UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1732

September Term, 2014

IN RE: TIANNA R.

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 19, 2015

Appellant, Tianna R., was found to be involved in the delinquent act of assault in the second degree by the Circuit Court for Prince George's County, sitting as a juvenile court.[1] She presents two questions for our review, which we quote:

> 1. Did the [juvenile court] err by permitting the prosecutor to impeach [a]ppellant with a prior adjudication of delinquency?
>
> 2. Is the evidence legally insufficient to sustain the finding that Tianna R. was involved in the delinquent act of assault in the second degree?

For the reasons below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case arose out of a fight between appellant and Janae B. On April 12, 2014, Janae was on her way to the mall with her two brothers and three friends when they encountered appellant, and her friends Cassandra and Steven. Steven informed Janae's group that the busses were not running, and, as a result, the two groups ended up in a nearby McDonald's.

Along the way, appellant and Janae's brother, Javion, were "play fighting" with one another. Initially the two were smiling, but eventually appellant got angry, balling her fists and saying "I'm serious. I'm not playing." Janae told her to calm down and then went into the McDonald's with her two brothers and three friends. Not far behind, appellant entered

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[1] *See* Md. Code (1974, 2013 Repl. Vol.), § 3-8A-01(l) of the Courts & Judicial Proceedings Article ("C.J.P."):

> **Delinquent act**
> (l) "Delinquent act" means an act which would be a crime if committed by an adult.

the McDonald's with Cassandra. Still angry, appellant attempted to climb over a table to get to Javion, and Janae attempted to break the two up. Cassandra began fighting with Janae, thinking that Janae was trying to fight appellant.

Janae, her two brothers, and three friends left the McDonald's and walked toward Janae's house, and appellant followed behind. When Janae's group reached the corner near Janae's house and were saying goodbye to one another, appellant approached. Janae testified that appellant said "'I'm coming for you' or something," which prompted Janae to back up. Appellant then began hitting Janae, pulling her hair, and instigating a fight between them. Janae's brothers held Cassandra back from joining in the fight, and tried to break the two girls up. As a result of the fight, Janae's hair braids were ripped out.

Following Janae's testimony, appellant testified in her own defense. Disputing Janae's version of events, she claimed Janae attacked her first. The juvenile court found Janae to be more credible than appellant and that the State had proven beyond a reasonable doubt that appellant was involved in committing an assault in the second degree on Janae.

DISCUSSION

I.

The following exchange took place during cross-examination of appellant:

[STATE'S ATTORNEY]: Do you remember being here in July of 2012?

[APPELLANT]: Yes.

[STATE'S ATTORNEY]: Uh-huh?

[APPELLANT]: Yes.

[DEFENSE COUNSEL]: Objection.

THE COURT: Basis.

[DEFENSE COUNSEL]: Your Honor, past crimes are not admissible in any way, sense, or form.

THE COURT: Overruled.

[STATE'S ATTORNEY]: It goes to credibility, Your Honor.

THE COURT: Overruled.

[STATE'S ATTORNEY]: Did you plead involved in theft in 2012?

[DEFENSE COUNSEL]: Objection.

THE COURT: I said overruled.

[APPELLANT]: Yes.

[STATE'S ATTORNEY]: You did plead involved in theft?

[DEFENSE COUNSEL]: Objection. I'd point to *Davis v. Zalaski* [Alaska], Your Honor.

THE COURT: Okay. I heard you. I think I ruled, counsel.

[DEFENSE COUNSEL]: She's continuing, Your Honor.

THE COURT: Okay. Because every time you refuse to allow the witness to answer the question – and your answer is?

[APPELLANT]: I said yes.

Based on the above exchange, appellant contends that the juvenile court erred in permitting the State's Attorney to impeach appellant with a prior adjudication of delinquency. She further contends that this error was not harmless because credibility of witnesses was the sole basis for the juvenile court's determination.

The State responds that the juvenile court properly exercised its discretion in permitting appellant's impeachment with a prior delinquency adjudication. It argues that the State's Attorney only inquired about an *admission* by way of a plea by appellant in the juvenile court of her prior involvement in a theft, and not as to whether she had been found to be delinquent as a result of her plea. Further, the State suggests that because appellant's counsel stated in his closing argument that his client "testified truthfully, [and] wasn't impeached[,]" the juvenile court "did not admit evidence of a prior adjudication of delinquency." The State attacks appellant's reliance on *Davis v. Alaska*, 415 U.S. 308 (1974), asserting that *Davis* is "distinguishable" and that provisions of the juvenile causes subtitle should be liberally construed. In the alternative, the State argues that any error was harmless.

