2014 IL App (4th) 130863-U

NO. 4-13-0863

FILED
February 26, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MATTHEW P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Mason County
v.	)	No. 12JD55
MATTHEW P.,	)	
Respondent-Appellant.	)	Honorable
	)	Scott J. Butler,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The fact respondent's delinquency petition was signed by two police officers and not the State's Attorney did not deprive the trial court of subject matter jurisdiction.

¶ 2 Under the circumstances of this case, respondent's failure to raise a potential conflict with the State's Attorney due to his prior representation of respondent forfeited the issue for review.

¶ 3 Even if the admission of alleged other crimes evidence was error, reversal is not warranted under the plain-error doctrine where respondent's case was decided by the trial court, which expressly limited its consideration of the evidence to the victim's state of mind.

¶ 4 In December 2012, the State filed a petition for adjudication of wardship, alleging respondent, Matthew P. (born in 1997), was a delinquent minor because he committed one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)) and one count of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(ii) (West 2012)). After an April 2013 trial, the

Mason County circuit court found respondent guilty of the offenses charged in the petition. At the September 2013 sentencing hearing, the court made respondent a ward of the court and sentenced him to 30 days in a youth home and 5 years' probation.

¶ 5 Respondent appeals, asserting (1) the trial court lacked subject matter jurisdiction over the proceedings because the State's Attorney did not file the wardship petition, (2) the State's Attorney represented the State under a *per se* and actual conflict of interest because he had previously defended respondent in a case involving similar accusations and presented evidence of the prior incident at respondent's trial in this case, and (3) respondent was deprived of a fair trial by the evidence of his alleged prior crime because he had no notice of the State's intent to use such evidence and the prejudicial effect of that evidence substantially outweighed its probative value. We affirm.

¶ 6 I. BACKGROUND

¶ 7 The December 4, 2012, petition for adjudication of wardship was sworn to and signed by Officer Jeremiah Hindahl and Officer Kevin Noble, chief of police, and lists Hindahl as the petitioner. The petition asserted respondent was a delinquent minor because he committed the offenses of criminal sexual assault and aggravated criminal sexual abuse on September 8, 2012, and the victim was M.N. The record does not state who filed the petition, but the docket sheet indicates the "notice of rights" document was filed with the petition. The notice of rights document was signed by Kirsten Miller as Mason County State's Attorney.

¶ 8 At the first status hearing, respondent moved for a substitution of judge, noting the same judge had previously made findings of fact adverse to respondent in a civil, no-contact proceeding brought by M.N. After the trial court granted the motion for substitution, the new Mason County State's Attorney, Roger Thomson, announced he had represented respondent on a

prior no-contact petition, involving a different female. Thomson further stated the following: "And it is my understanding none of that information would be admissible in evidence against [respondent], nor do I know of anything I learned through representing him in that matter that would be able to be used or useful against him." The court declined to address the issue, noting it was a matter for the new judge and respondent or his counsel could file a motion for substitution. None was filed.

¶ 9 At respondent's April 22, 2013, trial, the only testimony in the State's case in chief was that of the victim, M.N. M.N. testified that, on September 8, 2012, at around 6 p.m., she went to Havana's Octoberfest to meet three friends. She ended up leaving those three friends and started hanging out with respondent, N.P., and friends from Petersburg, Illinois. M.N. had known respondent since fourth grade and considered him a friend. Between 7 p.m. and 8 p.m., the group left Octoberfest and started walking around. After around 30 minutes of walking, the group decided to play "ding dong ditching," where they would ring a doorbell and then run away. After the first doorbell was rung, respondent grabbed M.N. by the arm and started running very forcefully. They ran two to three city blocks and were separated from the rest of the group. M.N. and respondent then started walking down an alley and were talking about football. When things got quiet, respondent forcefully pushed on M.N.'s shoulder, causing her to fall down a slope. Respondent then got on top of M.N., with his legs pinning hers and his hands on her shoulders. M.N. told him multiple times to get off her. Respondent tried to take her shirt off but could not. He then tried taking M.N.'s jeans off her. After respondent unbuttoned and unzipped M.N.'s jeans, he stuck one of his hands down her underwear and penetrated her vagina with his finger two to three times. M.N. was able to kick him off and started running. As M.N. approached the old gym and New Central School, she saw the people from the group that had

