NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KJ 1080

STATE OF LOUISIANA, IN THE INTEREST OF
P. H.

Judgment rendered NOV 02 2018

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Appealed from the
Juvenile Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court No. JU112379
Honorable Adam J. Haney, Judge

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P. H.

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

PETTIGREW, J.

The juvenile, P.H.,[1] was charged by petition in juvenile court with simple battery, a violation of La. R.S. 14:35 (count one); second degree battery, a violation of La. R.S. 34.1 (count two); battery of a school teacher, a violation of La. R.S. 14:34.3 (count three); and disturbing the peace, a violation of La. R.S. 14:103 (count four). She denied the allegations. At an adjudication hearing, following the presentation of evidence and a motion for directed verdict of acquittal, the juvenile court dismissed counts one and two. The court found that the alleged student victim, T.B., was a willing participant in the fight and that the State had failed to prove P.H. had intentionally hurt a teacher. However, the juvenile court adjudicated the juvenile delinquent on count three (battery of a school teacher) and count four (disturbing the peace) and ordered a pre-disposition report. On count three, the court ordered P.H. to a term of commitment of five years, suspended, with the juvenile placed on supervised probation for eighteen months, subject to standard conditions. In addition to those conditions, the court ordered: (1) a curfew of 6:00 p.m. or thirty minutes after work; (2) court costs of $80.50; (3) forty hours of community service; (4) participation in a "pro-social activity;" (5) participation in the Crime Prevention Clinic; (6) compliance with counseling; and (7) payment of $500.00 to the Victims of Juvenile Crime Compensation Fund. On count four, the court ordered the juvenile to a term of commitment of ninety days, suspended, with P.H. placed on supervised probation for eighteen months, with the same special conditions as count three. The probations and commitments were ordered to run concurrently. P.H. now appeals, designating one assignment of error. We affirm the adjudication and judgment of disposition.

FACTS

Testimony adduced at the adjudication hearing revealed that on February 19, 2018, P.H. and T.B. were engaged in a physical altercation. The two students were

[1] Pursuant to Rules 5-1(a) and 5-2 of the Uniform Rules--Courts of Appeal, the initials of the juveniles involved in this matter will be used instead of their names.

involved in an argument stemming from a prior incident. During the fight, teacher Karla Washington, along with an administrator and another teacher, Craig Bilbrew, attempted to intervene. Washington and Bilbrew were thrown (or knocked) to the ground by P.H. During the fall, Washington severely injured her ankle. She underwent surgery later that day, requiring a plate and eight screws in her ankle. Washington testified that as of the time of trial, she still had weekly visits from a home health nurse, was attending physical therapy, and seeing a pain management doctor. P.H., who was 16 at the time of the offense, told authorities she was trying to fight T.B., not Washington, and did not intend to injure Washington.

ASSIGNMENT OF ERROR

In her sole assignment of error, P.H. argues the juvenile court erred when it adjudicated her delinquent where the State failed to specify the felony grade of La. R.S. 14:34.3 in its petition, and the court found the juvenile delinquent of the offense due to the fact the victim sought medical attention. P.H. also argues the State failed to specify which teacher was alleged to have been the subject of the battery of a school teacher, and that failure prejudiced her ability to defend herself where there were multiple teachers involved in the conflict.

During arguments, the State requested the juvenile be adjudicated delinquent under La. R.S. 14:34.3(C)(3), due to the severity of injuries sustained by Washington. The court noted on the record that the State failed to specify the grade of offense in the petition under La. R.S. 14:34.3, stating "that kind of leaves it up to The Court a little bit." The juvenile court noted that it was its opinion that the legislature intended courts to use La. R.S. 14:34.3(C)(3) when a "battery is committed by a student and causes medical injury." Of note, during the hearing on the motion for directed verdict regarding count three, the juvenile only argued that the State failed to prove that she knew the victim was a teacher at the time, highlighting testimony from Washington that P.H. seemed "out of it" during the incident. It was not until a subsequent post-adjudication, pre-disposition motion for arrest of judgment that P.H. argued the juvenile

court erred by finding the felony offense where the State had not specified it in the petition, and failed to specify who the alleged victims of each offense were.

When the State charges a child with a delinquent act, it has the burden of proving each element of the offense beyond a reasonable doubt. La. Ch. Code art. 883.[2] The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime and the identity of the perpetrator of that crime beyond a reasonable doubt. See 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); **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1 Cir. 1984). The same standard of review applies to a challenge to the sufficiency of evidence adduced to support an adjudication in a juvenile proceeding. See La. Ch. Code art. 883; **State in the Interest of D.M.**, 97-0628 (La. App. 1 Cir. 11/7/97), 704 So.2d 786, 789. Further, in a juvenile delinquency proceeding, an appellate court is constitutionally mandated to review the law and facts. See **State in the Interest of L.C.**, 96-2511 (La. App. 1 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, furnishes 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. 1 Cir. 1989).

