NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 KJ 0388

STATE OF LOUISIANA

IN THE INTEREST OF A.H.

Judgment Rendered: NOV 27 2018

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Appealed from the
Juvenile Court in and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 106510

Honorable Adam J. Haney, Judge Presiding

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Hillar C. Moore
District Attorney
Dylan C. Alge
Assistant District Attorney
Baton Rouge, Louisiana

Counsel for Appellee
State of Louisiana

Katherine M. Franks
Madisonville, Louisiana

Counsel for Defendant/Appellant
A.H.

* * * * * *

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

MRT, concurs.

GUIDRY, J.

A juvenile, identified herein as A.H., was alleged to be delinquent according to a petition in case number 106510 filed by the State on September 12, 2014, pursuant to the Louisiana Children's Code.[1] The petition was based upon the alleged commission of four counts of simple burglary, in violation of La. R.S. 14:62. A.H. entered a denial as to each allegation. At an adjudication hearing on October 27, 2014, the State amended count one to allege the commission of unauthorized entry of a place of business, a violation of La. R.S. 14:62.4. A.H. withdrew the original denial on count one, and entered an admission on count one, as amended. The juvenile court accepted the admission and adjudicated A.H. delinquent on count one. The juvenile court imposed a disposition of one year in the custody of the Department of Public Safety and Corrections, to run consecutively with the dispositions in case numbers 106090 and 106579. The court suspended said commitment and placed A.H. on supervised probation for one year.[2] The State dismissed the allegations on counts two, three, and four. On appeal, A.H. alleges that the juvenile court erred in admitting school records without authentication in modifying the disposition at the January 3, 2018 contradictory hearing.[3] After a thorough review of the record and the assignment of error, we affirm the juvenile court's judgment of January 3, 2018.

STATEMENT OF FACTS

As A.H. entered an admission to the amended allegation on count one herein, the facts are not in the record. Moreover, the facts are not relevant to the

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[1] As stated in the amended petition, A.H.'s date of birth is April 18, 2000. A.H. was fourteen years of age at the time of the alleged offenses.

[2] A.H.'s dispositions were modified several times, ultimately with the juvenile court revoking A.H.'s parole following a contradictory hearing on January 3, 2018, and ordering him to serve the balance of his sentence with credit for time served.

[3] A.H. also has pending appeals in case numbers 2018 KJ 0387 (docket number 106090), 2018 KJ 0389 (docket number 106579), and 2018 KJ 0390 (docket number 110642), alleging the same error raised herein.

issues addressed in the instant appeal. The petition alleges that count one was committed on May 4, 2014.

RIGHT TO APPEAL

In addressing the State's argument on appeal that this court lacks jurisdiction because A.H. did not timely appeal the October 27, 2014 disposition, we note as follows. The State cites State in the Interest of Bemis, 459 So. 2d 1227, 1228 (La. App. 1st Cir. 1984), for the premise that the ruling at issue, the modification of the judgment of disposition, is not a judgment of disposition. However, Bemis specifically holds that the *denial* of a motion to modify a judgment of disposition is not a judgment of disposition, and thus, this court had no appellate jurisdiction in that case. Herein, the juvenile court granted the motion to modify the judgment of disposition. Thus, Bemis is distinguishable from the instant case. As the State concedes, the Louisiana Children's Code gives the right to appeal from a judgment of disposition. La. Ch. C. art. 330(B). By implication, the Children's Code also gives the right to appellate review of a modification of judgment of disposition as demanded by La. Const. Art. 5, § 10, which grants courts of appeal jurisdiction in all matters appealed from family and juvenile courts. State in the Interest of Wright, 387 So. 2d 75, 80 (La. App. 4th Cir. 1980); see also State in Interest of T. L., 17-579, pp. 27-29 (La. App. 5th Cir. 2/21/18), 240 So. 3d 310, 330-31; State in the Interest of Sterling, 441 So. 2d 372, 373 (La. App. 5th Cir. 1983) (modifications revoking parole were reviewed on appeal). Thus, A.H. has the right to appellate review of the January 3, 2018 modification of the disposition.

