IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. MICHAEL J. MORRIS, Appellant.	)))))))))	No. 67495-1-I UNPUBLISHED OPINION FILED: February 11, 2013

Schindler, J. — A jury convicted Michael J. Morris of assault in the first degree of his six-week-old baby A.M. Morris contends insufficient evidence supports the conviction, and the no-contact order with his two children, A.M. and T.M., violated his constitutional right to parent. We affirm the conviction but remand for resentencing to address the no-contact orders and the condition requiring a psychological evaluation.

FACTS

Michael J. Morris and Brittany Morris are the parents of T.M. and A.M. A.M was born on April 15, 2009. T.M. is a year and a half older than A.M.

The family lived in Brier. Morris worked for the Navy. Brittany stayed home and took care of the children.[1]

[1] We refer to the parties by their first names for purposes of clarity and mean no disrespect by doing so.

On May 29, 2009, Brittany left A.M. with her friend and neighbor Cheralyn Orkiz in the afternoon while she took T.M. to the doctor. Cheralyn testified that while she took care of A.M., the baby acted normally. Brittany also testified that after she picked A.M. up from Cheralyn a few hours later, A.M. was acting normally.

At about 7:00 p.m. that night, Brittany took T.M. to a doctor's appointment at Stevens Hospital and left A.M. with Morris. Brittany said that when she left, Morris was sitting on the couch starting to feed A.M. from a bottle.

Approximately ten minutes after Brittany left, Morris ran with A.M. in his arms across the street to Cheralyn's house. Morris told Cheralyn's husband Cristian Orkiz that something was wrong with A.M., that A.M. had suddenly started vomiting, and he needed a ride to the hospital. Cristian testified that during the 5- to 10-minute drive to the hospital, A.M. was "gasping" and her breathing "was going down gradually." Brittany met Morris when he arrived at the hospital. Brittany said that A.M.'s skin was blue, and the baby was limp and not breathing.

Emergency room physician Dr. Raul Borromeo treated A.M. Dr. Borromeo said that A.M. was "very lethargic" with a "decreased level of consciousness," A.M.'s breathing was shallow, and the baby's lungs did not sound clear. Dr. Borromeo said that A.M.'s heart rate dropped from a normal heart rate for an infant of 178 beats per minute to 120 beats per minute. Dr. Borromeo testified that there was a bruise on A.M.'s left jaw and the fontanel at the top of the baby's head was "full." Brittany told Dr. Borromeo that when she left the child with Morris, A.M. did not have a bruise.

Dr. Borromeo inserted a breathing tube in A.M.'s trachea. A CT[2] scan showed

[2] (Computerized tomography.)

possible bleeding in the baby's brain. Dr. Borromeo immediately transferred A.M. to Harborview Medical Center and then contacted Child Protective Services (CPS).

A.M. was admitted to the intensive care unit (ICU) at Harborview. A team of doctors treated A.M. at Harborview. The doctors removed the breathing tube because A.M. seemed capable of breathing without assistance. But after removing the tube, because A.M. started having seizures, the doctors reinserted the breathing tube. An ophthalmologist examined A.M. and found severe bleeding in both of the baby's retinas.

The CPS social workers went to Morris's home that evening to check on T.M. Morris told the social workers that A.M. choked while he was feeding her with the bottle. Morris said that he panicked and ran across the street to the Orkiz house. Morris also told the social workers that he thought the bruise on A.M.'s jaw was from the pacifier popping out of her mouth.

On May 31, Dr. Kenneth Feldman examined A.M. Dr. Feldman said that A.M. was not "responding as a normal child would respond at six weeks of age." Dr. Feldman testified that A.M. had blood in the white of the left eye and "a tremendous amount of bleeding within the retina," a bruise under the chin, and the fontanel was "quite full and quite tense," suggesting there was "extra pressure inside [A.M.'s] head." Dr. Feldman said that he made "a very strong" preliminary diagnosis of abusive trauma, and "[t]he findings we were seeing you see in virtually no other situation."

At about 6:30 p.m. on May 31, A.M. was transferred to Seattle Children's Hospital (Children's). An MRI[3] confirmed there was bleeding in the baby's brain and

[3] (Magnetic resonance imaging.)

that areas of the brain were "quite damaged." Dr. Feldman testified that the brain tissue was injured "because of shortage of oxygen or blood supply or you can get it in the context of trauma."

While at Children's, A.M.'s seizures became more frequent. A.M. repeatedly stopped breathing and required oxygen. The attending physician, Dr. John McGuire, reinserted a breathing tube.

