims to determine if there was any error before considering it under plain error.

¶ 35 Turning to the merits, we begin by noting that section 5-715(2) of the Juvenile Court Act of 1978 (Act) sets out numerous conditions that the trial court may impose as conditions of juvenile probation, including that the minor: (1) not violate any criminal statute of any jurisdiction; (2) refrain from possessing a firearm or other dangerous weapon; and (3) "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(2) (a), (g), (s) (West 2014).

¶ 36 Trial courts, however, have the direction to impose conditions of probation that are not specifically enumerated by statue to achieve the goals of fostering rehabilitation and protecting the public. *In re J.W.*, 204 Ill. 2d 50, 77 (2003); see also *People v. Hugo G.*, 322 Ill. App. 3d 727, 738 (2001).

¶ 37 Regardless of whether the probation condition is expressly permitted by statute or not, the trial court's latitude in setting the conditions of probations is not boundless. *In re J.W.*, 204 Ill. 2d at 77. The court's discretion is limited by constitutional safeguards and must be reasonable. *In re J.W.*, 204 Ill. 2d at 77. "The constitutional safeguards, which circumscribe a trial court's exercise of its discretion to impose conditions, are the basic constitutional rights of the probationer." *People v. Harris*, 238 Ill. App. 3d 575, 581 (1992). Whether the condition of

probation here violates the respondent's constitutional rights is a legal issue we review *de novo*. *People v. Burns*, 209 Ill. 2d 551, 560 (2004) ("The standard of review for determining whether an individual's constitutional rights have been violated is *de novo*.")

¶ 38 The first amendment to the United States Constitution, made applicable to the states through the due process clause of the fourteenth amendment, prohibits governmental action that "abridg[es] the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const., amends. I, XIV. Although the first amendment speaks of the freedom of speech, it also extends to expressive conduct. *Texas v. Johnson*, 491 U.S. 397, 404 (1989). Generally, the first amendment prevents the government from proscribing speech or expressive conduct because of disapproval of the ideas expressed. *City of Chicago v. Pooh Bah Enterprises, Inc*., 224 Ill. 2d 390, 406–07 (2006). First Amendment protection is not limited to written or spoken words, but includes other mediums of expression, including music, pictures, films, photographs, paintings, drawings, engravings, prints, and sculptures. See *Hurley v. Irish–American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 569 (1995)("[T]he Constitution looks beyond written or spoken words as mediums of expression; *Kaplan v. California*, 413 U.S. 115, 119–120 (1973)("[P]ictures, films, paintings, drawings, and engravings *** have First Amendment protection.")

¶ 39 In the present case, the respondent argues that because the probation condition requiring him to remove certain social media posts from his online profiles is a content based restriction on his freedom of speech, we must apply the strict scrutiny standard in determining whether such a condition was proper. The State disagrees, arguing that some form of intermediate scrutiny, or alternatively a rational basis test, should be applied. Neither party, however, provides us with

any citations to Illinois authority directly addressing a first amendment challenge to a probation condition in a juvenile setting.

¶ 40 Our supreme court, however, has spoken on the issue of the constitutionality of juvenile probation conditions, albeit in a freedom of movement setting, and set forth the standard to be used in determining whether a probation condition passes constitutional muster. *In re J.W.*, 204 Ill. 2d at 78. In *In re J.W.*, our supreme court vacated as unconstitutional a condition of juvenile probation limiting a minor respondent's freedom of movement. *In re J.W.*, 204 Ill. 2d at 78. In doing so, however, the court explained that a condition of probation limiting a minor's movement implicates not only the minor's liberty interests, but also certain fundamental constitutional rights, including, relevant to this appeal, his right to freedom of speech. *In re J.W.*, 204 Ill. 2d at 78. As such, we apply the standard articulated in *In re J.W.*, to the present cause.

¶ 41 In *In re J.W.* 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." *In re J.W.*, 204 Ill. 2d at 78. Our supreme court clarified that in this analysis "the overriding concern is reasonableness." *In re J.W.*, 204 Ill. 2d at 78. 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. *In re J.W.*, 204 Ill. 2d at 78 (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.

¶ 42 Our supreme court explained that when assessing the reasonableness of a condition of probation it is appropriate to consider whether the restriction is related to the nature of the offense or the rehabilitation of the probationer. *In re J.W.*, 204 Ill. 2d at 79 (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 (citing *Harris*, 238 Ill. App. 3d at 582; *In re J.G.*, 295 Ill. App. 3d at 843).

¶ 43 Our supreme court ultimately concluded that 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. *In re J.W.*, 204 Ill. 2d at 80-81.

¶ 44 In the present case, we find that the condition of probation ordering the respondent to clear his social media profiles of gangs, guns and drugs was overbroad and not narrowly drawn, so as to be unreasonable. *In re J.W.*, 204 Ill. 2d at 78 (citing *In re J.G.*, 295 Ill. App. 3d 840, 843 (1998)) (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.)

