Circuit Court for Prince George's County
Case No. JA-15-0620

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0053

September Term, 2016

In Re: Demiko A.

Berger,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R.

Filed: December 23, 2016

At an adjudicatory hearing held on January 28, 2016, in the Circuit Court for Prince George's County, sitting as a juvenile court, appellant, Demiko A. entered a plea of involved to theft of property valued between $1,000 and $10,000. The disposition hearing was held on February 5, 2016, at which time the court committed appellant to the Maryland Department of Juvenile Services (DJS) for placement at an appropriate "Level B" facility. In this appeal, appellant presents the following question for our review:[1]

> Was appellant improperly prevented from responding to new evidence presented by the State at the juvenile disposition hearing?

For the reasons discussed below, we assign no error and affirm.

BACKGROUND

On January 28, 2016, appellant entered a plea of involved to theft of property valued between $1,000 and $10,000. The court deferred disposition to February 5, 2016 and ordered a predisposition investigation (PDI). On February 3, 2016, DJS filed the PDI (also referred to as "Social History Investigation & Recommendation"). In it, DJS recommended that appellant be "[c]ommitted for placement in a non-community residential program."

At the February 5th disposition hearing, the court asked counsel for appellant to argue before the State. Defense counsel requested that appellant be "released today on

[1] Appellant phrased the question presented as follows:

> At the disposition hearing, after the defense was asked to argue first, was the defense improperly prevented from responding to new evidence which the State received by email, just eight minutes earlier?

unsupervised probation."[2] To support his request, defense counsel asserted that the present case represented appellant's first finding of involvement; appellant had never been placed on supervised probation; and that the offense was "non-violent." Defense counsel further argued that appellant had "never received any services whatsoever" from DJS; appellant was not a "danger to himself or others"; and that the offense "did not affect the community at large" as the victim in this case was appellant's father. Defense counsel informed the court that tensions within the family had lead appellant to commit the instant offense, but that he had since apologized to his father.

After defense counsel addressed the court, the State urged the court to order appellant to a "Level B placement." To support its request, the State noted that appellant had, in every practical sense, burglarized his father's home, but had not technically committed a burglary as "his official residence was listed as his father's residence at the time." The State also pointed out that appellant, "within a very short period of time" after the theft, had taken his father's van.[3] The State further noted that appellant had pending cases in the District of Columbia in which he had been placed in shelter care, but had escaped by stealing the shelter's van. Finally, the State indicated that appellant admitted to using marijuana and PCP.

[2] Defense counsel initially asked the court to place appellant on unsupervised probation, but later requested that appellant be given the "opportunity to take advantage" of DJS services, and to "be able to return back to the community on supervised probation."

[3] The theft of the van case was charged separately and subsequently stetted.

The State then presented photographs which it had received earlier that morning which depicted appellant holding a gun, and a computer printout from Twitter[4] which the State characterized as appellant's admission to stealing his father's van (the case which was ultimately stetted). Arguing that appellant was "clearly heading down the wrong path and conceivably a violent path," the State asked that the court commit appellant to a "Level B" placement. Whereupon, the following exchange occurred:

> [DEFENSE COUNSEL]: Your Honor, I --
>
> THE COURT: Young man, give me your full name.
>
> [DEFENSE COUNSEL]: -- I -- if I may. I know I have had my opportunity to speak but I would like to respond just to a couple of --
>
> THE COURT: Young man --
>
> [DEFENSE COUNSEL]: -- State's points.
>
> THE COURT: -- give me your full name.
>
> [DEFENSE COUNSEL]: Your Honor, may I --
>
> THE COURT: Young man --
>
> [DEFENSE COUNSEL]: -- may I respond?
>
> THE COURT: -- give me your full name.
>
> APPELLANT: Demiko A.
>
> THE COURT: And what's your date of birth?
>
> [DEFENSE COUNSEL]: August 3rd, 1999.

[4] Twitter is a social networking website where "users share brief messages with one another of 140 characters or fewer, referred to as 'tweets.'" *Sublet v. State*, 442 Md. 632, 638 n.7 (2015).

> THE COURT: You don't have to say anything. If there is anything you want to say, now is the time for you to tell me.

Appellant then presented a brief allocution. Before announcing its disposition, the court noted that it had "reviewed the predisposition investigation report along with the [apology] letter that the Defense Counsel presented up from the Respondent along with the two documents of I guess a copy of a photograph and tweet." The court explained its disposition stating the following.

> You know, I -- if this young man is not out of control at this point no one else is. If we don't get this young man some help at this point it's going to be too late. After he's been to court in the District of Columbia, after he's been released from court out here in Prince George's County, he's walking around with a gun in his hand. If we're going to save this young man, we better do it now.

The court then announced that it was committing appellant to a "Level B" placement.

DISCUSSION

Appellant argues that defense counsel was "improperly prevented from responding to new evidence which the State received by email, just eight minutes earlier." He contends that the State's failure to give adequate notice of information it intended to use against appellant was "patently illegal" and violated his due process rights. Appellant further argues that being given "adequate notice of allegations and evidence that the State will offer at disposition is required by the primary purpose of juvenile delinquency proceedings." Finally, appellant argues that had the court "allowed the defense to respond to the new allegations and evidence, there are a number of reasonable arguments that the defense might have made."