Pediatric ophthalmologist Dr. Erin Herlihy examined A.M. on June 1. Dr. Herlihy found severe bleeding in the baby's eyes. The layers of the retinas were "disconnected by blood," and the eyes showed no electrical activity and signs of "severe traumatic injury." By June 2, A.M. was partially paralyzed on the right side.

City of Brier Police Officer Patrick Murphy interviewed Morris on June 2. Morris told Officer Murphy that he ran across the street without supporting A.M.'s head and her head bobbed back and forth. Morris then told Officer Murphy he accidentally dropped A.M. in his lap and "jogged" the baby's head. After Officer Murphy asked Morris to provide a written statement, Morris told the officer he remembered that on May 29, he shook A.M. Morris told Officer Murphy he shook A.M. harder the second time. Officer Murphy testified that Morris "told me that he held [A.M.] out, straight out from the chest, and shook her for five seconds. She wasn't breathing. So he shook her again for five seconds."

Sometime before June 12, Morris sent a text message to Brittany. Morris admitted shaking A.M. and apologized, "I did shake her after she stopped breathing, but she would not respond to me. Am I a bad parent? I am so sorry, Baby. I forgot.

This is all my fault."

The State charged Morris with assault of a child in the first degree. The State alleged as an aggravating factor that Morris knew or should have known A.M. was particularly vulnerable and incapable of resistance.[4]

The State called a number of witnesses to testify at trial, including Dr. McGuire, Dr. Borromeo, Dr. Feldman, Dr. Herlihy, Officer Murphy, the CPS social workers, a Harborview social worker, Cristian and Cheralyn Orkiz, and Brittany Morris. The defense theory at trial was that an acceleration/deceleration force did not cause A.M.'s injuries.

Dr. McGuire testified A.M. was admitted to the ICU at Children's because the baby needed close monitoring of basic vital functions, breathing, circulation, and neurological and brain function. Dr. McGuire said he reinserted the breathing tube after determining A.M.'s symptoms "represent[ed] a pattern of critical illness and concern that this baby is not likely to be able to maintain adequate breathing for a prolonged period."

Dr. Feldman testified that the most likely cause of the injuries to A.M. were from "abusive head trauma" resulting from "whiplash forces" when the baby's head moved in a rapid arc and then abruptly decelerated. Dr. Feldman said that A.M. suffered brain damage that resulted in significant developmental delays.

Dr. Herlihy testified that "[t]o cause hemorrhages multi-layered like this in the retina," there must have been an "acceleration/deceleration force, something that would cause a shearing type of injury to tear blood vessels."

[4] The State also alleged A.M. was a family member as defined by RCW 10.99.020(3).

Dr. Steven Gabaeff, an emergency room physician and forensic practitioner; and Dr. Patrick Barnes, a pediatric radiologist and neuroradiologist, testified on behalf of the defense. Dr. Gabaeff testified that the most likely cause of the injury to the brain was viral meningitis. Dr. Barnes testified the most likely cause of the damage to A.M.'s brain was a lack of oxygen or lack of blood flow, and the next most likely cause was "a bleeding or a clotting problem," infection, or "accidental or nonaccidental injury."

Morris testified he tried unsuccessfully to burp A.M. about halfway through the bottle. Morris said that when he tried to burp A.M. again, she vomited from the nose and mouth. Morris testified that after A.M. went limp and stopped breathing, he shook the baby.

> A. I laid [A.M.] on the couch and I checked for what they call ABCs, airway, breathing and circulation, and she had a pulse, but she just -- she wasn't breathing. And I tried to clear her airway, tilting the head back, and I blew in her mouth to see if it worked and nothing worked. And that's when I picked her up and I shook her to try to respond to me.
> Q. And once you did that, what happened?
> A. Nothing happened. She wouldn't respond.
> Q. And when you say she wouldn't respond, what do you mean?
> A. She would -- I shook her once. She wouldn't do anything. She didn't -- eyes flutter. I didn't hear anything. She just -- I could explain it in so many words how I felt at that minute, how scared I got, and it just wouldn't be enough.
> Q. So then what did you do?
> A. I shook her again, and I shook her harder.

The jury convicted Morris of assault of a child in the first degree. In a special verdict form, the jury found that Morris knew or should have known A.M. was particularly vulnerable or incapable of resistance.

