UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0314

September Term, 2014

IN RE: JUWAN S.

Meredith,
Woodward,
Friedman,

JJ.

Opinion by Woodward J.

Filed: June 8, 2015

The Circuit Court for Montgomery County, sitting as a juvenile court, found appellant, Juwan S., to have been involved in punching his mother in the face, which, if committed by an adult, would constitute assault in the second degree. The juvenile court committed him to the Department of Juvenile Services for placement. Appellant presents two questions for our review, which we quote:

> 1. Did the [juvenile] court err in denying Appellant's motion to dismiss the petition on the grounds that it failed to set forth in clear and simple language the facts constituting the alleged delinquent conduct?
>
> 2. Did the [juvenile] court err in denying Appellant's motion to dismiss the petition on the ground that the adjudicatory hearing was not held within 60 days of service of the petition on Appellant?

Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 28, 2013, Officer Robert Johnson was on bicycle patrol in downtown Silver Spring with Officer Nathan Larson, whom he was field-training. Officer Johnson noticed appellant walking with a friend, and recalled appellant's mother notifying him that a warrant was outstanding for appellant in Prince George's County. Officer Johnson asked Officer Larson to stop appellant. At Officer Johnson's direction, Officer Larson handcuffed appellant because he appeared ready to run away. Officer Johnson then checked to see if there was a warrant for appellant in Montgomery County. Finding no warrant in Montgomery County, Officer Johnson contacted appellant's mother, Deborah D. ("Mother"). He instructed Mother to bring documentation of the alleged warrant, which she claimed she

had, to the scene. In the interim, Officer Johnson contacted the Prince George's County Sheriff's Department and determined that there was no outstanding warrant in that jurisdiction. Approximately ten minutes passed until Mother arrived at the scene, but she did not have the documentation concerning the warrant in her possession. Having no basis to detain appellant, the officers released him into Mother's custody.

Mother grabbed appellant by the hood of his sweatshirt, pulling him toward her car. In response, appellant turned, faced her, and punched her once, in the left side of her face, knocking her to the ground. Mother was not injured and did not require medical attention. The police officers immediately arrested appellant. After appellant was processed, Mother picked him up from the police station. Twenty minutes later, Mother contacted police and advised them that appellant had hit her again and ran away.

As a preliminary matter prior to the start of the adjudicatory hearing on January 23, 2014, appellant orally moved to dismiss the petition against him based on Md. Code (1974, 2013 Repl. Vol.) § 3-8A-13(a) of the Courts and Judicial Proceedings Article ("CJP") and Md. Rule 11-103, arguing that the petition did not "set forth in clear and simple language the alleged facts which constitute the delinquency." The juvenile court granted the motion, dismissed the petition, and denied the State's motion to amend it. The State then moved to vacate the dismissal the next day. On March 10, 2014, the juvenile court granted the State's motion to vacate the dismissal via written opinion and order.

At the adjudicatory hearing held on March 31, 2014, the juvenile court found that appellant was involved in a delinquent act, to wit, the second-degree assault of his mother. The juvenile court ruled as follows:

> The court finds that assuming for the sake of argument that there was an illegal detention, that the detention stopped upon release of the handcuffs by the police officers, that it then became a matter of private action between the respondent and his mother, that the behavior by the mother of initiating what the court believes to be relatively minimal contact, albeit maybe generated or fueled by some degree of peak or anger, that that did not cause such actual physical constraint or perception for a reasonable respondent, even a respondent with any mental or other limitations, as has been described in the evidence for him to react in the way that he did, which was to the level of a closed fist punch applied to the face of his mother, which was done with such force that it knocked her down.
>
> Accordingly, the court finds that there is a second degree assault which has been proven beyond a reasonable doubt. And accordingly, I find the respondent to be involved in a delinquent act.

Additional facts will be discussed as they become relevant to our analysis.

DISCUSSION

I.

The petition in the instant case alleged, in relevant part:

* * *

6. That [appellant] on or about 09/28/2013:

COUNT ONE:

ASSAULT-SECOND DEGREE - Article CR 3-203

> Did unlawfully and willfully, in Montgomery County, Maryland, assault [Mother] in the second degree, in violation of CR. 3. 203 of the Annotated Code of Maryland and against the peace, government and dignity of the State.

