2018 IL App (4th) 160583-U

NO. 4-16-0583

FILED
December 19, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
LATINO BUCHANAN,	)	No. 14CF1154
Defendant-Appellant.	)	
	)	Honorable
	)	John P. Schmidt,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred by imposing a no-contact provision in defendant's sentencing judgment but did not err by treating the forensic interviewer's testimony as expert witness testimony, failing to hold a *Krankel* hearing, and noting several times the victim was a child in explaining defendant's sentencing.

¶ 2 In December 2014, a grand jury indicted defendant, Latino Buchanan, with one count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)) and one count of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). After an April 2016 trial, a jury found defendant guilty of both counts. Defendant filed a timely motion for a new trial. At a July 2016 hearing, the Sangamon County circuit court denied defendant's posttrial motion and sentenced him to consecutive prison terms of 14 years for predatory criminal sexual assault and 5 years for aggravated criminal sexual abuse. Defendant filed a motion for reduction of sentence, which the court denied after an August 2016 hearing.

¶ 3 Defendant appeals, arguing the circuit court erred by (1) admitting the lay opinion testimony of the forensic interviewer that was based on her training and experience, (2) not adequately addressing defendant's *pro se* motion for substitution of counsel, (3) considering in aggravation a factor inherent in the offenses, and (4) imposing a lifetime no-contact order as part of defendant's sentence. We affirm in part, vacate in part, and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 The December 2014 indictments pertained to defendant's actions between January 1, 2013, and December 6, 2013. The predatory criminal sexual assault charge asserted defendant, who was 17 years old or older, committed an act of sexual penetration with J.M., who was under 13 years old when the act was committed, in that defendant placed his finger in the sex organ of J.M. The aggravated criminal sexual abuse charge alleged defendant, who was 17 years old or older, committed an act of sexual conduct with J.M., who was under 13 years old when the act was committed, in that defendant knowingly touched the body of J.M. for the purpose of defendant's sexual arousal.

¶ 6 In May 2015, defendant filed a document, requesting to change public defenders. Defendant asserted his appointed attorney, Michael Harmon, suffered from a mental health condition that caused Harmon memory loss and his mind to drift. Moreover, at their first two meetings, Harmon had not even reviewed his case. Defendant asserted Harmon did not have defendant's best interests in mind and was not proficient in dealing with sex crimes. Defendant also claimed Harmon wanted to argue with him instead of listening to what defendant said. In June 2015, the circuit court allowed Harmon to withdraw due to a conflict of interest. Sam Qui became defendant's attorney.

¶ 7 In July 2015, the State filed a notice of intent to use hearsay under section 115-10

of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/115-10 (West 2012)). Specifically, the State sought to introduce (1) J.M.'s statements to her grandmother, Kathleen K.; and (2) J.M.'s statements during a December 2017 forensic interview conducted by Tracy Pearson.

¶ 8 In a September 24, 2015, letter, defendant complained to the circuit court Qui had not shown defendant his discovery or the video (presumably the recording of Pearson's forensic interview of J.M.). Defendant later filed a motion for substitution of counsel claiming irreconcilable differences had arisen between him and Qui that made it impossible for Qui to effectively represent defendant. On October 21, 2015, the circuit court held a status hearing and allowed defendant to present his motion for substitution of counsel. Defendant alleged Qui had never reviewed the discovery with him and all they did was argue over unnecessary matters. The court allowed Qui to respond to defendant's allegations, and Qui noted defendant declined to look at his discovery materials. Qui acknowledged they had some disputes over trial strategy. However, Qui was prepared to represent defendant and had no issue with going to trial. The court denied defendant's motion.

¶ 9 On December 24, 2015, defendant filed a second motion for substitution of counsel, again alleging irreconcilable differences had arisen between him and Qui, rendering it impossible for Qui to effectively represent defendant. At a January 5, 2016, motions hearing, Qui stated he had met with defendant after the date of defendant's motion and it was his understanding they were able to proceed on the motions. The circuit court asked Qui if he believed he could adequately represent defendant, and Qui stated he did. The court replied Qui was defendant's public defender. The court then held a hearing on the State's motion to admit the victim's hearsay statements under section 115-10. On January 7, 2016, the court entered a

written order, allowing the admission of J.M.'s statements to Kathleen and Pearson.