ASSIGNMENT OF ERROR

In the sole assignment of error, A.H. notes that at the hearing his counsel objected to the introduction of his school report on the basis of hearsay. He notes that the report was introduced through the testimony of the probation officer, who

stated that he retrieved the document from a school counselor. Citing La. C.E. art. 803(6), the business records exception to the rule against hearsay, A.H. argues that since the custodian of the report did not testify as to how the records were kept, the report was unauthenticated hearsay and therefore inadmissible. A.H. argues that the introduction of the report denied him the ability to confront the source of the information. A.H. concedes that hearsay evidence is admissible in adult revocation proceedings. However, claiming that the Children's Code demands full compliance with the Code of Evidence in juvenile revocation proceedings, he argues that a different rule should be applied to juvenile revocation proceedings. A.H. contends that the juvenile court abused its discretion in allowing the admission of the report. Further contending that the juvenile court considered only school absences reflected in the report in deciding to revoke his parole, he claims that the error in admission cannot be considered harmless in this case.

At the January 3, 2018 hearing on the State's motion to revoke parole and/or modify disposition, the State introduced documentation of A.H.'s school attendance history, dated December 18, 2017. A.H.'s attorney initially objected on the basis of never having received or viewed the documentation prior to the hearing. At that point, the State gave the defense attorney a copy of the document, and the juvenile court judge took a recess to allow the defense attorney to review the document and address it with A.H. After the recess, the defense attorney maintained his previous objection, stating that the proper party to authenticate the document was not present. In overruling the objection and admitting the evidence, the juvenile court judge stated that hearsay is admissible in a revocation hearing. Regarding authenticity, the judge contended that the weight of the evidence may be at issue as opposed to its admissibility. Noting that the school attendance history report included a number of unexcused absences, tardy arrivals, and skipped dates, Gerard Landry of the Baton Rouge Office of Juvenile Justice

Probation and Parole testified that A.H. has some issues with attending school on a regular basis.

Modification of probation[4] can be obtained through the filing of a motion to revoke probation pursuant to La. Ch.C. art. 913. Unless A.H. waives his right, the court shall conduct a contradictory hearing. La. Ch.C. art. 913(B). However, pursuant to La. Ch.C. art. 913(C), the hearing may be more informal and summary than an adjudication hearing. As further provided in La. Ch.C. art. 913(C), "Consistent with the child's constitutional rights and the burdens upon the prosecution which full compliance with the Code of Evidence might otherwise entail, *the court shall have discretion in the receipt and consideration of proffered evidence.*" La. Ch.C. art. 913(C). (Emphasis added). The provisions of the Louisiana Code of Evidence, including the provisions concerning the exclusion of hearsay, are inapplicable to disposition and modification hearings[5] in juvenile cases. See La. C.E. art. 1101(C)(3); see also State in the Interest of D.H., 04-2105, (La. App. 1st Cir. 2/11/05), 906 So. 2d 554, 562. Further, the formal rules of procedure and evidence are not employed in a probation revocation hearing.[6] La. C.E. art. 1101(B)(3); State v. Davis, 375 So. 2d 69, 75 (La. 1979); see also State v. Black, 97-0774 (La. 12/12/97), 706 So. 2d 423, 424-25 (*per curiam*) (noting the relaxation of the rules of evidence in a probation revocation hearing); State v. Rochelle, 38,633 (La. App. 2d Cir. 6/23/04), 877 So. 2d 250, 256; State v. Fields, 95-2481 (La. App. 1st Cir. 12/20/96), 686 So. 2d 107, 110 ("the rules of evidence are relaxed in probation revocation proceedings"; hearsay evidence properly considered). Likewise, since the rules of evidence do not apply at a modification

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[4] The U.S. Supreme Court has recognized that "revocation of probation where the sentence has been imposed previously is constitutionally indistinguishable from the revocation of parole." Gagnon v. Scarpelli, 411 U.S. 778, 782 n.3, 93 S.Ct. 1756, 1759 n.3, 36 L.Ed.2d 656 (1973).

[5] However, the rules of evidence are fully applicable at the adjudication hearing. La. Ch.C. art. 881(A).

[6] We note that the principles underlying the Code of Evidence serve as guides to the admissibility of evidence at revocation of probation hearings. See La. C.E. art. 1101(B); Fields, 686 So. 2d at 110.

of disposition hearing, hearsay evidence is admissible at juvenile revocation proceedings.

