In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-19-00325-CV

IN THE MATTER OF J.M.

On Appeal from County Court at Law No. 1
Denton County, Texas
Trial Court No. JV-2016-00486

Before Birdwell, Bassel, and Womack, JJ.
Memorandum Opinion by Justice Bassel

MEMORANDUM OPINION

I. Introduction

In September 2016, Appellant J.M., a juvenile, stipulated to and was adjudicated delinquent for aggravated robbery with a deadly weapon. *See* Tex. Penal Code Ann. § 30.02. The trial court placed Appellant on probation. The trial court thereafter modified Appellant's probation three times.

In August 2019, after Appellant had continued to violate his probation conditions, the State filed its second amended motion to modify the trial court's disposition and alleged that Appellant had violated his probation conditions by (1) being unsuccessfully discharged on or about April 24, 2019, from Denton County Post Adjudication Courage to Change Program (Post Program); (2) being in a vehicle with a prohibited person (J.R.) on or about June 6, 2019; (3) leaving his place of residence on or about June 5, 2019, without a parent or other adult preapproved by the probation officer or the trial court and not returning before June 6, 2019; (4) leaving his place of residence on or about June 14, 2019, without a parent or other adult preapproved by the probation officer or the trial court and not returning; (5) associating with a prohibited person (J.R.) on or about June 6, 2019; and (6) failing to check in with his probation officer as directed during the weeks of June 2, 2019 through June 8, 2019, and June 9, 2019 through June 15, 2019.[1] The trial court held a

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[1]The allegations in the second amended motion to modify disposition differed from those in the first amended motion in that the earlier motion (1) altered the

hearing[2] and found the first five alleged violations "not true" and found the sixth alleged violation "true." The trial court reconvened eight days later for what the record refers to as the contested disposition hearing. After hearing testimony and receiving evidence, the trial court modified Appellant's disposition and committed him to the Texas Juvenile Justice Department (TJJD) for a period not to exceed his nineteenth birthday.

In a single issue, Appellant argues that the trial court abused its discretion by considering probation violations that were found "not true," by considering uncharged violations, and by allowing the psychological report and improper expert testimony about the report to be used against him. Because the trial court did not base its decision on any probation violations that were found to be not true and because the trial court was allowed to consider uncharged violations and the complained-of psychological report and expert testimony thereon, we affirm.[3]

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second violation to allege that Appellant was in a vehicle with prohibited persons J.R. *and B.M.* on or about June 6, 2019, and (2) included an allegation that Appellant had violated his probation conditions on June 6, 2019, "by committing a new offense Driving While Intoxicated/Open Container."

[2]The record refers to this as the contested adjudication hearing.

[3]Appellant states in his brief that he is not challenging the sufficiency of the evidence to support the trial court's decision to modify his prior disposition because he recognizes that a single violation of a probation condition—failing to report to his probation officer—is sufficient to modify the prior disposition. Because Appellant does not challenge the sufficiency of the evidence, we omit a factual background, but when necessary, we include relevant background within the analysis section below.

II. The Modification Decision Was Not Based on Inadmissible Evidence

In his sole issue, Appellant argues that the trial court abused its discretion by considering probation violations that were found "not true" and by allowing uncharged violations and improper expert testimony to be used against him in the disposition portion of the trial. Specifically, Appellant challenges the trial court's admission of certain parts of the social history and the psychological evaluation report, as well as testimony about that report.