Appellant first asserts that the juvenile court erred in granting the State's motion to vacate the dismissal of the petition. Specifically, appellant contends that the "bare bones" nature of the petition did not satisfy the requirements of CJP § 3-8A-13(a) and Md. Rule 11-103(a)(2)(c). Further, he argues that the discovery provided by the State failed to address with particularity the incident giving rise to the petition, because there were two incidents on the date in question where appellant struck his mother. The State responds that the petition was legally sufficient, as it included everything that would be required for a criminal charge of second-degree assault. Section 3-8A-13(a) of CJP provides:

> A petition shall allege that a child is either delinquent or in need or supervision. If it alleged delinquency, it **shall set forth in clear and simple language the alleged facts which constitute the delinquency**, and shall also specify the laws allegedly violated by the child. If it alleges that the child is in need of supervision, the petition shall set forth in clear and simple language the alleged facts supporting that allegation.

(Emphasis added). Md. Rule 11-103 implements the mandate of CJP § 3-8A-13(a). Md. Rule 11-103(a)(2)(c) provides that the petition shall state:

> The facts, in clear and simple language, on which the allegations are based. If the commission of one or more delinquent acts or crimes is alleged, the petition shall specify the laws allegedly violated by the respondent.

In all criminal prosecutions, every defendant has the right to be informed of the accusations against him. Among the purposes for this requirement are:

> "(1) putting the accused on notice of what [he or she] is called upon to defend by characterizing and describing the crime and conduct; (2) protecting the accused from a future prosecution for the same offense; (3) enabling the accused to prepare for trial; (4) providing a basis for the court to consider the legal sufficiency of the charging document; and (5) informing the court of the specific crime charged so that, if required, sentence may be pronounced in accordance with the right of the case."

In re Gary T., ___ Md. App. ___, ___, No. 464, Sept. Term 2014 (filed April 6, 2015), slip op. at 9 (quoting *Edmund v. State*, 398 Md. 562, 576 (2007)).

In *In re Roneika S.*, 173 Md. App. 577, 591 (2007), we held that the notice provided in delinquency proceedings is identical to that required in criminal cases. Md. Code (2002, 2012 Repl. Vol.) § 3-206 of the Criminal Law Article ("CL") governs the requirement for a charging document alleging an assault. It provides, in pertinent part:

> (a) *Assault — In general.* — An indictment, information, other charging document, or warrant for a crime described in § 3-202, § 3-203, or § 3-205 of this subtitle is sufficient if it substantially states:
>
> "(name of defendant) on (date) in (county) assaulted (name of victim) in the . . . . . degree or (describe other violation) in violation of (section violated) against the peace, government, and dignity of the State.".

In the instant case, the elements required under CL § 3-206(a) were all satisfied in the petition that the State filed. First, the petition listed appellant's name and the date on which the alleged assault occurred. Then, the petition listed the county wherein the incident

occurred, the name of the victim, and the section of the code that was allegedly violated. Accordingly, the petition was sufficient in describing the offense alleged. Our analysis, however, does not end there.

Unlike criminal prosecutions of adults, a bill of particulars is not required in juvenile proceedings. Consequently, a particularized statement of the acts charged must be provided by other means. Here, however, in the discovery provided by the State a police report, identified as Respondent's exhibit 1, mentions two separate assaults. The police report provides, in pertinent part:

> On 09-28-2013 at approx 2135 hours, the writer [Ofc. Nathan Larson] and Officer Johnson were on uniformed bicycle patrol in the area of 1 Veterans Place. While on patrol Officer Johnson observed a juvenile male he knew as [appellant]. On 09-23-2013, Officer Johnson was contacted by [Mother] and advised that [appellant] had a juvenile writ from Prince George's County for missing his court date for a burglary case. The writer detained [appellant] on a bench[;] Officer Johnson contacted [appellant]'s mother []. [Mother] advised Officer Johnson that she had writ paperwork for [appellant] and was on her way to drop it off. When [Mother] arrived on scene she advised Officer Johnson that she did not have paperwork but knew he had a writ out for his arrest. Officer Johnson contact[ed] Prince Georges County Sheriffs Department who did not have a writ on file for [appellant]. **The writer released [appellant] to [Mother;] the writer observed [Mother] grab [appellant] by his hoodie to bring him back to her vehicle. [Appellant] pulled away and with a closed right fist punched [Mother] on the left side of her face. [Mother] immediately released [appellant;] the writer then grabbed [appellant] and placed him under arrest for domestic 2nd degree assault.** Officer Johnson asked [appellant] why he punched his mother[.] [Appellant] responded, "I don't give a fuck, that's why they call me Cruddy." Neither [appellant] nor [Mother] were injured. [Mother] stated she did not need medical attention[;]

> the writer visually checked [Mother]'s face and did not see any physical sign of injury.
>
> [Appellant] was transported to the 3D station and processed. [Mother] and her friend Lonnie Curtis came in to [sic] the 3D station to pick up [appellant]. **Approx 20 minutes after [appellant] was released, [Mother] called the 3D station and advised them that her son had hit her again and ran away.**

(Emphasis added).

