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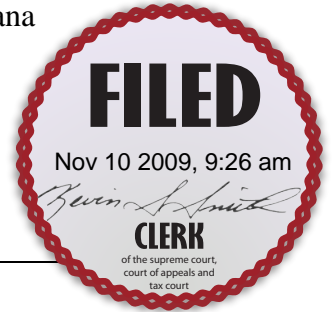
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**IN THE
COURT OF APPEALS OF INDIANA**

C.B.S.,)
)
Appellant-Defendant,)
)
vs.) No. 65A01-0906-JV-263
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable James M. Redwine, Judge
Cause No. 65C01-0901-JD-00010

November 10, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

C.B.S. appeals his adjudication as a delinquent child for committing an act that would be Class B misdemeanor battery if committed by an adult.¹ Specifically, C.B.S. argues that the evidence is insufficient to support the juvenile court's true finding and that the juvenile court abused its discretion by committing C.B.S. to the Indiana Department of Correction ("DOC").

We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Facts and Procedural History

On January 6, 2009, at approximately 7 p.m., D.G., a junior high school student, was walking home from the library. While he was walking, C.B.S. came from behind and put him in a choke-hold. D.G. knew C.B.S. from the previous summer and knew that C.B.S. wanted to fight D.G. After C.B.S. choked D.G., C.B.S. threw him to the ground

¹ We remind the parties of Indiana Appellate Rule 9(J) that requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(vi) states that "[r]ecords of juvenile proceedings, pursuant to Ind. Code § 31-39-1-2, except those specifically open under statute" are "excluded from public access" and "confidential." The inclusion of the juvenile record printed on white paper in his appellant's appendix and portions of the record included in his appellant's brief are inconsistent with Trial Rule 5(G), which states, in pertinent part:

Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

(1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."

(2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

and kned him in the face. C.B.S. then let D.G. stand up and hit D.G. in the face with his fist.

D.G. went home. His mother saw his injuries and asked how he had received them. Initially, D.G. claimed that he had been hit by a basketball while playing but after continued questioning, told his mother about C.B.S.'s attack. D.G.'s mother contacted police who came to investigate. The responding officer took down D.G.'s story and observed the injuries to D.G.'s nose, finger, and eye. The next day, D.G. went to the doctor, who determined that D.G.'s nose was broken but that it would heal normally.

On January 12, 2009, the State alleged C.B.S. to be delinquent for having touched D.G. in a rude, insolent or angry manner, a Class B misdemeanor. The fact-finding hearing was held on March 27, 2009. C.B.S.'s mother testified that C.B.S. was employed and had been working with her on January 6, 2009 from 5:00 p.m. to 9:30 p.m. and that he had been at the library earlier that day. Following the fact-finding hearing, the trial court concluded that C.B.S. had committed the acts alleged and entered a true finding against C.B.S.

The dispositional hearing was held on April 13, 2009. At the hearing, C.B.S.'s grandmother testified that she felt that C.B.S. would be best served by being placed in her care. The trial court disagreed and ruled that the "best available disposition is Boy's School." Tr. p. 35. The trial court then made C.B.S. a ward of the DOC. C.B.S. now appeals.

I. Sufficiency of the Evidence

C.B.S argues that the evidence is insufficient to sustain the juvenile court's true finding that he committed what would be Class B misdemeanor battery if committed by an adult. In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor assess the credibility of the witnesses. Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). Instead, we look to the evidence most favorable to the verdict and reasonable inferences drawn from that evidence. Id. We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id. "When the State seeks to have a juvenile adjudicated to be delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of that crime beyond a reasonable doubt." Al-Saud v. State, 658 N.E.2d 907, 908 (Ind. 1995).

C.B.S. argues that the juvenile court mischaracterized his mother's testimony when she claimed that he had been at work with her at the time D.G. said C.B.S. attacked him. C.B.S.'s mother testified that C.B.S. had been working that night but failed to present any corroborating evidence such as C.B.S.'s time card despite acknowledging that C.B.S.'s workplace does maintain time cards. Tr. pp. 18-20. D.G. testified that he saw C.B.S. while C.B.S. attacked him and he spoke with C.B.S. immediately after the attack. Tr. pp. 2-14. The juvenile court stated that "[C.B.S.'s mother's testimony] just doesn't sound definite enough to overcome the strong eyewitness testimony of [D.G.]." Tr. p. 22. C.B.S. is asking that we believe the testimony of his mother rather than that of D.G. This is merely a request to reweigh the evidence which we will not do. Love, 761 N.E.2d at 810. The juvenile court did not abuse its discretion when it determined that the

evidence is sufficient to sustain the true finding that C.B.S. committed what would be Class B misdemeanor battery if committed by an adult.

II. Disposition

C.B.S. also claims that the juvenile court abused its discretion by committing C.B.S. to the DOC. The choice of a specific disposition of a juvenile adjudicated a delinquent child is generally within the discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community's safety, and the policy of favoring the least-harsh disposition. R.S. v. State, 796 N.E.2d 360, 364 (Ind. Ct. App. 2003), trans. denied. A juvenile disposition will not be reversed absent a showing of an abuse of discretion. Id. An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. Id.

Unfortunately, our review of the record indicates that the juvenile court adjudicated C.B.S. to be delinquent for committing a Class B misdemeanor battery if committed by an adult, but the juvenile court's dispositional order states that C.B.S. was found to have committed a Class A misdemeanor battery if committed by an adult. Appellant's App. pp. 65, 66. The pre-dispositional report also states that C.B.S. was found to have committed what would be a Class A misdemeanor if committed by an adult. Id. at 69. The pre-dispositional report and the dispositional order also mistakenly state that three prior true findings of Class B misdemeanor batteries were true findings of Class A misdemeanors. Appellant's App. pp. 15, 17, 31, 51.

With the number of mistakes that may have affected the disposition of this case, we cannot determine whether the juvenile court based its disposition on an accurate finding and an accurate juvenile history or upon highly erroneous information. Therefore we must reverse the juvenile court's dispositional order and remand for additional proceedings to clarify the finding and juvenile history and to hold a new dispositional hearing with clarified information.

Conclusion

The evidence is sufficient to sustain the juvenile court's true finding that he committed what would be Class B misdemeanor battery if committed by an adult. We are unable to determine whether or not the juvenile court abused its discretion in placing C.B.S. in the DOC because of apparent errors in the pre-dispositional report and the dispositional order.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

DARDEN, J., and ROBB, J., concur.