The State responds that appellant's "claim is not preserved because [appellant] failed to object below." The State further argues that the "court did not abuse its discretion in conducting disposition," because both defense counsel and appellant "were afforded an opportunity to explain or refute the photographic evidence before the court imposed disposition."

We hold that appellant's claim was not preserved. Even if preserved, however, we would conclude that the juvenile court did not abuse its discretion as appellant was afforded the opportunity to respond to the evidence presented by the State.

Preservation

Maryland Rule 4-323(a) requires that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent." The rule further states that "the objection is waived" if no objection is made. The purpose of the rule is to prevent unfairness and to require that "all issues be raised in and decided by the trial court." *Conyers v. State*, 354 Md. 132, 150 (1999). "Rule 4-323 applies to both trial and sentencing proceedings." *Bryant v. State*, 436 Md. 653, 660 (2014). "[W]hen a party acquiesces in the court's ruling, there is no basis to appeal from that ruling." *Green v. State*, 127 Md. App. 758, 769 (1999).

During the disposition hearing in the present case, counsel for appellant addressed the court first, and alerted the court to the State's intention to introduce the photograph and Twitter printout in question, stating:

> And I understand that Mr. State intends to bring to the Court's attention a photograph which allegedly would indicate that Demiko may be dangerous

> but there's never been any finding that Demiko is a danger to himself or others.

Later the State addressed the court to present its recommendation, and asked if it could approach with the photograph and Twitter printout. Despite now claiming error in their admittance, counsel for appellant remained silent and did not object to the court seeing the photograph or the printout from Twitter. By failing to object to the admission of the photograph and printout at the time they were offered, appellant waived his claim of error.

At the conclusion of the State's recommendation, the court addressed appellant and asked if he wanted to say anything before the court rendered its findings. It is apparent from the record that counsel for appellant attempted to interject and "respond" to the State's presentation. Defense Counsel and appellant attempted to speak at the same time, however. After a brief allocution from appellant, defense counsel did not attempt to speak. The court issued its findings and order. At no time did counsel for appellant object or take exception to the admittance of the photographs, despite having several opportunities to do so. He first failed to raise an objection during his allocution when he addressed the State's intention to present the photograph and the Twitter printout. He next failed to raise an objection when the State asked to present the photograph and Twitter printout during its recommendation. Finally, when it was clear that the court was considering the evidence in its findings, appellant failed to object or take exception after the fact. Appellant simply acquiesced to the admission of the evidence and, as such, he has waived any claim of error.

Appellant's Opportunity to Respond

"[D]isposition in a juvenile case is committed to the sound discretion of the juvenile judge, to be disturbed on appeal only upon a finding that his discretion has been abused." *In re Wooten*, 13 Md. App. 521, 529 (1971). "Juvenile proceedings are of a special species that has been designed by the General Assembly in response to a particular need and to meet a peculiar problem." *In re Appeal Misc. No. 32*, 29 Md. App. 701, 704 (1976). The purpose statement of the Juvenile Causes Act sets forth the purpose of juvenile proceedings as follows:

> (1) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;
>
> (2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior;
>
> (3) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;
>
> (4) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;
>
> (5) To provide judicial procedures for carrying out the provisions of this subtitle.

MD. CODE ANN., Cts. & Jud Proc. § 3-8A-02(a)

Juvenile court dispositions "are not to be considered as punishment for a crime nor are adjudications of delinquency 'convictions,' as that word is generally applied with respect to criminal proceedings." *Id.* at 704. Nevertheless, juveniles are entitled to '"many of the constitutional safeguards afforded criminal defendants.'" *In re Roneika S.*, 173 Md.

App. 577, 587 (2007) (quoting *In re Anthony R.*, 362 Md. 51, 69 (2000)). For example, "a juvenile is entitled as a matter of due process to adequate notice of the allegations brought against him." *Id.* Further, a juvenile has the right of allocution in a delinquency proceeding before the juvenile court. *In re Virgil M.*, 46 Md. App. 654, 658 (1980). Pursuant to Maryland Rule 4-342(f) a defendant is afforded the "opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment." "The very purpose of affording an accused the right to allocute before passing sentence is to provide him or her an opportunity to refute or explain any information presented to the sentencing judge and to present a statement in mitigation of punishment." *Miller v. State*, 67 Md. App. 666, 674 (1986).

In the present case, appellant was afforded the "opportunity to make a statement and to present information in mitigation of punishment." Md. Rule 4-342(f). He was also given the "opportunity to refute or explain the information presented" by the State. *Miller*, 67 Md. App. at 674. Counsel for appellant was clearly aware that the State intended to present the photograph of appellant holding a gun and a printout from Twitter during the disposition hearing. In fact, it was counsel for appellant who first brought these two items to the attention of the court. He could have objected to their consideration by the court. Further, he could have, at that time argued, as he does here, that the items were "unduly prejudicial"; that the gun held by appellant in the photo was not real; that the State couldn't prove that appellant authored the "tweets" in the printout; or that the photograph did not equate to criminal conduct. Counsel for appellant, however, failed to make any of those arguments during the allocution.

After the State made its recommendation and submitted the photograph and Twitter printout, appellant had an opportunity to respond and allocute on his own behalf. At that time, he personally could have made any of the arguments he makes here including disavowing the authenticity of the photograph and the Twitter printout, yet he chose not to. Because appellant and his counsel were afforded the opportunity to refute or respond to the information presented by the State, we assign no error.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.