NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 KJ 0389

STATE OF LOUISIANA
IN THE INTEREST
OF
A.H.

Judgment Rendered: SEP 21 2018

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Appealed from the
Juvenile Court
In and for the Parish of East Baton Rouge, Louisiana
Juvenile Court Number 106579

Honorable Adam J. Haney, Judge

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

The juvenile, identified herein as A.H., was alleged to be delinquent according to a petition in case number 106579 filed by the State on September 25, 2014, pursuant to the Louisiana Children's Code.[1] The petition was based upon the alleged commission of six counts of simple burglary, in violation of La. R.S. 14:62. The juvenile entered a denial on each allegation. At an adjudication hearing on October 27, 2014, as to counts one and four, the juvenile withdrew the original denial and entered an admission. The juvenile court accepted the admissions on counts one and four, adjudicated the juvenile delinquent on counts one and four, and imposed a consecutive disposition of two years in the custody of the Department of Public Safety and Corrections on each count. As to both counts, the court suspended said commitment, placed the juvenile on supervised probation for one year, and ordered the terms of commitment to run consecutively with the dispositions in case numbers 106090, 106510, and six months of the disposition in case number 110642. The juvenile's dispositions were modified several times, ultimately with the juvenile court revoking A.H.'s probation following a contradictory hearing on January 3, 2018, and ordering him to serve the balance of his sentence with credit for time served. The State dismissed the allegations on the remaining counts. On appeal, A.H. alleges that the juvenile court judge erred in admitting school records without authentication in modifying the disposition at the January 3, 2018 contradictory hearing.[2] After a thorough review of the record and the assignment of error, we affirm the juvenile court's judgment of January 3, 2018.

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[1] As stated in the amended petition, A.H.'s date of birth is April 18, 2000. The juvenile was between the ages of thirteen and fourteen at the time of the alleged offenses.

[2] The juvenile also has pending appeals in case numbers 2018 KJ 0387 (docket number 106090), 2018 KJ 0388 (docket number 106510), and 2018 KJ 0390 (docket number 110642), alleging the same error raised herein. The applicable language presented herein is restated in the aforementioned cases.

STATEMENT OF FACTS

As the juvenile entered an admission to the amended allegations on counts one and four, the facts are not in the record. Moreover, the facts are not relevant to the issues addressed in the instant appeal. The petition alleges that counts one and four were committed on September 17, 2014 and March 28, 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 dispositions, we observe the following points. 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 judgments of disposition, is not a judgment of disposition. However, in **Bemis**, 459 So.2d at 1228, this court specifically held 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. Herein, the juvenile court granted the motion to modify the judgments 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. Code art. 330(B). By implication, the Louisiana 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.**, 2017-579 (La. App. 5th Cir. 2/21/18), 240 So.3d 310, 330-332; **State in the Interest of Sterling**, 441 So.2d 372, 373 (La. App. 5th Cir. 1983) (modifications revoking parole were reviewed on appeal). Herein, the ruling granting the judgment modifying the dispositions took place at the hearing on January 3, 2018, the motion for appeal was filed on January 19, 2018, and the

judgment modifying the dispositions was signed by the juvenile court judge on January 31, 2018. Accordingly, it is evident that the motion for appeal was filed within fifteen days from the mailing of notice of judgment. See La. Ch. Code art. 332(A); La. Ch. Code art. 903(D). Thus, A.H. has the right to appellate review of the January 3, 2018 modification of the dispositions.

ASSIGNMENT OF ERROR

In the sole assignment of error, A.H. notes that, at the hearing, his counsel objected to the introduction of a 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 obtained the document from a school counselor. Citing La. C.E. art. 803, the juvenile 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. The juvenile 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 Louisiana Children's Code demands full compliance with the Louisiana Code of Evidence in juvenile revocation proceedings, he argues that a different rule should be applied to juvenile revocation proceedings. The juvenile contends that the juvenile court abused its discretion in allowing the admission of the report. He further contends that the juvenile court considered only school absences reflected in the report in deciding to revoke the juvenile's parole; thus, he claims that the error in admission cannot be considered harmless in this case.[3]

At the January 3, 2018 hearing on the State's motion to revoke parole and/or modify disposition, the State introduced documentation of the juvenile's school attendance history, dated December 18, 2017. A.H.'s attorney initially objected on

[3] The child does not assign error to the sufficiency of the basis for revocation.

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 the child. 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 report into evidence, the juvenile court judge stated that hearsay was 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.

Modification of probation[4] can be obtained through the filing of a motion to revoke probation pursuant to La. Ch. Code art. 913. The hearing may be more informal and summary than an adjudication hearing. Consistent with the juvenile'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. Code art. 913(C). Further, the Louisiana Supreme Court has held that formal rules of evidence do not apply in revocation proceedings. See **State v. Davis**, 375 So.2d 69, 74-75 (La. 1979); **State v. Fields**, 95-2481 (La. App. 1st Cir. 12/20/96), 686 So.2d 107, 110. Nonetheless, we find that the juvenile in this case was afforded full compliance with the Code of Evidence. 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

[4] The U.S. Supreme Court has recognized that "revocation of probation where 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).

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:
>
> * * *
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> **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. 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, 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. Nicholas**, 359 So.2d 965, 968-69 (La. 1978).

The Confrontation Clause of the Sixth Amendment provides, in part: "[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).

Nonetheless, the rule of authentication, evidencing the genuineness of a particular document, must always be satisfied. **State v. Cobb**, 419 So.2d 1237, 1243-44 (La. 1982). We look at La. C.E. art. 901 to examine whether the exhibit might be properly authenticated. 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. art. 901(B)(1).

In this case, the juvenile's assigned parole supervisor, Gerard Landry of the Baton Rouge Office of Juvenile Justice Probation and Parole, 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 the juvenile's school records as a part of his routine duties as a parole officer. He testified that he went to EBR Readiness and submitted a record request to receive new records. Thereafter, the school guidance counselor fulfilled the request by

providing Landry with a printout of A.H.'s school attendance, report cards, and any other requested information. Noting that the attendance history form included a number of unexcused absences, tardy arrivals, and skipped dates, Landry testified that A.H. has some issues with attending school on a regular basis. Considering Landry's testimony, we find that the records at issue were sufficiently authenticated. As the records were, moreover, admissible under the public records exception, we find no abuse of discretion in the juvenile court's admission of the school records. Accordingly, the sole assignment of error lacks merit.

For the foregoing reasons, the juvenile court's January 3, 2018 modification of dispositions is affirmed.

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