A. Standard of Review

We review the trial court's decision to modify a juvenile disposition under an abuse-of-discretion standard. *See In re D.H.*, No. 13-11-00453-CV, 2012 WL 2052407, at *3 (Tex. App.—Corpus Christi–Edinburg June 7, 2012, no pet.) (mem. op.) (citing *In re J.G.*, 112 S.W.3d 256, 259 (Tex. App.—Corpus Christi 2003, no pet.)). Hearings to modify the disposition of a juvenile are divided into two distinct phases. *Id.* (citing Tex. Fam. Code Ann. § 54.05(e), and *J.G.*, 112 S.W.3d at 259). In the first phase, the trial court determines whether there is a reason for modifying a previous disposition (i.e., the juvenile has violated a condition of the probation imposed by the court); in the second phase, the trial court determines the necessary modifications that are appropriate. *Id.* (citing Tex. Fam. Code Ann. § 54.05(e), and *J.G.*, 112 S.W.3d at 259); *In re L.T.*, No. 12-05-00048-CV, 2005 WL 3725161, at *1 (Tex. App.—Tyler Jan. 31, 2006, no pet.) (mem. op.).

We also review a juvenile court's decision to admit evidence under an abuse-of-discretion standard. *In re J.M.A.B.*, No. 11-05-00104-CV, 2006 WL 3462201, at *2 (Tex. App.—Eastland Nov. 30, 2006, no pet.) (mem. op.) (citing *Weatherred v. State*, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000)). As long as the juvenile court's ruling is within the zone of reasonable disagreement, the juvenile court does not abuse its discretion, and its ruling will be upheld. *Id.* (citing *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g)).

B. Applicable Law

The Juvenile Code states that "[e]xcept as otherwise provided by this title, the Texas Rules of Evidence applicable to criminal cases and Articles 33.03 and 37.07 and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title." Tex. Fam. Code Ann. § 51.17(c). Article 37.07 of the Code of Criminal Procedure provides in Section 3(a)(1),

> Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the [S]tate and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.

Tex. Code Crim. Proc. Ann. art. 37.07, § 3(a)(1).

Modification hearings are governed by Section 54.05(e), which states that

> [a]fter the hearing on the merits or facts, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of other witnesses. On or before the second day before the date of the hearing to modify disposition, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in deciding whether to modify disposition.

Tex. Fam. Code Ann. § 54.05(e).[4] Section 54.05(e) manifests a legislative intent to permit the juvenile court to consider a broad pool of information in formulating an appropriate disposition. *In re C.H.*, No. 04-96-00910-CV, 1997 WL 426979, at *2 (Tex. App.—San Antonio July 31, 1997, no writ) (not designated for publication) (citing *In re A.F.*, 895 S.W.2d 481, 485 (Tex. App.—Austin 1995, no writ)). This access assists the trial court in reaching the objective of the disposition modification hearing, that is, ensuring that the child's need for rehabilitation is addressed in the most appropriate setting. *Id.*

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[4]A similar provision governs disposition hearings: "At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses." Tex. Fam. Code Ann. § 54.04(b). Courts have construed Section 54.04(b) as broadening the pool of information available for the trial court's consideration at the disposition hearing. *See In re J.S.S.*, 20 S.W.3d 837, 844 (Tex. App.—El Paso 2000, pet. denied) (collecting cases). Because of the similarities between Section 54.05(e) and Section 54.04(b), we rely on some section 54.04(b) case law in our analysis.

C. Analysis

1. Evidence of Violations Found "Not True"

Appellant first argues that during the contested disposition hearing, the trial court erred by considering evidence of alleged violations that the trial court had already found "not true" during the contested adjudication hearing. But as we explain, the trial court clearly indicated that it would not consider violations that it had found "not true," and we presume the trial court was faithful to its word.

When the State offered the social history report during the contested disposition hearing, Appellant objected as follows:

> The first objection would be the relevance of -- under 401 and 403 of being prejudicial. There -- beginning on page 2 and continuing through page 5, there are statements regarding the allegations that were found not true by this Court that provide additional information that I don't believe the Court should be reading.

The trial court sustained Appellant's objection.