¶ 10 In March 2016, the State filed a disclosure of expert witnesses, naming Dr. Careyana Brenham, who conducted a January 2014 forensic medical examination of J.M., as an expert witness. Pearson was not included in the disclosure.

¶ 11 The circuit court held defendant's jury trial in April 2016. The State presented the testimony of (1) Kathleen; (2) Justin Spaid, a Springfield police officer; (3) Lovie Faine, a child protection investigator for the Department of Children and Family Services (DCFS); (4) Paula Morrow-Crouch, a Springfield Police Department Detective; (5) Andria Burns, a DCFS investigator; (6) Pearson; (7) Dr. Brenham; and (8) J.M. Defendant testified on his own behalf. The evidence relevant to the issues on appeal is set forth below.

¶ 12 Kathleen testified she had a daughter, Trista M., as well as a son. Trista was the mother of four children, B.M., J.M., D.M., and T.M. At the time of trial, B.M. was 12 years old, J.M. was 10 years old, D.M. was 7 years old, and T.M. was 7 months old. In late 2013, Trista and the three older children were living with defendant, who was Trista's boyfriend. Kathleen testified Trista and defendant had been dating around three years. The children called defendant "Tino." On December 8, 2013, Kathleen and her husband took B.M., J.M., and D.M. to church. On the way home from church, Kathleen asked the children if anyone had done anything the child was uncomfortable with and then asked the child to keep it a secret. B.M. and D.M. responded in the negative. J.M. put her head down and started crying. J.M. then quietly responded, " 'yes.' " When Kathleen asked J.M. if she wanted to talk to her and her husband about it, J.M. wanted to talk. J.M. was also willing to talk about it in front of her siblings because they needed to hear it. At that point, J.M. was curled into a ball with her hair over her face and was sucking her thumb and crying. J.M. stated Tino had been touching her "coo coo,"

which was J.M.'s word for vagina. J.M. explained he touched her vagina with his fingers, nose, and face. J.M. stated the touching took place when Trista was at work and it happened a lot.

¶ 13 Kathleen and her husband remained with J.M. while J.M. told Trista about defendant's touching. Trista asked Kathleen to care for the three children while she talked with defendant. Trista later contacted Kathleen and asked her to bring the children home because defendant had left the home. When she returned the children to their home, Kathleen told Trista she needed to contact the police. Trista said she was taking care of it. When Trista had not contacted the police by Tuesday, Kathleen and her husband went to the police station and made a police report.

¶ 14 Detective Morrow-Crouch testified that, around December 11, 2013, she was assigned to conduct an investigation into the possible sexual assault of J.M. The initial information was that, on December 8, 2013, J.M. had reported to her grandparents defendant had touched her on her private part. Detective Morrow-Crouch set up a child forensic interview of J.M. at the Child Advocacy Center. On December 17, 2013, Pearson conducted the forensic interview of J.M. Detective Morrow-Crouch and Burns were present for the interview in a separate viewing room.

¶ 15 Pearson testified that, at the time of J.M.'s interview, she worked for the Sangamon County Child Advocacy Center as a forensic interviewer. Pearson had attended numerous week-long forensic interview training sessions. She also attended the national child abuse symposium. Pearson had more than 14 years of experience as a forensic interviewer and had conducted over 3000 forensic interviews. She mostly interviewed children but had conducted a few interviews of developmentally-delayed adults.