been walking around. When she was about a half of a block from the group, respondent caught up with her and kept asking her if she was mad. Respondent also indicated that was how he got in trouble the "last time." M.N. did not respond to respondent's questions and did not stop or talk to anyone from the group. M.N. believed she and respondent had been away from the group for about 30 minutes. M.N. headed back to Octoberfest and saw her friends N.W. and Z.H. in front of the courthouse steps. At that time, she was crying very hard and could barely talk. She approached N.W. and Z.H. but did not want to tell them what had happened because "[s]tuff" had happened between respondent and another girl and the girl was bullied. (Over respondent's substantiation and foundation objections, the trial court allowed M.N.'s testimony as to why she did not want to tell about the incident to show M.N.'s emotional state.) M.N. told Z.H. and N.W. respondent had tried "doing stuff" with her and she wanted to find J.T., her ex-boyfriend.

¶ 10 Thereafter, M.N. called J.T. and asked him to meet her at the bank across from the courthouse. M.N. told J.T. the following: respondent had put his hands down her pants, she now wanted to go home, and not to tell anyone. M.N. testified she was scared and still crying while talking to J.T. Despite her mother being at Octoberfest, M.N. had J.T. walk her home. M.N. also explained she did not want anyone to know because she did not want to go to court or be bullied. She just wanted to move on and forget about it. M.N. noted the bullying of the other girl had taken place the previous year when she and respondent were in eighth grade. The rumor around the school was respondent had raped the girl. M.N. had witnessed the other students, who now attended her high school, yell at the girl and call her names in the school hallways, throw stuff at her, threaten to beat her up, and put sticky notes on her locker.

¶ 11 The next day, M.N. started receiving Facebook messages from respondent asking if she was mad at him and wondering why he had not heard from her. At one point, he stated the

following: "Seriously tell me what is wrong. I need to know. This is what happened last time and it is scaring me. Just tell me why you are mad and I can try to fix it. I have not told anyone either." An exhibit of Facebook messages between the parties showed M.N. responded on the evening of September 9, 2012, with the following: "I was sleeping. Shhh. Lol" and "Bye now." However, M.N. did not recall making the messages. Additionally, M.N. testified she saw respondent and his family at McDonald's a week after the incident but did not approach them. M.N. talked to the police about 10 days after the incident.

¶ 12 After M.N.'s testimony, the following dialogue took place:

> "[RESPONDENT'S COUNSEL]: Well, if I may. At this point I think I need to make a record on this because I didn't realize there was even going to come up or I would have filed a motion before. I don't know how I guess I will have to decide how I am going to do at the proper time. This testimony about past stuff, I didn't realize it was coming in, this past stuff occurred. Mr. Thomson was my client's attorney during that. I don't know that all transpired with him, so I guess premature. I will wait until all of the evidence is in. I want to make sure everything is brought up to the Court on this and some of the hearsay statements.
>
> THE COURT: Nothing came to me as substantive evidence. I am taking this for what is worth and not a whole lot that the witness didn't report this immediately and why she didn't report it immediately and now she is saying a bunch of rumors going around the school. And of course you got in that whatever

these might have been, there was a recantation of those. And I am taking it strictly as minimal evidence to hat her state of mind was. Nothing in regard to substantive.

[RESPONDENT'S COUNSEL]: With that I am ready to proceed." (As written in the transcript of proceedings with missing letters and words and grammatical errors.)