The court sentenced Morris to an exceptional sentence of 147 months of

confinement and 36 months of community custody. As a condition of community custody, the court required Morris to "participate in [a] psychological evaluation" and "fully comply with all recommended treatment." The court ordered Morris to have "no contact with minors unless supervised by an adult approved by CCO [(community corrections officer)]," and imposed a no-contact order with A.M. for life "unless permitted by a court ordered parenting plan."

ANALYSIS

Sufficiency of the Evidence

Morris argues the State did not prove the essential elements of the crime of assault of a child in the first degree. In specific, Morris asserts the State did not prove A.M. suffered great bodily harm or that Morris acted recklessly.

The State must prove each essential element of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Oster, 147 Wn.2d 141, 146, 52 P.3d 26 (2002). In deciding whether sufficient evidence supports the conviction, we must view the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence. Salinas, 119 Wn.2d at 201. "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201. We defer to the trier of fact on "issues of

conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), abrogated in part on other grounds by Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Circumstantial and direct evidence are accorded equal weight. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

To convict Morris of assault of a child in the first degree, the State had to prove beyond a reasonable doubt that Morris (1) intentionally assaulted A.M. and (2) recklessly inflicted great bodily harm. RCW 9A.36.120(1)(b).[5] Jury Instruction No. 5 states:

> To convict the defendant of the crime of assault of a child in the first degree, each of the following elements must be proved beyond a reasonable doubt:
>
> (1) That on or about the 29th day of May, 2009, the defendant intentionally assaulted A.M. and recklessly inflicted great bodily harm;
>
> (2) That the defendant was eighteen years of age or older and A.M. was under the age of thirteen; and
>
> (3) That this act occurred in the State of Washington.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
>
> On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

To prove "great bodily harm," the State had to prove A.M. suffered bodily injury

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[5] RCW 9A.36.120(1) provides:

> A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:
>
> (a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or
>
> (b) Intentionally assaults the child and either:
>
> (i) Recklessly inflicts great bodily harm; or
>
> (ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

that "creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ." RCW 9A.04.110(4)(c). Jury Instruction No. 10 defines "great bodily harm" as follows:

> Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

Morris argues the State did not prove "great bodily harm" because the evidence was insufficient to prove a significant permanent loss or impairment of the function of any bodily part or organ. In support of his argument, Morris asserts that Dr. Feldman only testified that "[t]he most he could say was that he was worried that a permanent brain injury was likely," and points out that Dr. Feldman did not use the word "significant" to describe the impairment to A.M.[6] Morris misstates and takes Dr. Feldman's testimony out of context.

Dr. Feldman testified extensively about the significant brain injuries that A.M. suffered:

> [T]he MRI . . . showed areas of the brain that were quite damaged. They had what we'd call hypoxic ischemic changes, meaning it's brain tissue that's injured because of shortage of oxygen or blood supply or you can get it in the context of trauma, also.
>
> . . . .
>
> Q. . . . . So what is hypoxia ischemia?
>
> A. Well, hypoxia is lack of oxygen. Ischemia is lack of blood. So, basically, we have an area of the brain that's damaged and is

[6] For the first time on appeal, Morris also attacks Dr. Feldman's testimony on the basis that he did not express his opinions regarding A.M.'s impairment to a reasonable degree of medical certainty. Morris did not object below on this basis and has waived any argument that the State failed to lay a proper foundation for admitting Dr. Feldman's opinion. State v. Carlson, 61 Wn. App. 865, 869, 812 P.2d 536 (1991); see also Estate of Stalkup v. Vancouver Clinic, Inc., PS, 145 Wn. App. 572, 584, 187 P.3d 291 (2008) (party who fails to object that an expert did not testify to reasonable degree of medical certainty waived argument on appeal).

having problems with its nutrients.

. . . .

Q. What is it in this MRI that we're looking at that is of importance?

A. This is one of the sequences that tends to most vividly show those hypoxic ischemic changes in the brain. And normal brain tissue would look like up front in these images, but all areas where it's whiter are areas where the brain is very sick and unhappy.

Q. And when you say sick and unhappy, that's not a medical term, I assume?

A. Well, those nerve cells are damaged and we won't know for a while whether they're damaged to the point that they can recover or not.

Q. Anything else that we should know as far as these images from the MRI that are of importance to you with regard to what you were looking for here?

A. I think the sequence, that's the important message. That there's a lot of areas where the brain substance itself is severely injured.