As to the drafting of the petition by the State, La. Ch. Code art. 844 provides:

> A. The petition shall contain a caption setting forth the name of the court and the title of the action. The petition shall be entitled, "The State of Louisiana in the Interest of ...".
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> B. Allegations of fact shall be simple, concise, and direct and shall be set forth in numbered paragraphs. As far as practicable, each paragraph shall

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[2] The Louisiana Children's Code defines *child* as "any person under the age of twenty-one, including an emancipated minor, who commits a delinquent act before attaining seventeen years of age." La. Ch. Code art. 804(1)(a). A *delinquent act* is defined, in pertinent part, as "an act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, ... except traffic violations." La. Ch. Code art. 804(3).

be limited to a single set of circumstances. Allegations of fact may be made on information and belief.

C. Failure to comply with formal requirements of this Article shall not be grounds for dismissal of a petition or invalidation of the proceedings unless it results in substantial prejudice.

The purpose of the delinquency petition is to give the juvenile notice and an opportunity to defend. **State v. D.L.**, 29,789 (La. App. 2 Cir. 6/18/97), 697 So.2d 706, 710.

Additionally, the contents of the petition are guided by La. Ch. Code art. 845(A):

The petition shall set forth with specificity:

(1) The name, date, and place of birth, sex, race, address, and present location of the child.

(2) The names and addresses of the parents and spouse, if any, of the child. If the parents are not within the state or cannot be located, the name and address of the child's closest adult relative within the state, or, if there be none, the known adult relative residing nearest to the court.

(3) Facts which show that the child is a delinquent child.

(4) The statute or ordinance which the child is alleged to have violated.

The charging language at issue in the petition reads:

To the Honorable Juvenile Court for the Parish of East Baton Rouge, State of Louisiana:

The Petition of Courtney Myers with respect represents:

That [P.H.] Age 16 Address [Baton Rouge, Louisiana]
Whose parents are [E.H.] – mother/same address

Is delinquent and/or in need of supervision and within the jurisdiction of the Juvenile Court for the Parish of East Baton Rouge, State of Louisiana, in that while in the parish of East Baton Rouge:

. . . .

Count 3 on or about February 19, 2018 the defendant violated 14:34.3– Battery of a School Teacher: the defendant committed a battery upon a teacher when the defendant had reasonable grounds to believe the victim was a school teacher acting in the performance of employment duties[.]

Moreover, La. R.S. 14:34.3 provides, in pertinent part:

A. Battery of a school teacher is a battery committed without the consent of the victim when the offender has reasonable grounds to believe the victim is a school teacher acting in the performance of employment duties.

. . . .

C. Whoever commits the crime of battery of a school teacher shall be punished as follows:

> (1) If the battery was committed by a student, upon conviction, the offender shall be fined not more than five thousand dollars or imprisoned not less than thirty days nor more than one year. At least seventy-two hours of the sentence imposed shall be imposed without benefit of suspension of sentence.
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> . . . .
>
> (3) If the battery produces an injury that requires medical attention, the offender shall be fined not more than five thousand dollars or imprisoned with or without hard labor for not less than one year nor more than five years, or both.

Here, the petition itself conforms to the requirements of Article 845(A). In the event the juvenile found the petition confusing as to who the victim was, the proper vehicle to challenge any alleged vagueness would have been a motion to dismiss, which is the equivalent of a motion to quash. See **State ex rel. I.P.**, 2010-0882 (La. App. 4 Cir. 12/8/10), 53 So.3d 658, 662, writ denied, 2011-0066 (La. 5/20/11), 63 So.3d 973 (Bonin, J. dissenting, "A motion to dismiss under La. Ch. Code art. 875 functions comparably to a motion to quash under La. [Code Crim.] P. art. 532."). The juvenile failed to move to dismiss and only challenged the alleged vagueness of the petition following the adjudication. Therefore, P.H. arguably waived the error. Cf. **State v. Ruiz**, 2006-1755 (La. 4/11/07), 955 So.2d 81, 88 (failure to file a motion to quash alleging that the charging instrument was defective waives any error); La. Ch. Code art. 803 (in the absence of specific procedures provided by the Louisiana Children's Code, the court shall proceed in accordance with the Louisiana Code of Criminal Procedure).