¶ 13 Respondent testified on his own behalf and presented the testimony of his friends, D.R. and G.M., and his mother, R.N. Respondent testified he and M.N. were very good friends and often texted and e-mailed each other. According to him, M.N. followed him away from the house after the group had rung the doorbell. They ended up separated from the group about a block away from the old gym. They began looking for the group and talking about football. As they were talking, M.N. asked respondent if he would kiss her, and they kissed. Respondent denied touching her inappropriately during the kiss. They walked back together and rejoined the group at the old gym. Respondent estimated they were apart from the group for 5 to 10 minutes. After they had rejoined the group, M.N. asked respondent to homecoming. Respondent denied doing the things M.N. testified he had done. Respondent also testified the girl in the other incident was his girlfriend before she made the accusations against respondent that she later recanted.

¶ 14 D.R., who had known respondent since kindergarten, testified the group went out from 9:15 p.m. to 9:35 p.m. that night and M.N. and respondent were only gone 5 to 10 minutes. According to D.R., when M.N. and respondent returned, they were walking together and both seemed happy. M.N. stopped with the group and talked for 10 minutes. She was not crying and her clothes were not in disarray. D.R. also stated M.N. asked respondent to go to homecoming.

¶ 15 G.M., who had been friends with respondent for a couple of years, also testified M.N. and respondent were only gone 5 to 10 minutes, M.N. was not upset when she returned to the group, and M.N. asked respondent to homecoming after she had rejoined the group. He also testified M.N. left the group 10 minutes after rejoining it and did not appear to be upset or crying at that time. After M.N. left, respondent told G.M. that he and M.N. had "made out" while they were gone.

¶ 16 Respondent's mother testified respondent was home at 10 p.m. on the night of September 8, 2012. While respondent was mad that night because he could not return to Octoberfest, respondent did not appear nervous or upset. Respondent's mother also testified that, about a week later, she, her husband, respondent, and his sisters went to McDonald's restaurant after a football game. M.N. was already in McDonald's when they entered. She said "hi" to respondent, and respondent and M.N. began talking. After respondent's family had sat down to eat, M.N. came to their table and talked with respondent's sisters.

¶ 17 In rebuttal, the State presented the testimony of N.W., Z.H., J.T., and N.P. N.W. testified that, between 9:45 p.m. and 10:30 p.m. on September 8, 2012, he and Z.H. walked up to M.N. as she was sitting down on the courthouse stairs. M.N. was crying and appeared upset. Z.H. testified M.N. approached him and she was crying and upset. Additionally, Jesse testified M.N. was very sad and crying when he met with her at around 10 p.m. on September 8, 2012.

¶ 18 N.P. testified M.N. and respondent were gone about 30 minutes, maybe less than that, after the group rang the first doorbell. After N.P. returned to the old gym, she saw respondent return to the group first. When respondent got back, M.N. was on the opposite sidewalk walking back to Octoberfest. N.P. did not hear M.N. say anything to respondent. N.P. yelled M.N.'s name, but she did not say anything or look in N.P.'s direction. N.P. asked

respondent where M.N. was going, and "he said going back to her mom." According to N.P., M.N. never returned to the group.

¶ 19 At the trial's conclusion, the trial court found respondent had committed the two offenses alleged in the petition. The court explained it went back and forth in respondent's case. It believed the victim but started having doubts after hearing the defense witnesses. However, the court found N.P.'s testimony in rebuttal believable, resulting in it disbelieving the defense testimony.

¶ 20 On September 23, 2013, the trial court held the sentencing hearing. After considering the evidence, the court made respondent a ward of the court and sentenced him to 30 days in a youth home and 5 years' probation. On October 1, 2013, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). See Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001) (providing the rules applicable to criminal cases govern appeals from final judgments in delinquent-minor proceedings, unless specifically provided otherwise). A sentencing order in a juvenile delinquency proceeding is a final order (see *In re Justin L.V.*, 377 Ill. App. 3d 1073, 1079, 882 N.E.2d 621, 626 (2007)), and thus we have jurisdiction over this appeal under Illinois Supreme Court Rule 660(a) (eff. Oct. 1, 2001).