Later during the disposition hearing, Appellant asked the trial court to strike "all of the previously objected[-]to provisions of the Social History . . . based on relevance." The trial judge specifically stated that she would "not consider the things that were found not true." In response to Appellant's counsel's question about whether evidence of Appellant's unalleged contact with juvenile B.M. could be used even though the violation alleging that Appellant had contact with another juvenile (J.R.) was found not true, the trial judge clarified that evidence of Appellant's contact with juvenile B.M. could be used

> [b]ecause [it was] not alleged. And then I found not true of violating -- or I found not true for being unsuccessfully discharged [from the Post Program], but I didn't find that he didn't violate his rules, so we can get into that. It wasn't raised. I didn't find that he didn't do the laws and ordinance violation, so I think we can get into that. So anything that was found not true, we cannot get into.

The trial judge memorialized her ruling in a handwritten note on the first page of the social history report: "Admitted – except that all references to any violation found to be 'not true' are sealed and [are] not admitted." The record also includes an email from the trial judge to the attorneys with a proposed redacted copy of the social history report, which contains the following handwritten note: "Per request of [the] Respondent's attorney, the court notes (in yellow highlights) which portions of the social history were not considered in [the] disposition."[5] Appellant points us to no evidence that the trial court acted contrary to her statement—which is found in multiple places in the record—that she did not consider allegations that were found not true. Accordingly, we cannot agree with Appellant's premise that the trial court considered evidence of violations that were found "not true." *See Duchene v. Hernandez*, 535 S.W.3d 251, 259 (Tex. App.—El Paso 2017, no pet.) (stating that "we are confident that the trial court did not consider [appellant's] stricken response, and its attached exhibits, in its decision-making process" when "the trial court clearly stated on the record at the hearing that it was denying [appellant's] motion for leave to

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[5]The social history attached to the email does not contain yellow highlights, but the social history included in the exhibits volume of the reporter's record is highlighted in yellow.

file a late response[] and that it would not consider the late response; further, the trial court thereafter commemorated its ruling striking the response in a written order”). We therefore overrule this portion of Appellant’s sole issue.

2. Evidence of Appellant’s Post Program Infractions

Appellant next argues that during the disposition hearing, the trial court abused its discretion by considering evidence of alleged violations that he had committed while he was in the Post Program. Appellant argues that

> [i]t does not make legal sense that the court could not find a scintilla of evidence to find the allegation in the Motion to Modify regarding [the Post Program] “not true” and strike only those sentences that state specifically [that] Appellant was unsuccessfully discharged from the program, yet allow the underlying facts to be considered during sentencing.

The State notes that Appellant cites no authority for this proposition and counters that “it was possible to find no evidence that Appellant was [un]successfully discharged from the Post Program and yet find that Appellant [had] broke[n] the rules at the Post Program.” While we agree with the State, the reasoning for why the trial court was allowed to consider the Post Program infractions rests on the statute governing the broad admissibility of evidence in modification hearings.

Here, the Post Program infractions are contained in the social history report that was prepared by the probation officer. As set forth above, written reports from probation officers are specifically enumerated within the items that Section 54.05(e) allows a trial court to consider at the disposition hearing. *See* Tex. Fam. Code Ann.

§ 54.05(e); *C.H.*, 1997 WL 426979, at *2. Because Section 54.05(e) specifically allows for probation officer's reports to be considered after the hearing on the merits or facts, we overrule this portion of Appellant's sole issue. *See* Tex. Fam. Code Ann. § 54.05(e); *In re M.W.*, No. 10-06-00212-CV, 2007 WL 2447236, at *2 (Tex. App.—Waco Aug. 29, 2007, no pet.) (mem. op.) (having found that appellant had violated a condition of his probation, the trial court could consider "a report prepared by the juvenile probation officer which is commonly referred to as a social history" and appellant's "failure to comply with the rules of two different sex offender treatment programs while on probation"); *cf. Matter of J.A.W.*, 976 S.W.2d 260, 264 (Tex. App.—San Antonio 1998, no pet.) (allowing trial court, pursuant to Section 54.04(b), to consider juvenile detention center's incident reports that documented appellant's behavior and that were included in probation officer's file).

