NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KJ 0807

STATE OF LOUISIANA
IN THE INTEREST OF C.D.S.

Judgment Rendered: AUG 2 2 2012

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Appealed from Juvenile Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 101610

The Honorable Pamela Taylor Johnson, Judge Presiding

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Sean Collins
Baton Rouge, Louisiana

Counsel for Appellant
C.D.S.

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

Counsel for Appellee
State of Louisiana

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BEFORE: C.J. CARTER, GUIDRY, AND GAIDRY, JJ.

GAIDRY, J.

A fifteen-year-old child,[1] identified herein as C.D.S., was alleged to be delinquent, pursuant to the Louisiana Children's Code, according to a petition filed by the State on January 12, 2012. The petition charged the alleged commission of domestic abuse battery (count one), simple criminal damage to property where the damage is less than five hundred dollars (count two), and resisting an officer (count three), violations of La. R.S. 14:35.3, La. R.S. 14:56, and La. R.S. 14:108, respectively. After an adjudication hearing, the juvenile court adjudicated C.D.S. a delinquent based on the commission of simple battery, a violation of La. R.S. 14:35, and, as alleged, simple criminal damage to property. At the disposition hearing, the juvenile court committed C.D.S. to the secure custody of the Department of Public Safety and Corrections for six months on both counts, to be served consecutively, with credit for time served and certain conditions. On appeal, C.D.S. argues that the juvenile court erred in ordering the sentences to be served consecutively and in denying the motion for judgment of acquittal on count one. After a thorough review of the record and the errors assigned, we affirm the adjudications, amend the dispositions, and affirm the disposition order as amended.

STATEMENT OF FACTS

On January 8, 2012, C.D.S., a Baton Rouge resident, had a physical altercation while away from home. According to her mother, N.S., the child's back was cut with a razor blade during the altercation. After the child returned home, her mother called the police because the child planned to return to the scene of the altercation. When the police arrived at the

[1]The child's date of birth is September 24, 1996.

residence, the child's back was bleeding and she was taken to the hospital for treatment.

N.S. and the child returned home at about 8:00 p.m. and the child attempted to leave the home again. Noting that it was after the child's 6:00 p.m. curfew, N.S. refused to allow her to leave. When the child insisted that she was leaving, N.S. stood in front of the door and the child physically attacked her. According to N.S., the child repeatedly hit the upper portion of her body with closed fists as N.S. attempted to push her away. The child then pushed a 19-inch television to the floor and knocked over a glass table, breaking both items.

N.S. instructed her other daughter to call the police. While N.S. was waiting for the police, her niece arrived and she opened the door. At that point, the child fled from the home. Since the child was not present when the police first arrived at the home, they made follow-up visits to the residence that night and apprehended the child after she returned home.

ASSIGNMENT OF ERROR NUMBER ONE

In the first assignment of error, C.D.S. contends that the juvenile court erred in ordering her six-month dispositions to be served consecutively. Applying La. Code Crim. P. art. 493.1, the child argues the juvenile court should have ordered that the misdemeanor-grade dispositions be served concurrently. The child notes that the offenses arose out of the same incident and were joined in one petition. In its response brief, the State concedes the juvenile court erred in ordering that the dispositions be served consecutively, but contends the case should be remanded for a new disposition hearing to allow the juvenile court to determine how to impose an aggregate six-month commitment.

The Louisiana's Children's Code specifically provides for the joinder of two or more delinquent acts in the same delinquency petition whether based upon felony or misdemeanor offenses if the acts are of the same or similar character or constitute parts of the same transaction. La. Ch. Code art. 845(C). Although La. Ch. Code art. 899(C) authorizes the confinement of a juvenile in the custody of the Department of Public Safety and Corrections after a misdemeanor-grade delinquency adjudication, the article does not provide for any specific terms of custody. Instead, the Code states generally for misdemeanor-grade adjudications that "[n]o judgment of disposition shall remain in force for a period exceeding the maximum term of imprisonment for the offense which forms the basis for the adjudication...." La. Ch. Code art. 900(A). The Code thus expressly addresses the custodial disposition only of a single misdemeanor-grade delinquent act and does not provide a rule for delinquency adjudications based on several misdemeanor-grade acts charged in different counts in the same petition under the authority of La. Ch. Code art. 845(C). The Children's Code provides that where procedures are not provided for in that code, the court is mandated to proceed in accordance with the Code of Criminal Procedure. See La. Ch. Code arts. 104 & 803.

In *State in the Interest of B.J.*, 2005–0913 (La. 6/24/05), 906 So.2d 392 (per curiam), the Louisiana Supreme Court held that La. Code Crim. P. art. 493.1 governed the disposition of a child adjudicated delinquent for misdemeanor acts by capping the disposition for misdemeanor-grade offenses charged in a single petition to a total of six months. Therein, the State charged the relator in a delinquency petition with various misdemeanor-grade acts apparently stemming from a single incident in Baton Rouge at the end of 2003. Following the relator's admission to the

acts of possession of a firearm in violation of La. R.S. 14:95.8, and possession of marijuana in violation of La. R.S. 40:966, the juvenile court entered a disposition committing him to the custody of the Department of Public Safety and Corrections for consecutive terms of six months. In capping the total disposition that could be imposed at six months, the Supreme Court reasoned:

> Under the authority of La.C.Cr.P. art. 883, a trial judge in the case of misdemeanor offenses arising out of the same transaction and charged in the same bill of information may impose consecutive sentences, just as the court may in any other case, felony or misdemeanor, but La.C.Cr.P. art. 493.1 specifically limits the defendant's overall sentencing exposure in the particular circumstance of, [sic] joined misdemeanor offenses to a total of six months in jail.

