UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 878

September Term, 2016

IN RE: T.P.

Graeff,
Kehoe,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: March 16, 2017

In the circuit court for Prince George's County, the State filed a petition alleging that the appellant, T.P., had committed delinquent acts that, if committed by an adult, would be the crimes of second-degree assault and resisting arrest. At an adjudicatory hearing in juvenile court, Judge Herman C. Dawson found that the appellant had committed the acts charged. At a disposition hearing on May 25, 2016, the appellant was placed on probation.

On this appeal, the appellant raises the two contentions

1. that Judge Dawson erroneously denied his motion to dismiss the juvenile petition; and

2. that the evidence was not legally sufficient to sustain the charges.

Maryland Rule 11-114(b)

In an effort to encourage the expeditious handling of juvenile court adjudications, Maryland Rule 11-114(b) provides in pertinent part:

> An adjudicatory hearing shall be held within sixty days after the juvenile petition is served on the respondent [.] 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.

(E.S.)

The appellant's first contention is that his adjudicatory hearing was not held within the 60-day time limit set by the rule and that the juvenile petition against him should, therefore, have been dismissed. Both parties agree that the 60-day time clock in this case began to run on January 11, 2016 and that the last day for a timely adjudicatory hearing was, therefore, March 11, 2016. The adjudicatory hearing, however, was not held until March 18, 2016, seven days beyond the deadline.

The adjudicatory heading had actually been scheduled for three earlier dates, all of which were within the 60-day time limit. The hearing was first set for February 8, 2016. That hearing was postponed to February 24, 2016, at the request of the State because an essential witness was

unavailable. At the rescheduled hearing set for February 24, it was the appellant himself who failed to appear in court for the hearing. A "writ of attachment" was issued for him. On the following day, February 25, the appellant appeared in court and was placed on electronic monitoring in community detention. The adjudicatory hearing was rescheduled for March 7, 2016, still within the time limitation set by the rule.

It was the postponement of March 7, 2016, that is critical to the disposition of this contention. It had been a 911 call to the police from the appellant's mother that resulted in the charges against the appellant of second-degree assault and resisting arrest in the first place. The 911 call had stated, "My son's trying to hit me. I need a cop." It was when Detective Kevin Fillinich of the Laurel Police Department responded to that call that the allegedly delinquent acts occurred. The mother's role at the adjudicatory hearing was, therefore, threefold. She was 1) a victim of her son's assaultive behavior, 2) a witness to her son's behavior, and 3) her son's mother.

On March 7, 2016, all parties reported initially to Judge Dawson's courtroom for the scheduled adjudicatory hearing. The appellant, the appellant's mother, and the appellant's father were all present, along with defense counsel. Judge Dawson then sent the case to the courtroom of Judge Beverly J. Woodard for the hearing. When some of the parties arrived at Judge Woodard's courtroom, however, both the mother and the father were missing. Judge Woodard "did not want to proceed to trial without a guardian present" and she, accordingly, sent the case back to Judge Dawson. Before Judge Dawson, the State made its request for a postponement.

> Regarding this case, the Mother is both a victim, or alleged victim and also a State's witness. I did speak with the Mother today in court. The Mother was accompanied; it was the Mother, the Father, and the Respondent were present today, in court.
>
> The entire time when we were before you, initially, they were with defense counsel. They were in the interview room. To the extent that I actually even formally introduced myself to the Mother, and shook her hand, in the interview room.

> We had previous phone conversations, but not person-to-person communication. So I introduced myself, and allowed her to stay in the room because this matter dealt with her son. Although, she is the victim and a State's witness.
>
> When we subsequently went to Judge Woodard's courtroom, neither the Mother, nor the Father could be found. I made several attempts to make contact with the Mother because I have her direct contact number. And her number, it went straight into voice mail.
>
> I even sent my officer to go look for the Mother and/or the Father, and we did not succeed. We then went back in front of Judge Woodard. Judge Woodard, of course, inquired as to what we were going to do.
>
> I informed her of what exactly I am informing you today and she was inclined to continue the State's case because the State's witness is the Mother, witness, and victim on all three matters.
>
> She is the alleged victim in the matter ending in -- I'll give you the case -- ending in 0020, that is the JA-0020, and she is a witness in the other two matters. In the -- we'll call it the first case, in the case ending in -- Court's very brief indulgence. In the case ending 0794.
>
> My officer is present, and the State could technically proceed with that matter today; however, again the Mother is a State's witness. Is the State's essential witness in that matter.
>
> . . . .
>
> The reason why I'm saying all of this, is the State is asking for a continuance. And this is why Judge Woodard sent us back up.
>
> . . . .
>
> And the State is asking you to find -- based on the rendition of what I just stated, the State is asking for you to find good cause, to go beyond the James date, which is scheduled for today -- oh, no, for March 11. Which was scheduled for March 11.

