

**NOTICE**  
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2014 IL App (4th) 120908-U  
NO. 4-12-0908  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
April 23, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

|                                      |   |                  |
|--------------------------------------|---|------------------|
| In re: H.H., a Minor,                | ) | Appeal from      |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee,                 | ) | Coles County     |
| v.                                   | ) | No. 09JD64       |
| H.H.,                                | ) |                  |
| Respondent-Appellant.                | ) | Honorable        |
|                                      | ) | James R. Glenn,  |
|                                      | ) | Judge Presiding. |

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PRESIDING JUSTICE APPLETON delivered the judgment of the court.  
Justices Pope and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not improperly rely on evidence of an unrelated sexual abuse incident performed by another individual, not respondent, against the same victim, in determining respondent's guilt.

(2) Because respondent's counsel stipulated to the admission of the hearsay statements at trial, respondent effectively and affirmatively waived any challenge thereto.

(3) The fees and fines imposed by the circuit clerk upon respondent's disposition of delinquency must be vacated as unauthorized.

¶ 2 Respondent, H.H., appeals from the trial court's adjudication finding him to be a delinquent minor for committing aggravated criminal sexual abuse against a minor. During the trial, the parties stipulated to the admissibility of the testimony presented during several pretrial hearings conducted pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2008)). In those hearings, the court had determined the

hearsay statements presented were sufficiently reliable. In his appeal, respondent argues (1) the court improperly relied upon "other-crimes" evidence in the form of testimony regarding a sexual molestation of the same victim perpetrated by another individual in an unrelated incident, (2) the court erred in admitting the section 115-10 testimony at trial, and (3) the imposition of certain fines must be vacated. We agree with respondent the fines imposed must be vacated, but we otherwise affirm the court's judgment.

¶ 3

### I. BACKGROUND

¶ 4 On May 20, 2009, the State charged respondent, born on November 6, 1993, in a delinquency petition with aggravated criminal sexual abuse (720 ILCS 5/12-16(c) (West 2008)) for committing "an act of sexual conduct" (later clarified to allege that respondent placed his penis in the victim's anus) with M.C., who was under the age of nine when the act was committed. On July 28, 2010, the State filed a supplemental petition, charging respondent with a second count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c) (West 2008)) for placing his penis in the anus of K.C., a minor under the age of nine. Both incidents were alleged to have occurred in February 2009. The State filed three motions to admit hearsay evidence pursuant to section 115-10 of the Code (725 ILCS 5/115-10 (West 2008)).

¶ 5

#### A. Section 115-10 Hearings

¶ 6 The trial court conducted the first hearing on the State's section 115-10 motion on June 25, 2010. Kelli Vaughn, a registered nurse at Provena Covenant Medical Center (Provena) emergency room in Urbana, testified she met the six-year-old victim, M.C., on February 16, 2009, when her father had taken her to the hospital for an examination after he found bloodstains on her underwear. Apparently, he had picked up M.C. for visitation from her mother the day before. M.C. told Vaughn that the previous day, "TJ," her uncle, had touched her private area,

and several days before that, respondent put his privates "in her butt." Vaughn said M.C. told her "it happened several times" with respondent, but only once with TJ. She also said respondent offered her candy and toys if she let him touch her. M.C. said she told her mother, but her mother did nothing. Vaughn collected the underwear and placed it in an evidence bag for the police. After the close of Vaughn's testimony, the court ruled the State had proved sufficient safeguards of reliability to allow the admission of this evidence at trial.

¶ 7 On October 6, 2010, the trial court conducted a second hearing on the State's section 115-10 motion. Anne Kelly Drake, an employee of Illinois Department of Children and Family Services (DCFS), testified she conducted a forensic interview of M.C. on February 17, 2009. The court allowed the admission of the video-recorded interview, authenticated by Drake as accurately reflecting their meeting.

¶ 8 Our review of the recorded interview indicated that M.C. was an articulate and talkative young girl. Drake drew a picture of M.C. on paper held by a large easel and M.C. noted the places on her body where respondent and TJ touched her. She placed an "x" on her "butt," where she said they had placed their "private," and on her "lips," where she said they had kissed her. When talking about respondent, M.C. said she had been watching television at respondent's house when respondent took her to his room. She said he put his "penis" in her "butt" and her "vagina." She said she screamed because "it hurt"; and when she "went to poo it hurt." M.C. said when TJ did this to her at her house, she told "mommy" but, she said, her mother did "nothing." When respondent did this to her at his house, she did not tell anyone because "no one was home." She said her father took her to the doctor because she had blood in her panties.