¶ 16 Pearson explained a forensic interview of a child is neutral, "victim sensitive,"

and usually observed by DCFS and law enforcement. Before a forensic interview, Pearson will receive a report from DCFS with a general outline of what the allegation is. During the interview, she is the only person in the room with the child, but others may observe the interview through a mirror. Cameras are in the room to record the interview. At the beginning of the interview, Pearson tries to establish a rapport with the child. She will get to know the child better by asking about who lives with them, school, pets, and things in which the child is interested. With younger children, Pearson will do an anatomy identification to understand what the child calls his or her body parts. She also talks with the child to ensure the child knows the difference between the truth and a lie and tells the child everything they talk about needs to be the truth. Pearson further emphasizes with the child that, if Pearson says anything incorrectly, the child needs to correct her. Pearson lets the child know she wants to get things right. Pearson tries to use narrative questions or open-ended questions. If she uses a multiple-choice question or a yes/no question, Pearson will follow it up with a narrative question.

¶ 17 During Pearson's testimony, the State played the recording of Pearson's forensic interview of J.M. The State then indicated it would go through the interview with Pearson so she could help break it down. She again testified she had conducted over 3000 forensic interviews. Pearson was very familiar with how forensic interviews generally went and the behavior of children during such interviews. In her experience, Pearson learns different information from what the child initially disclosed. When the prosecutor asked the reason for such a difference, defense counsel objected noting Pearson was not an expert witness. The court overruled the objection, stating Pearson was trained in the performance of forensic interviews and, if her training reveled that to her, she could testify about it. Pearson testified she typically gets more information and details because she knows the type of questions to ask due to her training and

experience.

¶ 18 Moreover, Pearson testified that, in her experience, a child's behavior or body language varies during the interview. When the State asked what might make it change, defense counsel objected based on speculation. The court overruled the objection, again noting Pearson's training and experience as a forensic interviewer. Pearson testified a child's body language may change because the child is uncomfortable or does not want to talk about a certain topic during the interview. According to Pearson, J.M.'s body language was very open at the beginning of the interview. J.M.'s body language drastically changed when she started talking about what happened to her. At that time, J.M. was more closed. Specifically, J.M. put her hand insider her shirt, dropped her head, and talked "lower." Pearson testified J.M.'s body language when talking about what happened to her indicated the topic was difficult for her to talk about.

¶ 19 On cross-examination, Pearson testified a person's body language can change for many different reasons. In her experience, a person's body language could change when the person is about to tell a lie.

¶ 20 J.M. testified that, when she was in third grade, she lived with her mother, her two siblings, and her mother's boyfriend, Tino. Tino lived with them for a long time, and he watched J.M. and her siblings when their mom was working. J.M. shared a bedroom with her siblings. J.M.'s brother slept on the top bunk of a bunk bed, and J.M. shared the bottom bunk with her sister. J.M. testified that, when the children were asleep, Tino would come into their bedroom and touch J.M.'s privates. J.M. explained he would get on his knees, take the covers off her bed, put his hands under her pajamas, and touch her vagina. She testified his hand touched the inside of her vagina. According to J.M., defendant told her it was between them, which she believed meant she was not to tell anybody about it. J.M. identified defendant in court as the man who

touched her.

¶ 21 Defendant testified he dated J.M.'s mother, Trista, for three years and was a father figure to J.M. and her siblings. He believed he had a good relationship with J.M. Defendant denied molesting J.M. Defendant testified that, when he lived with J.M.'s mother, he worked six days a week from 8 p.m. to 1 a.m. at a bar. According to defendant, he was never home alone with the three children. He later admitted he was home alone with the children for short periods of time.

¶ 22 At the conclusion of the trial, the jury found defendant guilty of both charges. In May 2016, defendant filed a motion for a new trial, asserting, *inter alia*, the circuit court erred by overruling defendant's objection to Pearson's testimony "as to the psychological tendencies of someone who lies" because such testimony is improper for a lay witness.