Dr. Feldman testified that the brain injuries A.M. suffered would result in permanent impairment:

> Whenever we see changes in the substance of the brain on the MRI such as you saw, whenever we see a child like this who has convulsions who has a very low level of consciousness to start with, then there's likelihood that child will have permanent brain injury. By the time [A.M.] was ready to leave the hospital, she still wasn't quite safe to eat on her own. She hadn't developed enough coordination again to do that. She still had a little bit of that paralysis on the right side. So all of those things left me very worried that she was likely to sustain some permanent brain damage from that.
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> . . . .
>
> Q . . . . Did you get a chance to review [A.M.'s] records [after she left the hospital] to determine whether, in fact, your opinion in this case about her future was well founded?
>
> A Yes.
>
> Q Okay. And what did you determine?
>
> A I determined that [A.M.] actually did a little better than I suspected she might do, but <u>she still is showing significant developmental delays in her motor function, in her language function</u>. She's doing a lot better in her vision than we had anticipated. She had a seizure disorder for a while, but it's my understanding that that's doing better now.
>
> I think the way she's progressed, she's going to be a much more functional member of society than I thought she might have

been but will still be an impaired member of society.[7]

Viewing the evidence and reasonable inferences in the light most favorable to the State, sufficient evidence supports the jury finding that A.M. suffered significant

[7] (Emphases added.) Brittany also testified that at the time of the trial, A.M. was still receiving treatment for developmental delays.

permanent loss or impairment of the function of a bodily part or organ.[8]

In the alternative, Morris asserts the State did not prove he acted recklessly. Morris argues the State did not show he would have known that shaking A.M. would result in a substantial risk of great bodily injury.

"A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation." RCW 9A.08.010(1)(c). Jury Instruction No. 8 defines "reckless" as follows:

> A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that great bodily harm may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.
>
> When recklessness is required to establish an element of a crime, the element is also established if a person acts intentionally or knowingly.[9]

Dr. Feldman testified that only "very high levels" of acceleration and deceleration would cause A.M.'s injuries.

> Q . . . . So, I mean, do we have an idea of how much force it takes to cause this type of injury?
>
> A Well, nobody's gone out and tested actual babies to determine that. It's obviously inappropriate and not ethical. So everything is basically an estimate. I think it's fairly uniform that it really takes

[8] There was also evidence to support finding a probability of death. Dr. McGuire testified that A.M. was "critical[ly] ill[]" and he was "concern[ed] that this baby is not likely to be able to maintain adequate breathing for a prolonged period." Dr. Feldman also testified A.M. was "severely depressed neurologically, convulsing, [and] having trouble breathing."

[9] Jury Instruction No. 9 defines "knowledge" as follows:

> A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.
>
> If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

dramatic forces, very high levels of acceleration or deceleration to cause these injuries.
Q So we're talking about somebody really having to almost --
A Exert a lot of force on a child that any reasonable person watching what was happening would think, oh, my God, what's happening to that baby?

Dr. Herlihy compared the force necessary to cause the retinal bleeding A.M. suffered to falling off a tall building. Dr. Herlihy testified that "[i]n terms of retinal hemorrhages like [A.M.'s], it's severe head trauma, either from a shaking force or a fall off of a 13-story building."

Contrary to his argument on appeal, the testimony at trial also showed that Morris had taken care of A.M. before, that he knew it was important to handle A.M. carefully, and he knew how to perform CPR[10] on an infant. Morris testified, in pertinent part:

Q. How were you holding [A.M.] while you're feeding her?
A. Cradle her like this and a bottle in one hand and her head in my forearm and -- in between my forearm and upper arm.
Q. And then when you started burping her, how were you holding her?
A. Usually I'd put a towel or blanket over my shoulder and just lean her kind of on her stomach and pat her back.
Q. Is that what you did on this day?
A. I believe so.
Q. And then what happened?
A. She started throwing up and I noticed it really quick. And that's when I started -- that's when I paid attention. It wasn't just spitting it up. It started going out her mouth and out her nose at the same time.
Q. Is that different than normal?
A. Yes.
. . . .
A. I laid her on the couch and I checked for what they call ABCs, airway, breathing and circulation, and she had a pulse, but she just -- she wasn't breathing. And I tried to clear her airway, tilting the head back, and I blew in her mouth to see if it worked and nothing worked.

[10] (Cardiopulmonary resuscitation.)

Here, the evidence established Morris knew there was substantial risk that shaking A.M. could cause great bodily harm. Further, as in State v. Harris, 164 Wn. App. 377, 263 P.3d 1276 (2011), a "reasonable juror could find that [Morris] knew [A.M.] was young and fragile and that not handling [her] properly could result in serious injury." Harris, 164 Wn. App. at 391.