The State's contention that the State's Attorney merely asked whether appellant had *pleaded* involved to theft in 2012, and not whether she had been *adjudicated* involved, is hardly persuasive. We have previously held that:

> *it is impermissible to attack the credibility of a witness by asking [her] about [her] past record of juvenile offenses, directly or indirectly. Indeed, any inquiry* whether by record or *by cross-examination*, of determinations of *prior*

> *juvenile delinquency is impermissible* in any *adjudicatory* hearing. Adjudication of delinquency is not a criminal conviction and cannot be used as such for impeachment.

Lancaster v. State, 86 Md. App. 74, 86 (1991) (additional emphasis added) (internal citations and quotations omitted).

In our view, the State draws too fine a line between appellant's *plea* in her 2012 theft case, and an actual *adjudication* in that case. While the State's Attorney did not explicitly ask whether appellant had been adjudicated involved in the 2012 theft, that appellant's plea led to an adjudication of theft was the clear and unmistakable implication. Moreover, the State's Attorney acknowledged that the question was asked because the theft went to appellant's credibility. The State's attempt to recast the State's Attorney's question as anything but an attack on appellant's credibility is an attempted end run around our holding in *Lancaster*.

Nor are we persuaded that defense counsel's closing argument that his client "testified truthfully, [and] wasn't impeached[,]" was, in any way, a waiver of appellant's claim. A review of the transcript indicates that, in closing argument, defense counsel was only attempting to mitigate any damage to appellant's credibility caused by the State's question regarding appellant's earlier plea to theft.

In *Davis v. Alaska*, the trial judge prevented the defendant from cross-examining a witness for the prosecution regarding a juvenile offense for which he was still on probation. *Davis*, 415 U.S. at 312-13. Davis contended that the witness had a motive to lie, namely,

to avoid revocation of his probation, but he was prevented by a protective order from citing the witness's juvenile adjudication at trial. *Id.* at 311. The Supreme Court held that Davis's Sixth Amendment right to confrontation was "paramount to the State's policy of protecting a juvenile offender." *Id.* at 319. *Davis* is not particularly instructive in this case. In *Davis*, the Supreme Court was balancing Davis's constitutional right to confrontation against the State's policy of protecting juvenile offenders.

In this case, appellant stands in the shoes of Davis. She was the one accused, and she was the one the State wanted to impeach by her past delinquency involvement. Here, we are only concerned with an accused juvenile's right not to be judged based on her previous contact with the juvenile justice system; her previous plea to theft should not have been admitted at the adjudicatory hearing.

But our inquiry does not end. We must also determine whether its admission was harmless beyond a reasonable doubt. Based on a review of the record in this case, and even though the juvenile court adjudication was primarily based on the credibility of the two juveniles, we are satisfied that its admission was harmless. The juvenile court was already aware of appellant's previous contacts with the juvenile justice system. As the juvenile court stated, without reference to her plea to theft:

> Over the past two and a half years I've seen you a number of times, and you've been detained a number of times, and your lawyer's been arguing for you over and over and over and over and over and I've given you so many chances it's just run out.

* * *

> Everybody comes to court and they want to curse and do everything else and this young lady is violation after violation after violation. And we're here because of her behavior, fighting and acting out. And she picks up *another* assault charge while she has this case here that we've been watching her on.

(Emphasis added).

It is clear from the above statements that the juvenile judge was intimately familiar with appellant, her history of fighting, and her previous contacts with the juvenile justice system. The judge recalled putting appellant on probation in a previous case. Therefore, we are convinced that beyond a reasonable doubt, that appellant's admission of a plea to theft in no way influenced the juvenile court's credibility finding and its adjudication of this case.

> When an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

Taylor v. State, 407 Md. 137, 165 (2009) (citation and quotation omitted).

II.

Appellant also contends that the evidence was insufficient to sustain her conviction for assault in the second degree. She specifically claims that Janae's testimony did not

"seem credible," and points out that Janae could have gone into her house had she felt threatened prior to the fight.

We have recently reiterated the standard when reviewing challenges to the sufficiency of evidence:

> The test of appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the [delinquency petition] beyond a reasonable doubt. The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather is only with whether the verdicts were supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt. We must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference. Further, we do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.

DeGrange v. State, 221 Md. App. 415, 420-21 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 718 (2014), *cert. denied*, 438 Md. 143 (2014) (internal quotation marks and citations omitted)).

Here, Janae testified about the attack and was found by the juvenile court to be more credible than appellant. Viewing the evidence in this case in a light most favorable to the State, it established that when Janae's group of friends reached the corner nearby her house, appellant approached her and threatened her, saying "I'm coming for you," or something to that effect. When this prompted Janae to back up, appellant began hitting her and pulling

her hair, during which Janae defended herself and hit back. During the fight, appellant pulled some of Janae's hair extensions out. Clearly, a rational trier of fact could have found appellant involved in an assault in the second degree.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.