¶ 23 On July 13, 2016, the circuit court held a joint hearing on defendant's posttrial motion and sentencing. The court denied defendant's posttrial motion, finding its rulings were correct. As to sentencing, the court first noted a factor in aggravation was the fact defendant "was a stepfather, he was in authority." The court next found a sentence is necessary to deter this conduct. The court explained that aggravating factor as follows:

> "Simply stated, the society will not tolerate this conduct and that word needs to be carried forward. No matter what sentence is imposed, that word always needs to be carried forward in our community. People have to understand and know in our community that we protect our children and that is our number one obligation as a community and that is to protect our children. Goodness, what would our society be if we didn't considering they're our future, so it's very important that we recognize our obligation."

The court then found defendant's lack of a criminal history was a factor in mitigation. The court explained its duty to fashion a sentence that will punish defendant and also restore him to a productive member of our society.

¶ 24 Thereafter, the circuit court stated the following:

> "Simply put, [defendant], your conduct is inexcusable. As adults, we have a duty to protect our young and to ensure that they are safe. We are to be examples for them what it is like to be an adult, what is required of us as an adult and the very last thing that we should ever do is hurt a child. It's wrong on so many levels. They're innocent. They have no idea why and it violates our duty as members of this society to ensure that our young are safe and are raised and become responsible adults themselves.
>
> If you think about it, if you think about it, if we don't do that, our society collapses. How do we learn? How did I learn? How did [defense counsel]? How did [the prosecutor]? How did any of the adults in this room learn? Well, we went to school. But primarily we had some figure, adult figure in our life that cared for us and showed us by example what to do. And that adult figure can stay with you as long, if you're lucky, but always show you what to do."

The court then sentenced defendant to consecutive prison terms of 14 years for predatory criminal sexual assault of a child and 5 years for aggravated criminal sexual abuse. The court also stated the following: "[I]n no way, shape or form for the rest of your life are you to have any contact with the victim in this case. That means directly or indirectly in any manner, shape or form." The court included a no-contact provision in its written supplemental sentencing order.

¶ 25 Defendant filed a timely motion to reconsider his sentence, contending (1) his

sentence was excessive, and (2) the circuit court accorded too much weight in aggravation for deterrence factors and his role as paramour to the victim's mother. After an August 9, 2016, hearing, the court denied defendant's motion to reconsider his sentence.

¶ 26 On August 12, 2016, defendant filed a timely notice of appeal that listed the appealed judgment as the denial of defendant's motion to reconsider sentence. On August 26, 2016, defendant filed an amended notice of appeal listing the appealed judgment as his conviction, sentence, and motion to reconsider sentence. See Ill. S. Ct. R. 606(d) (eff. Dec. 11, 2014); R. 303(b)(5) (eff. Jan. 1, 2015). Thus, we have jurisdiction under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 27 II. ANALYSIS

¶ 28 A. Pearson's Testimony

¶ 29 Defendant first argues the circuit court erred by allowing Pearson to give lay opinion testimony based on her training and expertise in violation of Illinois Rule of Evidence 701 (eff. Jan. 1, 2011). The State appears to concede Pearson's testimony was inadmissible as a lay opinion but argues this court may consider Pearson's testimony as expert witness testimony or find the improper testimony was harmless error.

¶ 30 In *People v. Novak*, 163 Ill. 2d 93, 643 N.E.2d 762 (1994), abrogated on other grounds by *People v. Kolton*, 219 Ill. 2d 353, 848 N.E.2d 950 (2006), our supreme court addressed the admissibility of the testimony of two rebuttal witnesses. There, the State called the witnesses to address the defendant's alleged training methods, and the defendant objected, contending the witnesses were not experts in the field of athletic training. *Novak*, 163 Ill. 2d at 99, 643 N.E.2d at 766. The State responded it was not calling the witnesses as experts, but rather "as lay witnesses 'who have familiarity in the field of strength training and exercising.' " *Novak*,

163 Ill. 2d at 99, 643 N.E.2d at 766. The circuit court allowed the two rebuttal witnesses to testify. *Novak*, 163 Ill. 2d at 99, 643 N.E.2d at 766.