No-Contact Orders

Morris claims imposition of a no-contact order with A.M. and T.M. violates his fundamental constitutional right to parent.

The judgment and sentence prohibits Morris from having any contact with A.M. "for life . . . unless permitted by a court ordered parenting plan." The judgment and sentence states, in pertinent part:

> **NO CONTACT.**
> [X] The defendant shall not have contact with A.M. (D.O.B. 4/15/09)* . . . including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life . . . (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.
> *unless permitted by a court ordered parenting plan
> [X] A separate post conviction Domestic Violence No Contact Order, Anti-Harassment Order, or Sexual Assault Protection Order . . . is filed contemporaneously with this Judgment and Sentence.

As to T.M., the judgment and sentence prohibits Morris from having contact with minors "unless supervised by an adult."

> The defendant shall comply with the following crime-related prohibitions: no contact with minors unless supervised by an adult approved by CCO. Brittany Morris may not supervise contact.

The Sentencing Reform Act of 1981, chapter 9.94A RCW, authorizes the trial court to impose "crime-related prohibitions" as a condition of a sentence. RCW 9.94A.505(8). A "crime-related prohibition" prohibits "conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). We review the imposition of crime-related prohibitions for abuse of discretion. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010). A court abuses its discretion if it applies the wrong legal standard. Rainey, 168 Wn.2d at 375.

But where sentencing conditions interfere with a fundamental constitutional right, such as the right to parent, the extent to which a sentencing condition affects a constitutional right is subject to strict scrutiny. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). A sentencing condition that affects the fundamental right to parent must be "sensitively imposed" so that it is "reasonably necessary to accomplish the essential needs of the State and public order." Warren, 165 Wn.2d at 32.

In Rainey, the Washington State Supreme Court struck a lifetime no-contact order that prohibited a father from having contact with his child because the sentencing court did not articulate any reasonable necessity for the lifetime duration of that order. Rainey, 168 Wn.2d at 381-82. In reaching this decision, the court noted that the fact that the child was a victim of the crime was not in itself determinative as to whether the no-contact order was proper. "It would be inappropriate to conclude that, simply because [the child] was a victim of Rainey's crime, prohibiting all contact with her was reasonably necessary to serve the State's interest in her safety." Rainey, 168 Wn.2d at

378. Recognizing the "fact-specific nature of the inquiry," the court remanded to the trial court for resentencing so that the court could "address the parameters of the no-contact order under the 'reasonably necessary' standard." Rainey, 168 Wn.2d at 382.

Here, there is no question that the State has a compelling interest in protecting A.M. and preventing future harm to her. See Warren, 165 Wn.2d at 34. "The question is whether, on the facts of this case, prohibiting all contact with [a child], including indirect or supervised contact, is reasonably necessary to realize [a compelling State interest]." Rainey, 168 Wn.2d at 379.

Under the facts of this case, the court did not abuse its discretion by imposing a no-contact order with A.M. While the sentencing court made the lifetime no-contact order with A.M. subject to any court-ordered parenting plan, the provisions of a parenting plan are only in effect until the child reaches the age of majority.[11] Because the court did not articulate and address the reasons for a lifetime no-contact order, we remand for resentencing in order to address the duration of the no-contact order.[12]

We conclude the court did not abuse its discretion in prohibiting contact with T.M. unless supervised by an adult. RCW 9.94A.703(3)(b) (the court has authority to require an offender to not have direct or indirect contact with the victim of the crime or a specified class of individuals). However, if on remand the court conditions contact with A.M. subject to a parenting plan, the same exception should apply to T.M.

[11] Contrary to Morris's claim on appeal, the record shows the State informed the court that Brittany had filed for dissolution of the marriage.

[12] The State's sentencing memorandum recommends, without analysis, that the court impose "no contact with A.M. (as a condition of sentence and community custody)." Below, the State did not rely on A.M.'s vulnerability that resulted from her permanent neurological damage as a basis for the lifetime duration.

Psychological Evaluation

Morris contends the court erred in ordering him to obtain a psychological evaluation and follow treatment recommendations. Below, the prosecutor recommended parenting classes and counseling. On appeal, the State concedes the sentencing court should clarify the condition on remand. We accept the State's concession as well taken, and remand to determine whether the condition meets the statutory requirement for a finding that Morris has a mental health condition that contributed to his offense.

We affirm the jury conviction but remand for resentencing consistent with this opinion.[13]

WE CONCUR:

[13] The other arguments Morris makes in his statement of additional grounds are without merit.