3. Evidence of Uncharged or Abandoned Violations

Appellant next argues that the trial court abused its discretion during the disposition hearing by considering evidence of uncharged or abandoned violations from the State's first amended motion to modify.[6] Specifically, Appellant complains of the trial court's decision to consider evidence pertaining to Appellant's interactions with prohibited person B.M., arguing that "[i]f the court could not find a scintilla of evidence to find that Appellant violated his probation with J.R.[,] then how could the

[6] Although Appellant's brief refers to the "State's original Motion to Modify," his record reference corresponds to the State's first amended motion, which is the motion that contains the previously alleged violation at issue.

court find a scintilla of evidence to believe that Appellant violated his probation with B.M.?" Appellant also briefly references "any of the other unalleged or abandoned violations the State had included in [its first amended] motion to modify[, such as] the alleged arrest of [A]ppellant or any mention of live[-]and[-]reside violations" and argues that "[t]hese were all items that should have been brought before the court and a legal ruling made in the adjudication portion of the trial." Appellant does not cite any authority for this proposition.

As set forth in the applicable-law section, the trial court was allowed to consider evidence during the contested disposition hearing "as to any matter the court deem[ed] relevant to sentencing, including but not limited to the prior criminal record of the defendant, . . . and[] . . . any other evidence of an extraneous crime or bad act" that was shown beyond a reasonable doubt to have been committed by Appellant or for which he could be held criminally responsible. *See* Tex. Fam. Code Ann. § 51.17(c) (specifying that Texas Code of Criminal Procedure Article 37.07 applies to juvenile proceedings); Tex. Code Crim. Proc. Ann. art. 37.07, § 3(a)(1). The applicable-law section also demonstrates that the trial court was permitted to consider evidence that Appellant had violated his probation with B.M. and evidence of other uncharged or abandoned violations because that evidence was contained in the social history prepared by Appellant's probation officer. *See* Tex. Fam. Code Ann.

§ 54.05(e).[7] Because evidence of Appellant's contact with B.M. and the evidence of the other unalleged or abandoned violations was admissible under the preceding statutory provisions, we overrule this portion of Appellant's sole issue.

4. Statements in Psychological Evaluation Report

In the remaining portion of his sole issue, Appellant makes the following four-sentence argument about the 2019 psychological evaluation report prepared by Dr. Christopher G. Bellah:[8]

> Appellant objected to the trial court's admission of Dr. Bellah's report because he failed to provide facts or data to form a sufficient basis for his opinion. The basis of his updated report was based on conclusory statements to which Appellant objected pursuant to TRE 705(c) because [Dr.] Bellah failed to produce any notes or recollect any of the conversations that he allegedly had with Appellant. (2 RR 137–147)
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> If not the entire updated report, then the trial court should have stricken the objected[-]to paragraphs because Dr. Bellah failed to

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[7]Additionally, when the probation officer testified that Appellant was not to have contact with B.M., Appellant objected based on three grounds: lack of personal knowledge, speculation, and hearsay. The trial court overruled Appellant's multifaceted objection, and Appellant did not request a running objection. When the probation officer proceeded to give details about Appellant's contact with B.M., including that Appellant was driving his father's vehicle with B.M. in it, Appellant did not object. Appellant thus failed to preserve error as it relates to the evidence of his contact with B.M. *See In re Y.R.S.*, No. 10-19-00065-CV, 2019 WL 4072040, at *1 (Tex. App.—Waco Aug. 28, 2019, no pet.) (mem. op.) (stating that in order to preserve error, a party generally must continue to object each time the objectionable evidence is offered, and holding that because appellant did not object to the rest of the objectionable testimony, the complaint to that testimony was not preserved and was waived).

[8]Dr. Bellah had also performed a psychological evaluation on Appellant in February 2017, and that evaluation was referenced in various portions of the 2019 report that is at issue.

> articulate or provide notes in support of his conclusions regarding Appellant. In this regard[,] the trial court failed in its gatekeeping function as required by TRE 705(c). *Supra*[.]