¶ 31 The supreme court first concluded the testimony of the two rebuttal witnesses was inadmissible as lay witness opinion testimony because "[t]hey lacked first-hand knowledge upon which to base their opinion testimony." *Novak*, 163 Ill. 2d at 103, 643 N.E.2d at 768. However, it found the rebuttal witnesses' testimony was admissible as expert testimony. The supreme court explained the admissibility of expert testimony as follows:

> "An individual will be permitted to testify as an expert if that person's experience and qualifications afford him or her knowledge that is not common to laypersons, and where such testimony will aid the fact finder in reaching its conclusion. [Citation.] The indicia of expertise is not an assigned level of academic qualifications. Rather, the test is whether the expert has knowledge and experience beyond the average citizen that would assist the jury in evaluating the evidence. [Citation.] The expert may gain his or her knowledge through practical experience rather than scientific study, training, or research. There is no precise requirement as to how the expert acquires skill or experience. [Citation.] Regardless of how specialized knowledge is acquired, whether through education, training, experience, or a combination of each, if the witness possesses such knowledge, he or she may testify as an expert. [Citation.]
>
> The burden of establishing the qualifications of an expert witness is on the proponent of the expert's testimony. The determination of whether a witness qualifies as an expert is within the sound discretion of the trial court. [Citation.]" *Novak*, 163 Ill. 2d at 104, 643 N.E.2d at 768.

¶ 32 The supreme court found that, through their education, training, and/or experience, the rebuttal witnesses possessed knowledge the average citizen did not possess and their knowledge aided the jury in reaching its conclusion. *Novak*, 163 Ill. 2d at 104, 643 N.E.2d at 768. It concluded the circuit court did not abuse its discretion in admitting the rebuttal witnesses' testimony. *Novak*, 163 Ill. 2d at 104, 643 N.E.2d at 768.

¶ 33 Defendant cites *People v. Jackson*, 2017 IL App (1st) 142879, ¶¶ 49-53, 82 N.E.3d 194, where the reviewing court followed *Novak* but concluded the two witnesses' testimony was not admissible as either lay opinion testimony or expert testimony. There, the State presented two paramedics, who testified the defendant was not having a seizure during the incident at issue. *Jackson*, 2017 IL App (1st) 142879, ¶ 47. The reviewing court found the testimony of the two paramedics regarding what a person appears like after they have had a seizure was not lay opinion testimony because the testimony relied on specialized knowledge and training that would not be common knowledge to a layperson. *Jackson*, 2017 IL App (1st) 142879, ¶¶ 51, 53. As to expert testimony, the court found that, while the paramedics could have been qualified as experts in paramedic practice, they did not meet the qualifications as expert witnesses in whether defendant was suffering from a seizure. *Jackson*, 2017 IL App (1st) 142879, ¶¶ 52, 53. The reviewing court noted the State never offered or qualified the paramedics as experts on seizures and they only testified to their education and experience as paramedics. *Jackson*, 2017 IL App (1st) 142879, ¶¶ 52, 53. The reviewing court found the witnesses had training as paramedics, not in the diagnosis of seizures. *Jackson*, 2017 IL App (1st) 142879, ¶ 52. It concluded the circuit court erred by admitting the paramedics' lay opinion testimony about whether the defendant was suffering from a seizure "because it violated Illinois Rule of Evidence 701 and went to the ultimate question of fact to be decided by the jury." *Jackson*, 2017

IL App (1st) 142879, ¶ 57.

¶ 34 As in *Novak*, the State did not formally offer Pearson as an expert witness. However, she gave testimony based on her training and experience, which the court allowed based on that training and experience. Defendant contends Pearson's testimony was beyond her area of expertise as in *Jackson*. We disagree.