¶ 21 II. ANALYSIS

¶ 22 A. Subject Matter Jurisdiction

¶ 23 For the first time on appeal, respondent contends the trial court lacked subject matter jurisdiction in this case because, contrary to section 5-502(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-520(1) (West 2012)), someone other than the State's Attorney filed the wardship petition. Despite respondent's failure to raise this argument in the trial court, he has not forfeited this issue. See *Belleville Toyota, Inc. v. Toyota Motor Sales,*

U.S.A., Inc., 199 Ill. 2d 325, 333-334, 770 N.E.2d 177, 184 (2002) (noting the issue of subject matter jurisdiction is not subject to waiver and may be raised at any time). The State asserts the fact the petition was not signed by the State's Attorney does not mean the trial court lacked subject matter jurisdiction of the petition.

¶ 24 Our supreme court has defined "subject matter jurisdiction as a court's power to hear and determine cases of the general class to which the proceeding in question belongs." (Internal quotation marks omitted.) *In re Luis R.*, 239 Ill. 2d 295, 300, 941 N.E.2d 136, 140 (2010) (quoting *In re M.W.*, 232 Ill. 2d 408, 415, 905 N.E.2d 757, 763 (2009)). Under section 9 of article VI of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, § 9), Illinois trial courts possess subject matter jurisdiction over all "justiciable matters" brought before them, except in a few limited situations not present here. *Luis R.*, 239 Ill. 2d at 301, 941 N.E.2d at 140. Our supreme court has defined a "justiciable matter" as follows:

> "Generally speaking, a justiciable matter is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests. [Citation.] To invoke a circuit court's subject matter jurisdiction, a petition or complaint need only alleg[e] the existence of a justiciable matter. [Citation.] Indeed, even a defectively stated claim is sufficient to invoke the court's subject matter jurisdiction, as [s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings. [Citation.] In other words, the *only* consideration is whether the alleged claim falls within the general class of cases

> that the court has the inherent power to hear and determine. If it does, then subject matter jurisdiction is present." (Emphasis in original; internal quotation marks omitted.) *Luis R.*, 239 Ill. 2d at 301, 941 N.E.2d at 140.

¶ 25 Respondent asserts a justiciable matter does not exist in this case because section 5-520(1) of the Juvenile Court Act (705 ILCS 5/5-520(1) (West 2012)) requires the State's Attorney to file a delinquency petition and his petition was signed by two police officers. Section 5-520(1) of the Juvenile Court Act (705 ILCS 5/5-520(1) (West 2012)) specifically states, in pertinent part, the following: "The State's Attorney may *file*, or the court on its own motion may direct the filing through the State's Attorney of, a petition in respect to a minor under this Act." (Emphasis added.) We note section 5-520(1) uses the term "file," and not the term "signed" as in section 111-3(b) of Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(b) (West 2012)), which requires, in pertinent part, "an information shall be *signed* by the State's Attorney and sworn to by him or another." (Emphasis added.) When construing a statute, the court's objective is "to ascertain and give effect to the intent of the legislature, bearing in mind that the best evidence of such intent is the statutory language, given its plain and ordinary meaning." *People v. Johnson*, 2013 IL 114639, ¶ 9, 995 N.E.2d 986. In doing so, we follow the following principles:

> "Where the statutory language is clear and unambiguous, we will apply the statute as written. [Citation.] When statutory terms are undefined, we presume the legislature intended the terms to have their popularly understood meaning. [Citation.] Moreover, if a term has a settled legal meaning, the courts will normally infer that

the legislature intended to incorporate the established meaning.

[Citation.]" *Johnson*, 2013 IL 114639, ¶ 9, 995 N.E.2d 986.