Appellant's four-sentence argument does not provide any specifics about what portion or portions of the report the trial court's ruling impacted. We are hard-pressed not to conclude that this constitutes briefing waiver. However, because Appellant cites to eleven pages of the record, in the interest of justice we will set forth the objected-to portions of the report and analyze whether the trial court abused its discretion by ruling on Appellant's Rule 705(c) objection.

a. What the record shows

Before Dr. Bellah testified at the contested disposition hearing, Appellant objected to his testimony under Texas Rules of Evidence 403, 404, 613(b), and 702. After the trial court overruled Appellant's objections, he asked for a running objection, which the trial court implicitly denied, stating, "I'll rule on every objection that you have." Two pages later, before Dr. Bellah started testifying, the trial court clarified, "And then we're going forward with testimony, and [defense counsel] you're going to make your objections to anything that you feel objectionable versus a running objection." Defense counsel responded, "Yes, ma'am."

Appellant later objected to the admission of the psychological report under Rules 702 and 403 and to any parts containing information that was found "not true." The trial court "sustain[ed] the objection on anything related to items that were found not true in any part of this" and held a Rule 702 hearing to determine if Dr. Bellah

was qualified as an expert. After defense counsel had an opportunity to voir dire Dr. Bellah, and the trial court had an opportunity to question him, the trial court overruled Appellant's Rule 702 and 403 objections. Before Dr. Bellah began his testimony on direct, the State offered the psychological report, which had been redacted to remove references to alleged violations that were found "not true" during the contested adjudication hearing, and Appellant offered no other objections than the one that had been sustained—regarding references to the "not true" allegations.

During Dr. Bellah's testimony, he testified about the various tests that he had performed on Appellant and noted that Appellant needed a strict program. Throughout his testimony, Dr. Bellah stated that he did not take notes separately from his report; instead, he typed notes during the psychological evaluation, and those notes became his report.

After Dr. Bellah finished his testimony and was excused, Appellant raised a new objection:

> I just would like to lodge another objection to -- under Rule 705(c) regarding the admissibility of Dr. Bellah's opinion. I believe Dr. Bellah did not really provide facts or data to form a sufficient basis for his opinion. You heard the testimony of Dr. Bellah. Very much conclusory statements. No data to support any of his findings. And I'd ask the Court to consider that objection under 705(c).

Appellant initially stated that he was not asking the trial court to strike Dr. Bellah's whole report.[9] Instead, Appellant asked the trial court to strike "the statements that the doctor took allegedly from [Appellant] but has no notes on them, has no basis for forming that opinion, no recollection." Specifically, Appellant asked the trial court to strike, pursuant to Rule 705(c), the following portions of the psychological evaluation report:

> When asked to comment on his opinion of the effectiveness of his experiences in treatment, [Appellant] responded by saying, "I was thinking, just get it over with and go back to my friends." Importantly, it was noted in the original evaluation that [Appellant] ["]expressed having an insouciant disregard for the negative consequences of his actions, including his own detainment, saying, [']I'm not going to take it seriously[.'"]
>
> [Appellant] currently echoed this sentiment, glibly describing himself as aloof, egocentric, and self-serving, with an indifference about other people's feelings or opinions of him. He also expressed having little regard for others or concern for his future. He further indicated that he has become skilled at making denials, minimizing, rationalizing, and blaming others as [a] means of justifying his actions, both to himself and others. Finally, [Appellant] dispelled the notion that he simply lacks willpower and is susceptible to peer pressure, suggesting that he is independent in making his own choices in life. Thus, he reportedly intends to persevere for eight more months until he reaches adulthood and becomes empowered to live his chosen lifestyle of addiction.
>
> . . . .
>
> Overall, given [Appellant's] psychosocial and behavioral history, along with his drug habits and his expressed intention to resist

[9]Later, Appellant stated that he was objecting to the "overall opinion," and the trial court interpreted that comment to mean that Appellant was challenging the admission of the report as a whole. The trial court then, on its own motion, challenged a portion of page 7 of the report, but we do not include that here.

