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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001826-DG

J. M., A CHILD

APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT
v. HONORABLE FREDERIC COWAN, JUDGE
ACTION NO. 11-XX-000078

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, DIXON, AND VANMETER, JUDGES.

VANMETER, JUDGE: J.M., a child under eighteen, petitions this court for discretionary review of the Jefferson Circuit Court's order affirming the Jefferson District Court's denial of his motion for a new trial. The circuit court upheld J.M.'s convictions of Criminal Mischief in the Third Degree and Terroristic Threatening in the Third Degree. For the following reasons, we affirm.

J.M. was adjudicated guilty of Criminal Mischief in the Third Degree and Terroristic Threatening in the Third Degree following a bench trial on February 9, 2011, in the juvenile session of the Jefferson District Court. The Commonwealth introduced testimony from Paula Logsdon, the victim, and surveillance video taken at Logsdon's home. Logsdon testified that her car was damaged when J.M. ordered another child to fire a BB gun at the hood of her vehicle. Logsdon also testified that when she demanded that J.M. leave her property, he threatened her, saying, "I'm going to BB you."

J.M. testified that he passed through Logsdon's yard while playing a game of "cops and robbers" and the BB gun was not loaded. J.M. admitted he confronted Logsdon in front of her house, but denied threatening to "BB her." In rendering its decision, the district court noted that Logsdon's testimony regarding J.M.'s threat to "BB her" was consistent with her sworn statement in the juvenile petition.

J.M. moved for a new trial pursuant to RCr¹ 10.02, claiming that he was denied due process of law since the district court improperly used the petition as evidence against him. He cited RCr 9.56, which prohibits a jury from using an indictment or charging document as evidence. The district court denied the motion, stating:

The language used in the petition, by the complaining witness, that the Defendant had threatened "to bb her", was exactly the same phrase that she used during her

¹ Kentucky Rules of Criminal Procedure.

testimony at trial. The time frame between the alleged incident, the taking of the petition (in September, 2010) and the trial date, (February 9, 2011) was such that the Court put great weight in the credibility of the witness, when she was able to recite, verbatim the same language she had used in the petition. The petition itself was never viewed by the court as evidence or as having any weight against the Defendant.

J.M. appealed that decision to the circuit court, which noted that RCr 9.56 applies to jury trials, not juvenile bench trials, and the district court enjoys a presumption that its decision is based on the evidence. Further, the circuit court cited KRS² 610.080(1) which requires juvenile court judges to consider the information in the petition to determine its truthfulness. Thus, the circuit court found that it was appropriate for the district court to consider the petition, and affirmed. This appeal follows.

J.M. raises three questions on appeal: (1) whether a juvenile court judge may consider statements made in the charging document when assessing the credibility of a witness; (2) if the judge may consider information contained in the petition, whether the petition must first be entered into evidence; and (3) whether KRS 610.080 requires a judge in all juvenile adjudications to consider the information in the petition.

“We review the denial of a motion for a new trial to determine whether such decision was an abuse of discretion.” *Bedingfield v. Commonwealth*, 260 S.W.3d 805, 810 (Ky. 2008). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair or unsupported by sound legal

² Kentucky Revised Statutes.

principles.” *Woodard v. Commonwealth*, 147 S.W.3d 63, 67 (Ky. 2004)

(quotations and citation omitted).

First, J.M. argues that a juvenile court judge should not be permitted to consider the charging petition when evaluating the credibility of a witness or determining the outcome of a case. J.M. cites RCr 9.56(1), which states:

In every case the jury shall be instructed substantially as follows: “The law presumes the defendant to be innocent of a crime, and **the indictment shall not be considered as evidence or as having any weight against him or her**. You shall find the defendant not guilty unless you are satisfied from the evidence alone, and beyond a reasonable doubt, that he or she is guilty. If upon the whole case you have a reasonable doubt that he or she is guilty, you shall find him or her not guilty.”

(emphasis added). J.M. claims that this rule also applies to juvenile bench trials.

We disagree. We find the circuit court’s reasoning persuasive, and agree that this rule only applies to instruction of a jury and is meant to provide due process protections to defendants whose guilt or innocence is being determined by laypersons. RCr 9.56(1) is intended to insure that juries do not rely solely on the fact that a defendant was indicted for the crime in making their determination. Instead, it instructs the jury to rely on the evidence presented at trial. A judge in a juvenile bench trial presumably needs no such instruction.

Further, as cited by the circuit court and the Commonwealth, KRS 610.080(1) states:

The adjudication shall determine the truth or falsity of the allegations in the petition and shall be made on the basis

of an admission or confession of the child to the court or by the taking of evidence.

We agree with the circuit court's finding that a judge cannot determine the truthfulness of allegations contained in the petition without referring to the petition itself. It appears from the record that Logsdon testified to J.M.'s threat to "BB her" both in the petition and during the adjudication hearing. In finding that the terroristic threatening allegations in the petition were truthful, the district court judge had no choice but to compare the threat alleged in the petition to the threat alleged in Logsdon's testimony. Therefore, we do not believe the district court judge's notation of Logsdon's consistent statements was erroneous.

Next, J.M. asks this court to decide whether the petition must be entered into evidence if considered by the judge. We do not believe the petition must be entered as evidence because the petition is not relied upon as evidence. Logsdon's testimony was the evidence presented against J.M. during the hearing, not the petition. The petition was not considered as evidence against J.M.; the district court merely obeyed its duty to determine the truth or falsity of the petition by comparing the evidence, Logsdon's testimony, to the alleged offenses in the petition. Thus, admitting the petition as evidence is unnecessary.

Lastly, we believe that the petition is considered, to some extent, in all juvenile proceedings. KRS 610.080(1) requires that the adjudication "determine the truth or falsity of the allegations in the petition[.]" In reading that statute for its plain meaning, it inherently requires the judge to consider the contents of the

petition in rendering a decision. *See Commonwealth v. Love*, 334 S.W.3d 92, 93 (Ky. 2011) (statutes should be interpreted in accordance with their plain meanings).

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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