Defense counsel was "absolutely opposed to the State's request for a continuance," but offered no explanation for the mother's inexplicable disappearance. Judge Dawson granted the postponement.

> Madam Clerk, understanding that the Mother (inaudible) witness was here, present earlier;

> Met with defense counsel, apparently; then met with the state; the Assistant State's Attorney, and now is no longer present;
>
> The Court will find good cause to go past the James date.

The Case was immediately rescheduled for March 18, 2016, which was one week beyond the official deadline.

We are not impressed by the appellant's attempt to distinguish between Rule 11-114(b)'s use of the phrase "extraordinary cause" and Judge Dawson's use of the term "good cause." We are not going to trivialize.[1] We will apply the abuse of discretion standard, *Ashton v. State*, 185 Md. App. 607, 620, cert. denied, 410 Md. 165 (2009), to what Judge Dawson actually did in postponing the case, not to the words he may have said (without, incidentally, any objection from the appellant or even comment on his choice of language). It was not of critical importance. We find no abuse of discretion.

Rule 11-14(b) does not specify any sanction for non-compliance with its time limit. *In re Keith W.*, 310 Md. 99, 109 (1987) advises that "in determining whether dismissal is an appropriate sanction for a violation of Rule [11-114b], a judge presiding over a juvenile cause should examine the totality of the circumstances as required by Rule 1-201." The *Keith W.* case made it clear, moreover, that the dismissal of the case is not a standard or routine sanction.

> As we see it, the foremost consideration in the disposition of a juvenile proceeding should be a course of treatment and rehabilitation best suited to promote the full growth and development of the child. Only the most extraordinary and egregious circumstances should be allowed to dictate dismissal as the sanction for this violation of a procedural rule. Thus, in determining whether dismissal is an appropriate sanction for a violation of Rule 914, a judge presiding over a juvenile cause should examine the totality of the circumstances as required by Rule 1-201. In doing so, the judge must keep in mind the overriding purpose of the juvenile

[1] This was hardly a case calling for some subtly nuanced King Solomon-like calibration, such as, "I agree with the State that there was good cause for a postponement; on the other hand, I cannot find that this fairly common good cause was in any sense 'extraordinary.' I, therefore, must deny postponement." Such a decision would be, in and of itself, extraordinary.

> statute along with the fact that this purpose will ordinarily not be served by dismissal of the juvenile proceeding. Neither the juvenile nor society should be denied the benefits of the juvenile's rehabilitation because of a technical violation of Rule 914's scheduling requirements. Nevertheless, we do not foreclose the possibility that under some circumstances dismissal will be a proper sanction. . . .

310 Md. at 109-10 (E.S.).

The opinion of this Court in *In re Caitlin N.*, 192 Md. App. 251, 270 (2010) is instructive. In that case, we ultimately determined that Rule 11-114(b) had not actually be violated. In addressing the argument that the delinquency petition should have been dismissed because the adjudicatory hearing had been conducted six days beyond the deadline, we nonetheless observed:

> We view appellant's claim as elevating form over substance, because there clearly was no inordinate delay in this case. Further, accepting appellant's argument that the adjudicatory hearing should have been held six days earlier does little to advance the underlying purpose of treating and rehabilitating juveniles alleged to be involved in the commission of a delinquent act. The juvenile court properly denied appellant's motion.

(E.S.)

We see no abuse of discretion in Judge Dawson's decision to grant the postponement in this case.

Legal Sufficiency of the Evidence

The appellant contends that the evidence was not legally sufficient to support his convictions for second-degree assault and for resisting arrest.