¶ 35 Here, Pearson testified about the training and education she underwent to be able to conduct forensic interviews. She had over 14 years of experience and had conducted more than 3000 forensic interviews. Pearson was very familiar with both how such interviews generally went and children's behavior during such interviews. Defendant objected when Pearson testified that, in her experience, the child provides different information during a forensic interview. The court overruled the objection, and Pearson further explained that, with her training and experience, she knows what questions to ask to obtain more information and details. Defendant objected a second time when the State asked Pearson to explain what might make a child's behavior or body language change during a forensic interview. The court again found that was a matter within Pearson's training and experience, and Pearson explained a child's body language when they are uncomfortable or do not want to talk about a certain topic. In this case, the State provided sufficient evidence to show Pearson's training and experience provided her with special knowledge about children's disclosures and behaviors during forensic interviews. Thus, we find the circuit court did not abuse its discretion by allowing Pearson's testimony.

¶ 36 Defendant also argues Pearson's testimony about J.M.'s body language during the interview was improper because Pearson was essentially giving an opinion about J.M.'s veracity. In support of his argument, defendant cites *People v. Henderson*, 394 Ill. App. 3d 747, 752, 915

N.E.2d 473, 477 (2009), and *People v. O'Donnell*, 2015 IL App (4th) 130358, ¶¶ 30-32, 28 N.E.3d 1026, where both reviewing courts found error when a police officer testified the defendant's body language indicated the defendant was being deceptive. The *Henderson* court explained, "[a]n investigator's testimony should be presented only to communicate what was said during an interrogation. Using such a witness as a 'human lie detector' goes against the fundamental rule that one witness should not be allowed to express his opinion as to another witness's credibility." *Henderson*, 394 Ill. App. 3d at 753-54, 915 N.E.2d at 478.

¶ 37 In this case, Pearson testified J.M.'s "more closed" body language when she disclosed being touched indicated "[i]t was difficult for her to talk about it." Pearson did not testify J.M's body language indicated she was telling the truth or not telling the truth. It simply was just that the topic was a difficult one for J.M to talk about. In fact, on cross-examination, Pearson acknowledged a person's body language could change for many different reasons, including when someone is about to tell a lie. Thus, we disagree with defendant Pearson's testimony was like the police officers' testimonies in *Henderson* and *O'Donell*, where the officers expressly commented on the veracity of the defendant.

¶ 38 Accordingly, we find the circuit court did not err by admitting Pearson's expert testimony. As such, we do not address the parties' harmless-error arguments.

¶ 39 B. Motion For Substitution of Counsel

¶ 40 Defendant next contends the circuit court erred by not adequately addressing his pretrial motion for substitution of counsel under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny. The State contends the circuit court properly addressed defendant's motion.

¶ 41 In this case, defendant filed his first pretrial motion for substitution of counsel

related to Qui in October 2015 and asserted irreconcilable differences had arisen between him and appointed counsel that made it impossible for appointed counsel to effectively represent defendant. The circuit court addressed defendant's motion at an October 21, 2015, pretrial status hearing. It allowed defendant to explain why he wanted Qui removed. The court then had Qui respond to defendant's statement. After hearing counsel's response, the court denied defendant's motion. In December 2015, defendant filed a second pretrial motion for substitution of counsel, raising the exact same allegation as in the October 2015 motion. At a January 5, 2016, hearing, the court noted defendant's second motion. Qui stated he had met with defendant after the date of the December 2015 motion and believed they were going to proceed on the State's motions. The court then asked Qui if he believed he could adequately represent defendant, and Qui responded in the affirmative.

¶ 42 Defendant claims the court's *Krankel* hearing for defendant's second pretrial motion for substitution of counsel was inadequate. We disagree *Krankel* applies to defendant's second motion for substitution of counsel because the motion was not a posttrial motion.

¶ 43 In *People v. Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 732, our supreme court held a circuit court must conduct a *Krankel* hearing "when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing." The State argued an ineffective assistance of counsel claim in any communication to the circuit court would necessitate a *Krankel* hearing and, thus, "a circuit court would be required to 'minutely scrutinize' every *pro se* filing for such a complaint." *Ayres*, 2017 IL 120071, ¶ 22. Our supreme court disagreed, declaring "*Krankel* is limited to *posttrial* motions." (Emphasis added.) *Ayres*, 2017 IL 120071, ¶ 22. The cases defendant cites in support of his contention (*People v. Jocko*, 239 Ill. 2d 87, 940 N.E.2d 59 (2010); *People v. Washington*, 2012 IL App (2d) 101287, 970 N.E.2d 43) were

decided before the supreme court's decision in *Ayres*. Accordingly, we find no error because *Krankel* did not apply to defendant's second pretrial motion for substitution of counsel.