Interest of B.J., 906 So.2d at 394.

Based on the Supreme Court's holding in *Interest of B.J.*, we find the juvenile court erred herein in ordering the dispositions to run consecutively, as opposed to concurrently. Because this case involves two misdemeanor offenses arising out of the same transaction and alleged in the same petition, the total disposition imposed cannot exceed six months. Thus, assignment of error number one has merit. In *Interest of B.J.*, the Supreme Court amended the disposition order of the juvenile court to provide for concurrent, not consecutive, dispositions and affirmed the disposition order as amended. Similarly, we find no need to remand the instant case. We amend the disposition order of the juvenile court to provide for concurrent and not consecutive terms of secure custody, and hereby affirm the disposition order as amended.

ASSIGNMENT OF ERROR NUMBER TWO

In the second assignment of error, C.D.S. argues that the juvenile court erred in denying her motion for acquittal on the domestic abuse battery

offense alleged in count one of the petition. The child contends that although the adjudication on count one is based on the commission of a responsive offense, the appellate court must look to the original offense alleged in the petition to determine if there was sufficient evidence to sustain the adjudication. The child argues that the State failed to show that a battery had been committed by one household member upon another household member within the meaning of La. R.S. 14:35.3.[2]

At the outset we note that when the child was found guilty of a lesser degree of the offense alleged on count one, the judgment of the juvenile court was, in effect, an acquittal of the greater offense. See La. Code Crim. P. art. 598(A). In arguing that this court must look to the alleged offense to determine the sufficiency of the evidence to sustain the adjudication of the lesser offense, the child relies on *State v. Collins*, 2009-2102 (La. App. 1st Cir. 6/28/10), 43 So.3d 244, writ denied, 2010-1893 (La. 2/4/11), 57 So.3d 311, cert. denied, ___ U.S. ___, 132 S.Ct. 99, 181 L.Ed.2d 27 (2011). Therein, the defendant waived his right to a jury trial and the trial court entered responsive verdicts of aggravated battery on attempted second degree murder charges. On appeal the defendant argued that the State, in failing to present evidence that he had any physical contact with either victim or caused any of the victims' injuries, did not prove all of the essential elements of the offense of aggravated battery. The defendant claimed that the State was required to prove every element, despite the fact that the convictions were by way of responsive verdicts. Citing *State ex rel. Elaire v. Blackburn*, 424 So.2d 246, 251-52 (La. 1982), cert. denied, 461 U.S. 959, 103 S.Ct. 2432, 77 L.Ed.2d 1318 (1983), this court held that a "compromise" verdict is allowed for whatever reason the fact finder deems

[2] As detailed herein, it is not necessary to address the merits of this argument. The child does not in any manner challenge the adjudication on count two.

to be fair, as long as the evidence is sufficient to sustain a conviction for the charged offense.[3] *Collins* merely applies the proposition that if there is no objection to an instruction on a responsive verdict, then the reviewing court may affirm the conviction if the evidence would have supported a conviction of the greater offense, whether or not the evidence supports the conviction of the responsive offense returned by the fact finder. *Collins*, 43 So.3d at 250. Nonetheless, there is no need to look to the greater offense if the evidence supports a conviction for the responsive offense returned by the fact finder. Thus, the child's reliance on *Collins* is clearly misplaced and there is no support for the argument set forth in this assignment of error. As further discussed below, the adjudication in this case clearly fits the evidence and this court is not required to find sufficient evidence of the original offense, which did not form the basis of the adjudication. The adjudication will be upheld if the record supports the juvenile court's finding on the lesser offense.

The child does not appear to directly challenge the sufficiency of the evidence in support of the delinquent act for which she was adjudicated on count one. Nonetheless, out of an abundance of caution, this court notes that the evidence presented herein clearly established the elements of the simple battery, the intentional use of force or violence upon the person of another without the consent of the victim. La. R.S. 14:33 & La. R.S. 14:35.

The constitutional standard of review for determining the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State

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[3] A "compromise" verdict is a verdict which does not "fit" the evidence, but which (for whatever reason) the trier of fact deemed to be a fair verdict. See *State ex rel. Elaire*, 424 So.2d at 251.

proved the essential elements of the crime beyond a reasonable doubt. See La. Ch. Code art. 883; La. Code Crim. P. art. 821; *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). However, in a juvenile delinquency proceeding, an appellate court is constitutionally mandated to review the law and facts. La. Const. art. V, § 10(A) & (B). See *State in the Interest of L.C.*, 96-2511 (La. App. 1st Cir. 6/20/97), 696 So.2d 668, 670. In a juvenile case, when there is evidence before the trier of fact that, upon its reasonable evaluation of credibility, furnished a factual basis for its finding, on review the appellate court should not disturb this factual finding in the absence of manifest error. Reasonable evaluation of credibility and reasonable inferences of fact should not be disturbed upon review. *State in the Interest of Wilkerson*, 542 So.2d 577, 581 (La. App. 1st Cir. 1989).

Herein, the child's mother testified that the child repeatedly hit her with her fists in the head and shoulder area without her consent. There was no testimony or evidence in conflict with this testimony. It is well settled that an appellate court cannot set aside a juvenile court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. See *State in the Interest of D.H.*, 2004–2105 (La. App. 1st Cir. 2/11/05), 906 So.2d 554, 559-60. Based on our careful review of the record, the juvenile court's finding that there was proof beyond a reasonable doubt of simple battery was not manifestly erroneous or clearly wrong. Considering the foregoing, the second assignment of error lacks merit.

ADJUDICATIONS AFFIRMED, DISPOSITIONS AMENDED, AND DISPOSITION ORDER AS AMENDED AFFIRMED.