The hydra-headed misdemeanor of common law assault could assume three distinct, albeit related, dominant forms: 1) an actual battery, 2) an attempted battery, or 3) an action intended to place the victim in fear of an imminent battery. All three are now subsumed within the replacement statutory crime of second-degree assault. Maryland Code, Criminal Law Article, Sect. 3-203 and Sect. 3-201(b). See *Lamb v. State*, 93 Md. App. 422 (1992). As an arresting officer and an intractable arrestee wrestle each other to the ground, the head controlling the hydra may shift from moment to moment or overlap with another head with dizzying rapidity. When the combat

ultimately comes to rest, however, the observer may say of assault what Supreme Court Justice Potter Stewart once said of obscenity, "I shall not today attempt further to define the kinds of material I understand to be embraced within the shorthand description; and perhaps I could never succeed in intelligently doing so. But I know it when I see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 12 L.Ed2d 793 (1964) (Concurring opinion by Stewart, J.). With respect to the assault conviction now before us, we know it when we see it. Which particular form or forms it assumed at any particular moment in the course of an evolving combat does not really manner.

On July 4, 2015, the appellant's mother's 911 call to the Laurel Police Department consisted of "My son's trying to hit me. I need a cop." The mother then repeated, "I need a cop. I need a cop. I need a cop." The caller then abruptly hung up. When Detective Fillinich arrived at the home, the mother explained that she had been arguing with her son and that her son was then "in his bedroom on the second floor." When the detective rapped on the bedroom door, the appellant told him to come in. The detective stood in the doorway about four to five feet from the appellant. Also in the bedroom were the appellant's girlfriend and a seven-month old infant. Ours will be a gestalt or holistic appraisal of the appellant's behavior as Detective Fillinich stood in the doorway of the appellant's bedroom.

When Detective Fillinich first spoke to the appellant, the appellant "seemed to be highly agitated." Throughout the attempted conversation, he was cursing and "shouting and yelling." As the detective asked about "what was going on with [the appellant] and his mother," the appellant "was becoming more and more agitated" and told the detective to leave. The detective informed the appellant that he was not going to leave and that he was there at the request of the mother to calm down a potentially violent domestic confrontation. The appellant responded that the detective

"was pissing him off" and then announced that "he was going to swing on" the detective. He then "turned his body towards" the detective.

Detective Fillinich decided to handcuff the appellant because of the "amount of anger and agitation he was illustrating" and for the safety of "everyone on the scene at that time." The detective testified to what followed:

> As I approached [T.P.] to grab ahold of his hands to control him, he fought back, at which point I was -- at which point was pushed backwards toward the entrance of the door by [T.P.] A struggle ensued. Another Officer came in to assist me. We gained control over [T.P.'s] arms. At one point after the fact, after he was, after the fight or the struggle ensued, he attempted to strike me in the face with a closed fist with his right hand.

(E.S.)

The detective's testimony was then corroborated by the introduction of police body camera footage which had recorded the entire incident.

Corporal Scott Craiger accompanied Detective Fillinich to the bedroom. He characterized the appellant as "highly irate," "very unruly," and "very combative in his stance and posture." He described how the appellant was going to "swing on" the detective. He was "balling up his fists, taking an aggressive stance, and flailing his body as if he was going to swing." The corporal testified as to the physical nature of the confrontation:

> At that time, Detective Fillinich reached out to grab his arm away and then when he did, [T.P] smacked his arm away and then I grabbed his other arm. We then pushed him back against the wall. He continued to flail, tried to get away. Shortly thereafter he got his fist away from me, balled it up and went to throw a punch in the direction -- not necessarily in my direction, but towards Detective Fillinich. I grabbed his hand. We were then able to get control of his arms, and we took him down to the air mattress where we placed him in handcuffs.

If to land a punch is a battery, to throw a punch is an attempted battery. Corporal Craiger went on:

> There was the initial, Detective Fillinich grabbing for his arm. He smacked it away. I grabbed his arm -- so it would have been once we pushed him back against the

> wall, and he was raising his body, trying to come off the wall. His arm came up like this, and he went to swing. And if you look at the video, you can see my hand come up and grab it like this, as he's in mid-flight with his swing.

(E.S)

The evidence was legally sufficient to have permitted the jury to infer that the appellant had committed what for an adult would have been a second-degree assault.

The appellant also challenges his conviction for resisting arrest. He claims the common law right to resist an unlawful arrest. Whether the appellant, as Detective Fillinich moved to handcuff him, was being subject to an arrest or to a *Terry* stop, it would not have been, in our judgment, an unlawful police action. With respect to the unavailing prerogative of combative self-help under the circumstances in this case, see *Barnhard v. State*, 86 Md. App. 516, 527-29 (1991), *aff'd*, 325 Md. 602 (1992). See also *Rodgers v. State*, 280 Md. 406, 410 (1977).

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.