Moreover, under the Code of Evidence, school records are admissible under the traditional public documents exception to the rule against hearsay rather than the business records exception. State v. Dewhirst, 527 So. 2d 475, 478 (La. App. 5th Cir. 1988), writ denied, 535 So. 2d 740 (La. 1989); see also Laplante v. Stewart, 470 So. 2d 1018, 1020 (La. App. 1st Cir.), writ denied, 476 So. 2d 352 (La. 1985). Specifically, La. C.E. art. 803(8) states in pertinent part:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

> (8) Public records and reports. (a) Records, reports, statements, or data compilations, in any form, of a public office or agency setting forth:
>
> (i) Its regularly conducted and regularly recorded activities;

The public documents exception to the rule against hearsay is historically based upon the principles of necessity and the probability of trustworthiness. State v. Nicholas, 359 So. 2d 965, 968 (La. 1978). The exception is founded primarily upon the presumption that an individual entrusted with a duty will do his duty and make a correct statement. The usual hearsay requirement that the declarant (here, the entrant or custodian) be shown to be unavailable is dispensed with in the instant case. This is largely because of the public inconvenience that would otherwise result from the disruption of public business to be occasioned by the continual summoning of public officers to prove routine facts reflected by their records with a high probability of accuracy. State v. Cunningham, 04-2200 (La. 6/13/05), 903 So. 2d 1110, 1117; Nicholas, 359 So. 2d at 968-69.

The Confrontation Clause of the Sixth Amendment provides: "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the

witnesses against him...." U.S. Const. amend. VI. In Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court overruled Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980). Under Roberts, 448 U.S. at 66, 100 S.Ct. at 2539, the Confrontation Clause did not bar admission of an unavailable declarant's statement if the statement fell under a "firmly rooted hearsay exception" or bore "particularized guarantees of trustworthiness." In Davis v. Washington, 547 U.S. 813, 822, 126 S.Ct. 2266, 2273-74, 165 L.Ed.2d 224 (2006), the Supreme Court, in discussing the parameters of Crawford in the context of a police interrogation, held that statements are testimonial when the circumstances objectively indicate there is no ongoing emergency and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of proving or establishing some fact at trial—they are not testimonial. Melendez-Diaz v. Massachusetts, 557 U.S. 305, 324, 129 S.Ct. 2527, 2539-40, 174 L.Ed.2d 314 (2009).

In addition to the hearsay argument, A.H. herein further contends that the document was not authenticated. As provided in La. C.E. art. 1101(D), in pertinent part, "Notwithstanding the limitations on the applicability of this Code stated in Paragraphs A, B and C of this Article, in all judicial proceedings a court may rely upon the provisions of this Code with respect to ... authentication."[7] One acceptable method of authenticating a public record is through the testimony of a witness with knowledge that the record is what it is claimed to be. La. C.E.

[7] As the court noted in Rochelle, there is no requirement that strict adherence to the formal rules governing certification or authentication of documents is necessary in a probation revocation hearing. Rochelle, 877 So. 2d at 256.

art. 901(B)(1). In the instant case, A.H.'s assigned parole supervisor, Gerard Landry, testified as to the authenticity of the school records at issue. According to Landry, A.H. had been booked into the East Baton Rouge Parish Prison on charges of unauthorized use of a motor vehicle, aggravated criminal damage to property, and resisting an officer. Landry further testified that A.H. initially attended Scotlandville High School, but was expelled due to a gang fight and was attending school at EBR Readiness Superintendent Academy at the time of the hearing. Landry obtained A.H.'s school records as a part of his routine duties as a parole officer. He testified that he submitted a record request to EBR Readiness to receive new records. Thereafter, Landry personally went to EBR Readiness and the school guidance counselor, in fulfillment of the request, personally gave Landry the printout of A.H.'s school attendance, report cards, and any other requested information. Accordingly, the report at issue was sufficiently authenticated. We find no abuse of discretion in the juvenile court's admission of the school documentation in this case. The sole assignment of error lacks merit.

JUVENILE COURT'S JANUARY 3, 2018 MODIFICATION OF DISPOSITION AFFIRMED.