¶ 9 On cross-examination, Drake said M.C. was unable to identify the time periods of the abuse. She also said when she interviewed M.C.'s mother, she learned M.C.'s father was

fighting for custody of the girl. Drake acknowledged she had witnessed parents attempting to manipulate children into giving certain statements to help in a custody battle. Again, the court found this evidence "reliable enough to allow the exception to the hearsay rule."

¶ 10 On December 8, 2010, the trial court conducted the third hearing on the State's section 115-10 motion. Dr. Mary Kathleen Buetow, a pediatrician at Carle Clinic, testified she met with M.C. on February 20, 2009, as a referral from Drake and Michael Williams of the Child Advocacy Center in Champaign. A social worker, Kathy Johnson, and M.C.'s father attended the appointment, but only Dr. Buetow, M.C., and Johnson were present during the interview. M.C. advised the doctor that she was living with her father because two individuals had touched her inappropriately, one of whom was respondent. She said respondent had " 'stuck his private in [her] bottom and in [her] private.' " She said it happened " 'ten or five or seven times.' " She also described how respondent had put soap on her genital and anal areas, " 'so he could slip his private in easier.' " She said it hurt when he did it to her genital area and " 'really hurt' " when he did it to her anal area. M.C. also said respondent had placed his penis in her mouth, which she described as " 'bad' " and " 'almost made [her] sick.' " She said these incidents occurred at respondent's house. She also said she saw respondent touch her younger brother on his stomach and on the genitals. She said respondent had also kissed her on the mouth.

¶ 11 Upon a review of her notes from the interview, Dr. Buetow recalled M.C. also said respondent had " 'kissed [her] tits.' " M.C. told the doctor that respondent told her not to tell or she would be " 'in trouble.' " M.C. said she told her father because she " 'now feels safe living with dad.' " The doctor diagnosed M.C. as being a victim of sexual abuse, which included genital penetration, anal penetration, and oral sex by two different individuals. The abuse by respondent occurred at his house, while the abuse by the other individual occurred at M.C.'s

house. M.C.'s physical examination was "totally normal," since the last contact had been more than a week earlier. She said she expects to find physical evidence of sexual abuse only in approximately 5% of cases, as mucosal tissue heals very rapidly, so tears or injuries generally heal within four to five days.

¶ 12 On cross-examination, Dr. Buetow recalled that M.C.'s father said he picked up M.C. from her mother on February 13, 2009, and took her to the hospital that day, but the hospital staff refused to examine the child. Dr. Buetow did not review Provena's records to know whether the father's story was true. When Dr. Buetow first asked M.C. who had touched her, she gave respondent's father's name, not respondent's name. Dr. Buetow said she had not reviewed the recorded interview conducted by Drake.

¶ 13 The trial court then considered testimony related to the other victim, K.C. Dr. Buetow said she spoke with K.C. after her examination of M.C. K.C. spoke of being inappropriately touched by respondent and "TJ," the second person referred to by M.C. K.C. told the doctor that respondent had punched him " 'on the bottom.' " Dr. Buetow described K.C. as a "little boy [who] was very, very stressed, very tearful, very unhappy. Found it very difficult to talk." He told the doctor he was scared to talk because respondent had " 'punched him and smacked him.' " Respondent told him not to tell. K.C. revealed that respondent " 'put some things in [his] bottom, in [his] butt.' " He said the "things" were a tissue and soap. He said respondent touched his privates, his " 'pee-pee and on [his] butt.' " He said respondent put these things in his "butt" because he told his mother. Dr. Buetow arrived at the diagnosis that K.C. had been sexually abused on numerous occasions by both his uncle (TJ) and his cousin (respondent). The court admitted Dr. Buetow's reports on each child. On cross-examination, Dr. Buetow

acknowledged that K.C. said TJ hurt his "butt." K.C. did not mention respondent's name until the doctor brought it up, based on what the children's father told the doctor.

¶ 14 After considering the testimony and reviewing the evidence introduced, the trial court found there existed sufficient safeguards of reliability as to K.C.'s and M.C.'s statements. Therefore, the court granted the State's motion to allow the admission of hearsay evidence as it related to both children.