"The verb 'file' means '[t]o deliver a legal document to the court clerk or record custodian for placement into the official record.' " *People v. Perez*, 2013 IL App (2d) 110306, ¶ 36, 988 N.E.2d 131 (quoting Black's Law Dictionary 642 (7th ed. 1999)).

¶ 26 Citing Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) and *Bachmann v. Kent*, 293 Ill. App. 3d 1078, 1083-84, 689 N.E.2d 171, 175 (1997), respondent also asserts in his reply brief an attorney must sign a delinquency petition for the court to obtain subject matter jurisdiction as it is the person that signs the document which controls the question. However, both the case and the rule cited address general civil cases and not juvenile delinquency cases. Respondent has provided no authority Rule 137 applies to delinquency proceedings. He also does not explain how Rule 137 would control over the plain language of section 5-520(1) of the Juvenile Court Act (705 ILCS 405/5-520(1) (West 2012)). Accordingly, respondent's argument does not affect our interpretation of section 5-520(1).

¶ 27 In this case, while respondent's delinquency petition was signed by two police officers, the record suggests it was delivered to the circuit clerk's office by the State's Attorney because the notice of rights that was filed with the petition was signed by the Mason County State's Attorney. Regardless, respondent has not shown the petition was not *filed* by the State's Attorney. Accordingly, we find respondent's delinquency petition was compliant with section 5-520(1)'s requirements. Thus, we need not determine whether noncompliance with section 5-520(1) deprives the trial court of subject matter jurisdiction. Here, respondent has failed to show the trial court lacked subject matter jurisdiction of his wardship petition.

¶ 28 B. Conflict of Interest

¶ 29 Respondent next asserts the State's Attorney labored under a *per se* and actual conflict of interest in respondent's case because the State's Attorney had previously represented respondent in a case involving similar accusations. Citing *People v. Price*, 196 Ill. App. 3d 321, 553 N.E.2d 760 (1990), the State first asserts respondent has forfeited this argument based on his failure to raise the issue in the trial court and other circumstance of this case. Since our supreme court has instructed us to begin our review of a case by determining whether any issues have been forfeited (see *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008)), we first address the State's forfeiture argument.

¶ 30 In *Price*, 196 Ill. App. 3d at 325, 553 N.E.2d at 762, the Third District did not find a conflict of interest between the defendant and the State's Attorney, but the court went on to note the following:

> "[W]e observe the record establishes defendant knew of Lyons' assuming the State's Attorney's position and that defendant was hopeful this would be beneficial to him. We do not believe a defendant, cognizant of a possible conflict, should be allowed to await the outcome of a proceeding to determine, in his own mind, if the conflict was helpful and, then, if displeased, be allowed to overturn the proceedings based on this conflict. Accordingly, if a conflict had existed, which we have determined did not, then defendant by this conduct would have waived any assertion of error due to it."

¶ 31 Here, at the first status hearing in this case, the State's Attorney stated for the record he had previously represented respondent on a petition for no contact involving a different

female. He also noted it was his understanding none of that information would be admissible as evidence against respondent and nothing he learned through representing him in the prior matter would be used or useful against respondent. The trial court declined to address the issue, indicating it was a matter for the new judge and that respondent's counsel or respondent could file a motion for substitution. Neither respondent nor his counsel filed a motion for the substitution of the State's Attorney before respondent's trial. At respondent's trial, the victim testified and referred to respondent's prior act with the other girl. When her testimony concluded, respondent's counsel stated he wanted to make a record that he did not think the "past stuff" was coming in and pointed out the State's Attorney had been respondent's attorney in a case regarding the prior act. The court responded nothing came in as substantive evidence, and it was "taking it strictly as minimal evidence as to [w]hat her state of mind was." Respondent's counsel stated, "With that I am ready to proceed." No objection was made to the State's Attorney remaining on the case.