¶ 44 C. Sentencing Factor

¶ 45 Defendant next contends the circuit court erred by repeatedly emphasizing defendant was the adult and the victim was a child because it indicates the court improperly considered in aggravation a factor inherent in the offenses. In support of his contention, defendant quotes two sections of the circuit court's oral sentencing judgment. The State asserts defendant failed to establish the circuit court improperly considered the victim's age as an aggravating factor. We agree with the State.

¶ 46 Whether the circuit court relied on an improper factor in imposing the defendant's sentence presents a question of law, which we review *de novo*. *People v. Williams*, 2018 IL App (4th) 150759, ¶ 18, 99 N.E.3d 590. This court has recognized a strong presumption exists the circuit court based its sentencing determination on proper legal reasoning. *Williams*, 2018 IL App (4th) 150759, ¶ 18. In reviewing the circuit court's sentencing, we consider the record as a whole, rather than focusing on a few words or statements by the circuit court. *Williams*, 2018 IL App (4th) 150759, ¶ 18. The defendant bears the burden of affirmatively establishing his or her sentence was based on improper considerations. *Williams*, 2018 IL App (4th) 150759, ¶ 18.

¶ 47 Section 5-5-3.2(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3.2(a) (West 2012)) lists factors the circuit court may consider as reasons to impose a more severe sentence. The circuit court found the following two aggravating factors applied in defendant's case: (1) the need to deter others from committing the same crime (730 ILCS 5/5-5-3.2(a)(7) (West 2012)) and (2) defendant, as the victim's "stepfather," held a position of trust in relation to the minor victim (730 ILCS 5/5-5-3.2(a)(14) (West 2012)). Defendant does not argue

the court's application of those two factors was improper.

¶ 48 When reading the circuit court's comments in their totality, the court's statements address the two proper aggravating factors in this case. Defendant first challenges the court's comments regarding the community's need to protect children. The court made those comments in relation to its finding a sentence was necessary to deter defendant's conduct. As to the second set of comments about an adult's duty to protect the young, the court had already noted defendant was the victim's "stepfather" and in a position of authority. The court's comments about adults having a duty to protect their young reflect the fact defendant was a person, who was supposed to protect and help raise the victim, not hurt her. Accordingly, we agree with the State defendant failed to establish the court improperly considered the fact the victim was a child as a factor in aggravation.

¶ 49 D. No-Contact Provision

¶ 50 Last, defendant argues the circuit court erred by imposing a lifetime no-contact provision with the victim in defendant's sentencing order. The State does not contest defendant's assertion the no-contact provision of defendant's sentence is unauthorized by the legislature.

¶ 51 Section 5-6-3(b)(15) of the Unified Code (730 ILCS 5/5-6-3(b)(15) (West 2012)) allows a circuit court to impose as a condition of probation that a defendant refrain from having any contact with a specified person. However, in this case, defendant was sentenced to a term of imprisonment. The State notes the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq*. (West 2012)) and article 112A of the Procedure Code (725 ILCS 5/art. 112A (West 2012)) also do not provide a basis for the no-contact provision in defendant's sentence. Thus, absent any apparent authority, the circuit court could not enter the no-contact order as part of

defendant's sentence in this case. Accordingly, we vacate the no-contact provision of defendant's supplemental sentencing order and remand the cause for an amended order.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the Sangamon County circuit court's judgment, except for the no-contact provision of defendant's sentence. We vacate the no-contact provision and remand the cause for an amended supplemental sentencing order. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 54 Affirmed in part and vacated in part; cause remanded with directions.