¶ 15 B. Bench Trial

¶ 16 On May 11, 2012, the trial court conducted a bench trial. By stipulation, the court admitted the transcripts from the section 115-10 hearings of Vaughn, Drake, and Dr. Buetow, as well as the video of the recorded interview between Drake and M.C. The State called M.C., age nine, as a witness. She first identified respondent and respondent's father in court and then proceeded to testify regarding her interview with Drake in February 2009. She said she was six years old when she was interviewed, and she remembered speaking with Drake. She was shown the paper that she and Drake used to draw pictures and she identified the things she had drawn. She identified a house she had drawn as respondent's house in Mattoon and another house as TJ's. She identified TJ as a relative of her mother. M.C. testified she had been truthful when she spoke with Vaughn, Drake, and Dr. Buetow.

¶ 17 When asked if respondent had done anything to her, M.C. testified respondent grabbed her arm and took her to his room. She said he had "this white thing" that he "put on his private, and then he put his private in [her] bottoms." She explained that her "bottoms" meant her "butt." On cross-examination, M.C. said no one told her what to say to Vaughn, Drake, or Dr. Buetow, or what to testify to in court. She said she and her two brothers live with her father

and stepmother in Rantoul. She denied doing "anything sexual" with her brother K.C. After the close of M.C.'s testimony, the State rested.

¶ 18 Respondent's father, Ralph H., testified he "know[s] that [his] son did not molest [M.C.]" because respondent is with him "all the time" due to a condition known as neurofibromatosis. He explained this condition manifests itself through symptoms of deficient memory, attention deficit hyperactivity disorder, and seizures. For these reasons, Ralph said he "always kept [respondent] with [him]. He had a tendency to drift off or go to different places that he wasn't supposed to go." He said he picked respondent up every day from school and took him home. He then took respondent to Sylvan Learning Center every day for tutoring at 4:30 p.m. He picked him up at 6 p.m. and took him to Ralph's house. He said, "[t]here's never been a time that I was not with [respondent]." Ralph testified that, in January 2009, he saw M.C. lying on top of K.C. "grinding sexually." The two had spent the night at Ralph's house. Ralph said he "smacked [M.C.'s] butt and told her that [he] was going to tell her mom."

¶ 19 Cherae Shaw, respondent's cousin and M.C.'s mother, testified that, in early 2009, she tutored respondent in math at her home approximately five times per week from 9 to 10 p.m. When respondent was being tutored, M.C. was in bed. Shaw said M.C. never told her that respondent had done anything to hurt her. Shaw said the last time M.C. lived with her was on February 13, 2009, when M.C.'s father picked her up and she never returned.

¶ 20 On cross-examination, Shaw testified she met with a detective in February 2009, but she denied telling the detective there were occasions when respondent, K.C., and M.C. would have been playing in a room alone. Shaw admitted her brother, Timothy (also known as "TJ"), lived with her in 2009 and he had been convicted of "molesting" M.C. Shaw admitted she did

not contact the police about "what was happening to [M.C.] with Timmy." She said the police had to come to her because M.C. never told her about the abuse.

¶ 21 Respondent testified on his own behalf. He said he was 18 years old and lived with his father. He said he never harmed M.C. He said he suffers from a learning disability and deficient memory. He described a time in January 2009 when he saw M.C. "grinding and humping" on top of K.C. He said he told his father and Shaw about the incident. Upon questioning by the trial court, respondent said he saw M.C.'s actions "at their house and [his] house."

¶ 22 In rebuttal, the State called Detective David C. Vanderport, a sergeant with the Mattoon police department, who testified that, on February 24, 2009, he took a statement from Shaw regarding the investigation of sexual molestations involving Shaw's brother (TJ), her cousin (respondent), and at least two of her children. He said Shaw told him that, on more than one occasion, the children would be left alone with respondent because she had Ralph (respondent's father) babysit M.C. and K.C. while she worked. In surrebuttal, respondent called Shaw, who said she was never advised that anyone saw M.C. perform a sexually inappropriate act on K.C.

¶ 23 After considering the evidence and arguments of counsel, the trial court found respondent not guilty of aggravated criminal sexual abuse of K.C., as the evidence was insufficient to prove the allegation. The court noted the allegations regarding M.C. involved a determination of credibility. Although M.C. was somewhat inconsistent in terms of stating when and where the abuse had occurred, the court noted she *was* consistent in her stories to Vaughn, Drake, and Dr. Buetow, and in her in-court testimony. The court noted it did not find it credible that respondent's father was with respondent "every moment of the day" or that respondent was

never left alone with M.C. The court further found that, based upon respondent's claimed memory deficiency, his testimony may not have been truthful, in that he might have been unable to remember or "perceive everything that happened, at least as it was described." The court stated:

"So considering all of the evidence that's been presented today, the credibility of various witnesses, their opportunity to remember, their opportunity to observe and perceive, and any interest, bias, or prejudice, I find that, as to the original petition regarding M.C., the State has met its burden beyond a reasonable doubt, and I find [respondent] guilty of the petition."