Appellant contends that the last sentence of the police report, where it indicated that he had run away from his mother after hitting her again constituted a second, separate assault, and therefore, the report set forth two bases upon which he could have been charged with second-degree assault. According to appellant, because the police report did not specifically indicate which incident gave rise to the petition, the petition lacked the particularity necessary to properly inform him of the charge that he "is called upon to defend."

When the police report is read in conjunction with the petition, it is quite clear which assault was alleged in the petition. Nearly the entire report is dedicated to the first incident where appellant hit his mother in the presence of the officers. The report discusses in detail the events before, during, and after the incident; it identifies the location of the incident and the persons present. More importantly, the report indicates that appellant was arrested and booked after the first incident. By contrast, there is no indication in the report where the second incident occurred, or any other facts surrounding that matter. The report simply indicates that appellant struck his mother a second time and ran off. Finally, the petition lists

as witnesses Officers Nathan Larson and Robert Johnson, both of whom witnessed the first assault, but not the second. Therefore, we are persuaded that the State provided the necessary information in discovery to inform appellant of the incident for which the petition was filed, thereby permitting him to prepare a defense.[1]

II.

Appellant next asserts that the juvenile court erred when it denied his motion to dismiss the petition where the adjudicatory hearing did not occur within sixty days of service of the petition, as required by Md. Rule 11-114(b)(1). provides:

> b. **Scheduling of hearing.** 1. Adjudicatory hearing. **An adjudicatory hearing shall be held within sixty days after the juvenile petition is served on the respondent** unless a waiver petition is filed, in which case an adjudicatory hearing shall be held within thirty days after the court's decision to retain jurisdiction at the conclusion of the waiver hearing. However, upon motion made on the record within these time limits by the petitioner or the respondent, the administrative judge of the county or a judge designated by him, for extraordinary cause shown, may extend the time within which the adjudicatory hearing may be held. The judge shall state on the record the cause which requires an extension and specify the number of days of the extension.

(Emphasis added).

Prior to the adjudicatory hearing, appellant moved to dismiss the petition based on a violation of Maryland Rule 11-114(b)(1). Appellant proffered that the petition was served

[1] In his motion to dismiss the petition, appellant never argued in the juvenile court, as he does in this Court, that he did not know the State's theory of assault or the particular assault that he was alleged to have committed. Consequently, appellant's argument is a pure appellate afterthought.

on him on December 3, 2013, and thus the sixty-day period would have expired on February 1, 2014, a Saturday. According to Md. Rule 1-203(a)(1), the subject period would have been extended to February 3, 2014.[2] As previously stated, the adjudicatory hearing was held on March 31, 2014.

It is clear that the adjudicatory hearing was not held within sixty days of service of the petition on appellant. Appellant contends that this violation of Rule 11-114(b)(1). requires the dismissal of the petition. We disagree. The Court of Appeals has held that the violation of a procedural rule in the context of a juvenile case warrants dismissal in "[o]nly the most extraordinary and egregious circumstances[.]" *In re Keith W.* 310 Md. 99, 109 (1987). The Court continued, explaining that a court presiding over such a situation should examine the totality of the circumstances as required by Md. Rule 1-201, which provides, in pertinent part:

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[2]Md. Rule 1-203(a)(1) provides:

> (a) **Computation of time after an act, event, or default.** In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted. The last day of the period so computed is included unless:
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> (1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday[.]

> (a) **General.** These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. If no consequences are prescribed, the court may compel compliance with the rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

In re Keith W. presents a similar situation to the present case. There, Keith W. appealed the denial of exceptions to a magistrate's refusal to dismiss a juvenile petition against him where there was a violation of Rule 914, predecessor to the current Rule 11-114. *Id.* at 101. The Court of Appeals acknowledged that the rule was violated, but nonetheless held that dismissal was improper because "the purpose of Maryland's juvenile statute is not ordinarily best served by dismissal of the proceedings." *Id.* at 106.

In the instant case, the initial adjudicatory hearing was set for January 23, 2014, well within the sixty-day period that commenced on December 3, 2013, when the petition was served on appellant. Instead of adjudicating the charge against appellant, the juvenile court granted appellant's motion to dismiss on January 23, 2014. The next day the State filed a motion to vacate the dismissal, which was granted on March 10, 2014. A new date for the adjudicatory hearing was set for March 31, 2014, well within sixty days of the reinstatement of the petition. Given the intervening dismissal, and considering the totality of the circumstances, we are persuaded that dismissal was not the proper remedy for a violation of Rule 11-114, as the delay was neither extraordinary nor egregious. Accordingly, we hold that

the juvenile court did not err in refusing to grant appellant's motion to dismiss for a violation of Rule 11-114.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.