Even assuming the juvenile preserved the error despite the failure to file a motion to dismiss, the standard of review for a claim of defective charging instrument is harmlessness. La. Ch. Code art. 844(C) ("Failure to comply with formal requirements of this Article shall not be grounds for dismissal of a petition or invalidation of the proceedings unless it results in substantial prejudice."); cf. **State in the Interest of P.L.**, 2011-1173 (La. App. 4 Cir. 1/11/12), 81 So.3d 983, 990 (trial court error in failing to obtain a verification of juvenile delinquency petition was deemed harmless, where the prosecution of juvenile ratified the unverified petition and juvenile failed to file a motion to quash the petition).

Though P.H. cites **State in the Interest of D.M.**, 2002-2528 (La. App. 4 Cir. 7/2/03), 851 So.2d 1216, as supporting the proposition that a charging error necessitates reversal of a subsequent adjudication, that case presents distinguishable facts. Specifically, in that case the State alleged in the petition that the juvenile had committed battery of a police officer, misdemeanor grade, but captioned the charge as felony second degree battery. The juvenile was subsequently adjudicated by the juvenile court to have committed second degree battery. **Id.** at 1220. Second degree battery is not a responsive verdict of battery of a police officer, but instead a more serious crime. The fourth circuit court of appeal reversed, holding that because the juvenile had been convicted of a greater – and different – offense relative to what the petition had descriptively charged him with, the adjudication must be reversed and remanded. **Id.** at 1221. Citing a yet different set of circumstances out of the third circuit in **State v. Boswell**, 96-0801 (La. App. 3d Cir. 2/12/97), 689 So.2d 627, 632 (where bill of information cited to subsection of cocaine distribution statute which defined crime of possession, for which defendant was not charged, was harmless, as bill of information stated essential facts of offense charged and defendant neither objected to error, nor claimed surprise or prejudice), the fourth circuit reasoned that the petition did not adequately give the juvenile notice where he was not properly charged with the offense for which he was adjudicated delinquent. **State in the Interest of D.M.**, 851 So.2d at 1220.

Here, P.H. was nominally and factually charged in the petition with battery of a school teacher and was subsequently adjudicated delinquent for battery of a school teacher. Cf. **State in the Interest of Batiste**, 367 So.2d 784, 787 (La. 1979) (where petition for adjudication of child as delinquent set forth the charged offense of theft as well as specific allegations of misconduct that formed basis for charged offense, petition was sufficient to put juvenile's defense on notice that it would be required to defend against lesser included offense of unauthorized use of movable); **State in the Interest of Korkosz**, 393 So.2d 332, 334 (La. App. 1 Cir. 1980) (offense of hit-and-run driving contains no lesser and included offenses, and where minor was charged only with having

committed offense of hit and run while driving, he could not be adjudicated delinquent as having committed other offenses with which he could appropriately have been charged with separately, such as negligent injury, or reckless driving). The only difference between the charge and the adjudication is in the punishment to which P.H. could be subject to under the provisions of La. R.S. 14:34.3(C). The juvenile court observed that subsection (C)(3) only "made sense" if it were available to use in situations not covered by sections (C)(1) and (C)(2). We find no abuse of discretion by the juvenile court in sentencing. The juvenile has failed to demonstrate substantial prejudice by the lack of a specification of the felony grade in the petition.

Moreover, the petition itself was not defective. The juvenile was on notice as to the "unnamed" victim alleged in the petition, at a minimum, by virtue of her own motions for discovery and for a bill of particulars filed prior to the hearing. Any remaining doubt as to the specifics of the charges could have been specifically addressed by the motions. In a later-filed motion for subpoena *duces tecum*, the State captions the incident as between P.H., the other student, and Washington. Testimony at the adjudication hearing revealed that law enforcement spoke directly to P.H. regarding the injury to Washington, and her subsequent arrest was due to having caused that injury. The officer also referenced in his testimony an offense report, which was also used by the juvenile during the hearing. Though the juvenile claims "discovery provided by the state indicated that the number of alleged victims appeared to align each victim with one count," and while there was another teacher involved in the fall with Washington, there is no suggestion in the record of a battery of any teacher other than Washington. Further, the juvenile does not provide any record support for that contention.

It is difficult to imagine how defense counsel could have prepared differently where the facts underlying either misdemeanor or felony punishment were the same, but for the ankle injury of Washington, which the juvenile was present for and aware of. P.H. fails to demonstrate how she was prejudiced by an alleged lack of notice by the State's petition. Thus, this assignment of error is without merit.

ADJUDICATION AND DISPOSITION AFFIRMED.