¶ 24 On August 31, 2012, the trial court conducted a sentencing hearing. Upon the State's request, the court took judicial notice of "the evidence it heard at trial as well as the evidence it heard at the various 115-10 hearsay hearings." After considering the evidence and arguments of counsel, the court sentenced respondent to probation until his twenty first birthday, November 6, 2014. This appeal followed.

¶ 25

## II. ANALYSIS

¶ 26

### A. Other-Crimes Evidence

¶ 27 Respondent claims he was denied his due-process right to a fair trial where the trial court allowed the State to introduce evidence regarding TJ's sexual assault of M.C. He claims, because there was no allegation that respondent and TJ had abused M.C. together, the admission of this irrelevant "other crimes" evidence was prejudicial and "compromised the integrity of the judicial process." He claims this evidence "permeated [respondent]'s entire

adjudicatory proceeding, creating an atmosphere of guilt by association and offering an explanation of where the complainant's many inconsistencies came from."

¶ 28 As respondent concedes in his reply brief, the introduction of evidence of any crime committed by someone other than respondent is not considered "other-crimes" evidence. *People v. Pikes*, 2013 IL 115171, ¶ 16 (the concerns regarding the admission of other-crimes evidence are not present when the other crime was not committed by the defendant). However, he suggests this court simply ignore the phrase "other-crimes evidence" wherever it appears in his brief, and instead, consider his entire argument simply as a challenge to the admission of irrelevant and unduly prejudicial evidence.

¶ 29 Analyzing respondent's contention of error as a relevancy claim, we begin by reiterating the general statements of law regarding the admissibility of evidence.

"Evidence is generally admissible if it is relevant. Ill. R. Evid. 402 (eff. Jan. 1, 2011). 'Relevant evidence' is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011). Even relevant evidence, however, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Ill. R. Evid. 403 (eff. Jan. 1, 2011)." *Pikes*, 2013 IL 115171, ¶ 21.

¶ 30 Further, it is well established trial courts have the discretion to determine the admissibility of evidence, and we will overturn a court's decision only if the record clearly demonstrates an abuse of that discretion. *People v. Lynn*, 388 Ill. App. 3d 272, 276-77 (2009).

A court abuses its discretion if the decision is " ' "clearly against logic; the question is not whether the appellate court agrees with the [trial] court, but whether the [trial] court acted arbitrarily, without employing conscientious judgment," ' or whether, considering all the circumstances, the court acted unreasonably and ignored recognized principles of law, which resulted in substantial prejudice." *Lynn*, 388 Ill. App. 3d at 277 (quoting *Long v. Mathew*, 336 Ill. App. 3d 595, 600 (2003) (quoting *State Farm Fire & Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1083 (2000))). "Typically, the prejudicial effect of certain evidence 'means that the evidence in question will somehow cast a negative light upon the defendant for reasons that have nothing to do with the case on trial.' [Citations.]" *Lynn*, 388 Ill. App. 3d at 278.

¶ 31 Respondent argues the evidence regarding TJ's sexual abuse of M.C. cast a negative light on him by "creat[ing] an atmosphere of guilt by association." He claims the trial court erred by allowing the State to introduce evidence that M.C. had told Vaughn, Drake, and her mother that TJ had sexually abused her in an incident completely unrelated to the alleged incident against respondent.

¶ 32 We find the evidence of TJ's abuse was relevant to explain why M.C. had not told her mother of respondent's abuse. On cross-examination, M.C.'s mother admitted her brother, TJ, had been convicted of sexually abusing M.C. She also admitted she never contacted the police. She claimed she did not contact the police because she said M.C. never told her TJ had done anything to harm her. However, M.C. testified she *had* told her mother about TJ but, because her mother did "nothing" about it, she did not tell her mother about respondent. When respondent's counsel objected to the State's line of cross-examination, the trial court overruled the objection, finding the evidence probative to explain why M.C. had not reported the abuse by respondent.