¶ 45 In coming to this decision, we first hold that contrary to the respondent's position, this

probation condition was valid because it was reasonably related to the respondent's rehabilitation. See *In re J.*G., 295 Ill. App. 3d at 843 ("conditions of juvenile probation must be reasonably related to the juvenile's rehabilitation."). While it is true that there was no evidence presented at the adjudicatory hearing that the crime here had any relation to social media, gangs or drugs, there can be no doubt that social media images portraying the respondent engaged in drug use, throwing gang signs, or brandishing real or fake weapons, place the minor in danger by exposing him to others on social media inclined to engage in criminal behavior. In today's world where gangs routinely use social media to recruit members, orchestrate criminal activities (like mob actions), and advertize their criminal exploits, we find that limiting the minor's social media profile to photographs that do not appear to support criminal activities was a valid condition of probation because it was reasonably related to his rehabilitation. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 144 (the purpose of the juvenile court is to act as *parens patriae* to the minor in order to see through the minor's rehabilitation) (citing *In re W.C.*, 167 Ill. 2d at 325-26). This is particularly true where according to the social investigation report, the minor has "mediocre consequential thinking skills" and only "sometimes" understands that there are consequences to his action, and where he voluntarily attached himself to the gun-wielding co-respondent, and helped him steal the victim's cell phone.

¶ 46 Nonetheless, we are compelled to conclude that the probationary conditions as articulated by the trial court were overbroad and not narrowly tailored, so as to be unreasonable. *In re J.W.*, 204 Ill. 2d at 78. While we take no issue with the trial court's order requiring the minor to remove all images of himself "throwing gang signs," and "pointing [his] finger at the screen and looking as if [he] had a gun," since both types of images appear to promote illegal activity, we

find that removal of "all pictures with [the respondent] and gang members" and "anything that looks like drugs," was too broad.

¶ 47 With respect to photographs with "gang members," there is no exclusion for people based on familial, employment or educational relationships, and no explanation as to what type of photographs, no matter how innocuous, will result in a probation violation. This is particularly troubling where, according to the social investigation report, the respondent's brother, who resides with the respondent, is an admitted gang member. As such, a photograph of the respondent with his brother at a birthday party or family dinner can result in a probation violation.

¶ 48 Similarly, the ban on photographs with "anything that looks like drugs" leaves too much discretion to law enforcement to determine what "looks" or does not "look" like drugs. Such an order also does not distinguish between photographs of legal and illegal drugs. Nor does it allow the minor to post photographs condemning the use of drugs. Accordingly, we find that in the present case, the trial court's imposition of the aforementioned social media conditions of probation constituted error. See *In re J.W.*, 204 Ill. 2d 50 (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).

¶ 49 Since we find error, we must next determine whether the error rose to the level of plain error, so as to permit our review. See *Fort*, 2017 IL 118966, ¶ 18. Under the second prong of the plain error doctrine, we may review an error, which was not objected to at trial, if that error is so serious that it affected the fairness of the respondent's trial and challenged the integrity of the

judicial process, regardless of the closeness of the evidence. *Piatkowski*, 225 Ill. 2d at 565 (citing *Herron*, 215 Ill. 2d at 186-87).

¶ 50 The judicial process of permitting social rehabilitation as a condition of probation depends on evidence of the need for such social rehabilitation, but also clear parameters in setting out how the rehabilitation is to proceed. The aforementioned social media conditions were simply too general and overbroad to provide a juvenile with clear parameters about how to comply with the conditions of his probation. That is, if the parameters are so vague, overboard, or general that a juvenile could be inadvertently caught violating probation in a number of scenarios, including when conducting himself in a constitutionally protected manner, then the judicial process is not functioning as intended. This breakdown in the judicial process constitutes second-prong plain error. See *e.g.*, *People v. Lewis*, 234 Ill. 2d 32, 48 (2009) (applying the second prong plain error analysis to a review of a condition of probation that was imposed in an arbitrary and unreasonable manner, so as to effect the integrity of the judicial process).

¶ 51 Proceeding with the merits, and for all of the reasons already articulated in detail above, we conclude that the imposition of the aforementioned social media probation conditions was overly broad and therefore not exercised in a reasonable manner. We therefore vacate that portion of the trial court's order requiring the respondent to clear all social media of "anything that looks like drugs" and " all pictures with him and gang members." We remand the cause so that the trial court may consider these two restrictions and narrowly tailor them with appropriate exceptions.

¶ 52 In addition, we note that while the respondent does not raise this issue on appeal, as part of his conditions of probation, the trial court here entered an order requiring him to have no gang contact. In light of our recent ruling in *In re Omar F.*, 2017 IL App (1st) 171073, wherein co-respondent was jointly tried with respondent, we hold that this order was also overly broad and

not exercised in a reasonable manner, and remand to the trial court to carve out the proper exceptions. A narrowly tailored no gang contact order will help clarify what the respondent can or cannot post on social media.

¶ 53 III. CONCLUSION

¶ 54 For the aforementioned reasons, we affirm in part, and reverse and remand in part.

¶ 55 Affirmed in part; reversed and remanded in part.