> treatment, evidence suggests that he has a very poor prognosis. Moreover, his expressed glibness and lack of empathy or remorse, as well as his expressed lack of motivation to change further diminish his prognosis and suggest that he would be a poor candidate for all but the most stringent form of treatment.

The trial court allowed the State to give argument against redacting each of these paragraphs and sustained Appellant's 705(c) objection only as to redacting the second paragraph.

b. Analysis[10]

As explained above, the Juvenile Code permits the trial court to consider a broad pool of information during the disposition portion of the modification hearing, including "written reports from probation officers, professional court employees, or *professional consultants* in addition to the testimony of other witnesses." *See* Tex. Fam. Code Ann. § 54.05(e) (emphasis added). As noted by a sister court,

> The Texas Legislature did not define "professional consultant" in the family code, *see* Tex. Fam. Code Ann. § 54.05(e), and there is little case law construing the definition of "professional consultant." *See In re C.D.R.*, 827 S.W.2d 589, 592 (Tex. App.—Houston [1st Dist.] 1992, no writ). However, a social worker has been held to be a "professional consultant." *See In re C.J.H.*, 79 S.W.3d 698, 705 (Tex. App.—Fort Worth 2002, no pet.). Moreover, a Texas Youth Commission [now known as TJJD] assistant superintendent, who was described as a trained professional who interacted with a juvenile, has also been characterized as a professional consultant. *See C.D.R.*, 827 S.W.2d at 592. A general definition of "professional consultant" is one who gives expert or professional advice as a source of livelihood, or one who has great skill at giving expert or professional advice. *See* Webster's Third New Int'l

[10]For purposes of our analysis, we will presume that Appellant's Rule 705(c) objection was timely.

> Dictionary 490 (1993) (definition of consultant); Webster's Third New Int'l Dictionary 1811 (1993) (definition of professional).

J.G., 112 S.W.3d at 260. The Houston First Court of Appeals determined that a Texas Youth Commission (TYC) assistant superintendent was a professional consultant and allowed his report to be admitted during the disposition phase as follows:

> The written report in this case contained vital information for the trial court to examine in deciding whether to parole appellant or send him to TDCJ. The report consisted of psychological and psychiatric evaluations, test scores, a behavior summary, a treatment summary, a recommendation regarding release, and a parole plan in case the court opted for parole. This report was made by trained professionals who interacted with appellant in TYC. It is the type of information necessary for the judge to enter a judgment in the best interests of appellant and society. We hold that the report of TYC's assistant superintendent is a report by a professional consultant and a professional court employee[.]

C.D.R., 827 S.W.2d at 592.

The psychological evaluation report at issue here contains information similar to the report at issue in *C.D.R.* Although not prepared by a TYC assistant superintendent, the psychological evaluation report here was prepared by a psychologist who had contracted with the Denton County Juvenile Probation Department to perform psychological evaluations. Under Section 54.05(e), the trial court was thus permitted to consider Dr. Bellah's report and testimony during the contested disposition hearing.

Moreover, because Appellant failed to obtain a running objection and to object to Dr. Bellah's testimony about the information contained in the report, he forfeited

any error in the admission of the report. *See In re G.M.P.*, 909 S.W.2d 198, 205–06 (Tex. App.—Houston [14th Dist.] 1995, no writ) (op. on reh'g) ("Generally, alleged error in the admission of evidence is waived when essentially the same evidence is admitted without objection elsewhere in the trial."). With regard to the first sentence in the first objected-to paragraph, Dr. Bellah testified as follows:

> Q. Right. So after you interviewed him, did he make any statements about his intentions for treatment or his future?
>
> A. Are you referring to future? Future treatment or past treatment?
>
> Q. His past treatment.
>
> A. Oh, okay. Yes, he did make a statement.
>
> Q. And what was that statement?
>
> A. That he was thinking, *"Just get it over with and go back to my friends."*
>
> Q. Did that echo his sentiment from the 2016 Social History of not taking it seriously?
>
> A. Yes. [Emphasis added.]