¶ 33 Further, at trial, respondent argued M.C.'s statements were inconsistent, and thus, unreliable. As a likely strategy, respondent's counsel stipulated to the admission of M.C.'s out-of-court statements describing the abuse by respondent *and* TJ, most likely with the hope of demonstrating those inconsistencies. However, by stipulating to the admission of this evidence, which contained testimony regarding TJ's abuse of M.C., respondent cannot now complain the admission was somehow erroneous. "[W]hen a defendant procures, invites, or acquiesces in the admission of evidence, even [if] the evidence is improper, [the defendant] cannot contest the admission on appeal." *People v. Bush*, 214 Ill. 2d 318, 332 (2005) (citing *People v. Caffey*, 205 Ill. 2d 52, 114 (2001); *People v. Payne*, 98 Ill. 2d 45, 50 (1983)). "This is because, by acquiescing in rather than objecting to the admission of allegedly improper evidence, a defendant deprives the State of the opportunity to cure the alleged defect." *Bush*, 214 Ill. 2d at 332-33 (citing *People v. Trefonas*, 9 Ill. 2d 92, 98 (1956) ("A party cannot sit by and permit evidence to be introduced without objection and upon appeal urge an objection which might have been obviated if made at the trial.")). In other words, respondent cannot proceed in one manner in the trial court only to claim error on appeal.

¶ 34 Respondent argues, in the alternative, that his counsel was ineffective for failing to keep out all references to TJ's abuse. In order to find counsel ineffective, we would have to determine that counsel's conduct prejudiced respondent. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We cannot make that finding.

¶ 35 We find no evidence in the record to suggest the trial court improperly considered the evidence of TJ's abuse of M.C. against respondent, causing him prejudice in the outcome of his case. In announcing its decision, the court merely recounted it had reviewed the videotaped interview of M.C. multiple times—twice in relation to respondent's case and once in relation to

TJ's criminal case. The court also referred to the incident related to TJ when it offered an explanation for M.C.'s inconsistencies as to where the alleged abuse occurred, noting M.C. had described incidents "not only by one alleged accuser [*sic*], one alleged accuser [*sic*], but also two." Other than making these noted references, the court did not mention TJ's abuse. We find no evidence to demonstrate the court relied at all on the circumstances of TJ's abuse in determining respondent's guilt.

¶ 36 B. Admission of Hearsay Statements

¶ 37 Respondent also claims M.C.'s hearsay statements were improperly admitted under section 115-10 of the Code because those statements were not reliable. He contends the trial court was not presented with any evidence regarding the substance of the earlier questioning of M.C. about the abuse allegations. He claims M.C.'s father questioned her, as did Mattoon police officer Adam Jenkins, though the substance of those interviews was not presented to the court. Accordingly, respondent contends, M.C.'s statements to Vaughn, Drake, and Dr. Buetow were not spontaneous, but rather, may have been the result of suggestiveness by others.

¶ 38 The problem with respondent's argument on appeal is that, at trial, he stipulated to the admission of these statements, rather than object to their admissibility. His stipulation was not presented to the court as limited in nature. That is, he did not indicate he was stipulating solely for the purpose of avoiding unnecessary repetition, while preserving a claim as to the admissibility of the statements. As a result, respondent effectively waived his challenge to the statements' admissibility. *Cf., In re T.T.*, 384 Ill. App. 3d 147, 157-58 (2007) (the First District reviewed the defendant's challenge to the admissibility of the hearsay statements even though he had stipulated to the introduction of those statements at trial; however, it was a case where the defendant challenged the facts in light of a new constitutional rule, which could have been

applied retroactively if found to be applicable). This case is distinguishable from *T.T.* in that here, respondent is not raising a constitutional challenge based upon a new rule.

¶ 39 Instead, respondent is challenging the precise action he stipulated to at trial. Respondent's counsel affirmatively acquiesced to the actions taken by the trial court and now challenges those actions as error. Based upon his attorney's stipulations to admit the hearsay statements at trial as evidence, respondent has effectively waived the challenge he raises in this appeal. See *People v. Dunlap*, 2013 IL App (4th) 110892, ¶ 12. We find no error.

¶ 40 C. Fines Assessed

¶ 41 Respondent contends the fees and fines imposed by the circuit clerk must be vacated because the clerk is not authorized to impose the same in juvenile delinquency proceedings. The State concedes error and we accept the State's concession. There is no authority for imposing fines against juveniles in delinquency proceedings, as dispositions in such cases are not convictions, nor may juveniles be placed on supervision so as to qualify for the imposition of fines or fees. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 97; *In re Veronica C.*, 239 Ill. 2d 134, 148 (2010); *In re Davontay A.*, 2013 IL App (2d) 120347, ¶ 26.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we vacate the fines and fees imposed against respondent upon the trial court's disposition of delinquency. We otherwise affirm the court's judgment.

¶ 44 Affirmed in part and vacated in part.