¶ 32 Thus, the State's Attorney's role in respondent's prior case was known at the start of the proceedings in this case, and respondent never objected to the State's Attorney's participation in the proceedings, even when the State's Attorney presented testimony allegedly related to the prior acts. As in *Price*, respondent was aware during the entire proceedings a potential conflict existed with the State's Attorney. Further, the first trial judge noted what motion to file to address the matter, and none was filed. When the prior matter was mentioned in testimony by the State's witness, the possible ramifications of the State's Attorney's prior representation were known. Despite that knowledge, respondent's counsel still did not object to the State's Attorney being on his case and continued with the proceedings. While the record does not reveal why respondent chose not to pursue the conflict in the trial court, it appears

respondent was waiting to see the results of the proceedings before raising the potential conflict. Accordingly, we find respondent's conduct in the trial court has waived, by his knowing acquiescence, his right to raise any error resulting from the alleged conflict. Thus, we decline to address this issue on the merits.

¶ 33 C. Testimony Regarding a Prior Bad Act

¶ 34 Last, respondent asserts he was deprived of a fair adjudicatory hearing by the State's introduction of evidence of a similar prior bad act without proper notice and contrary to the State's Attorney's prehearing statements. During oral arguments, respondent's counsel recognized the challenged testimony was not prior-bad-act evidence and dropped respondent's Illinois Rule of Evidence 404(c) (eff. Jan. 1, 2011) argument. Respondent claims prosecutorial misconduct and contends the testimony should not have been allowed because it was too prejudicial. The State asserts respondent has forfeited this issue by failing to raise it in the trial court. See *In re W.C.*, 167 Ill. 2d 307, 320, 657 N.E.2d 908, 915 (1995) (noting that, in delinquency proceedings, claimed errors are generally forfeited for the failure to first raise them in the trial court). At oral arguments, respondent's counsel conceded the issue was not properly preserved and requested we review it under the plain-error doctrine (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)). Unlike the conflict-of-interest issue where respondent's counsel never made an objection, respondent's counsel did make an initial objection to the challenged testimony, but the issue is not preserved because the objection was on other grounds. Accordingly, we will review this issue for plain error.

¶ 35 We begin our plain-error analysis by first determining whether any error occurred at all. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773. Additionally, a reviewing court will not notice an unpreserved error under Rule 615(a) unless that error is " 'clear or obvious.' " *M.W.*,

232 Ill. 2d at 431, 905 N.E.2d at 773. If the reviewing court finds such an error, it will grant relief in either of two following circumstances:

> "(1) if the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) if the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)).

The defendant bears the burden of persuasion on both questions of (1) whether an error exists and (2) whether the respondent is entitled to relief as a result of the unpreserved error. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773.

¶ 36 Respondent contends the testimony of rumors related to his alleged actions with another girl should have been excluded because the testimony was too prejudicial as it created an inference that, because he had been alleged of committing a similar act, he was more likely to have committed the act at issue. He also argues the testimony bolstered M.N.'s credibility.

¶ 37 As stated, the trial court allowed the testimony under an exception to the hearsay rule. When reviewing such evidentiary rulings, we give deference to the trial court because it must consider a number of circumstances that bear on that issue, including questions of reliability and prejudice. See *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001).

¶ 38 Here, the trial court clearly stated it would consider the challenge testimony "strictly as minimal evidence as to [w]hat [the victim's] state of mind was" and not substantively.

The record contains no evidence that, when the court decided this case, it considered the evidence outside its declared parameters. Further, the court explained its decision came down to the testimony of N.P. and made no mention of respondent's alleged prior activities with a different girl. Thus, we are confident that, even if some of the testimony regarding the alleged other incident was improper, the error neither threatened to tip the scales of justice against respondent nor affected the fairness of respondent's trial. Accordingly, respondent has not established a reversible error.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the Mason County circuit court's judgment.

¶ 41 Affirmed.