With regard to the remainder of the first objected-to paragraph, Dr. Bellah testified,

> Q. Okay. On page 3 in the next paragraph, does [Appellant] express thoughts on his consequences for his actions?
>
> A. Yes.
>
> Q. And what were his -- what were his statements made regarding the consequences to his actions?

A. Well, I just have one quote here where he says, *"I'm not going to --" -- in terms of detainment, he says, "I'm not going to take it seriously."*

Q. "In terms of detainment," is that what you said?

A. Yeah. [Emphasis added.]

With regard to the third paragraph that Appellant objected to, Dr. Bellah testified as follows:

Q. Okay. Did he express any intention to resist treatment?

A. I don't remember that.

Q. Could you look at paragraph two [on page eight].

A. Yeah, it is there.

Q. What is there?

A. *"Expressed intention to resist treatment."*

. . . .

Q. And did you also state in your report that *he's a poor candidate for all but most stringent forms of treatment*?

A. Yes. [Emphasis added.]

Thus, Appellant forfeited any error in the admission of Dr. Bellah's report, because the same evidence was provided without objection during Dr. Bellah's testimony. *See In re J.D.*, No. 03-14-00075-CV, 2016 WL 462734, at *3 (Tex. App.—Austin Feb. 3, 2016, no pet.) (mem. op.) (holding that appellant failed to preserve error, if any, in the admission of the challenged evidence when the only time he objected to the admissibility of the evidence was prior to the victim's testimony on the

subject; he did not object when evidence related to the text messages and photo was subsequently admitted during the testimony of two witnesses).

Accordingly, having resolved each of Appellant's arguments against him, we overrule Appellant's sole issue.[11]

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[11]Appellant concludes his brief with a harm analysis arguing that he

> was harmed because [had] the unadjudicated alleged violations and alleged crimes [been] removed from the record[,] the only evidence before the court that [he] had violated his probation [would have been] that he [had] failed to contact his probation officer during a two-week period. Ordering Appellant to the Texas Juvenile Justice Department for a period not to exceed his 19th birthday based on minor probation violations is not appropriate, especially when Appellant's parents and employer testified to the [c]ourt that Appellant could be provided the quality of care and level of support needed for Appellant to meet the conditions of probation.

Appellant has not identified the proper harm standard, nor has he applied it. *See generally In re D.S.*, 02-17-00050-CV, 2017 WL 3187021, at *5 (Tex. App.—Fort Worth July 27, 2017, pet. denied) (mem. op.) ("[I]f a trial court's decision to admit evidence was erroneous, we . . . will not reverse the trial court's judgment unless the complaining party shows that such error was harmful[.] . . . [T]he complaining party [must] show[] that the error in admitting the evidence probably caused the rendition of an improper judgment." (citing Tex. R. App. P. 44.1; *Owens–Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998))). Appellant focuses his harm argument solely on "the unadjudicated alleged violations and alleged crimes," while ignoring all of the evidence that supports the trial court's decision to modify his disposition.

Moreover, because we have held that Section 51.17 and Section 54.05(e) of the Juvenile Code specifically allowed the trial court to consider "the unadjudicated alleged violations and alleged crimes," the trial court had more than just "minor probation violations" on which to base its decision to commit Appellant to TJJD. Based on our holdings on each of Appellant's arguments above—that the trial court did not abuse its discretion during the contested disposition hearing by considering the evidence that Appellant challenges on appeal—we need not further address Appellant's harm argument. *See generally* Tex. R. App. P. 47.1.

III. Conclusion

Having overruled Appellant's sole issue, we affirm the trial court's judgment.

/s/ Dabney Bassel

Dabney Bassel
Justice

Delivered: June 4, 2020