MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

David M. Payne
Ryan & Payne
Marion, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jodi Kathryn Stein
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

K.W.,

Appellant-Respondent,

v.

State of Indiana,

Appellee-Petitioner.

June 10, 2022

Court of Appeals Case No. 21A-JV-2260

Appeal from the Grant Superior Court

The Honorable Brian F. McLane, Magistrate

Trial Court Cause No. 27D02-2109-JD-107

Weissmann, Judge.

[1] K.W. claims he was denied due process when he was adjudicated a delinquent for slapping his mother. He notes the delinquency petition contained several errors and the fact-finding hearing occurred only one day after the offense. But K.W. waived his due process claim, invited some of the alleged irregularities, and established no prejudice. We thus affirm the trial court's judgment.

Facts

[2] K.W. slapped his mother as they tussled over his cell phone, which his mother intended to take from him as punishment for an earlier altercation. She called police, who detained K.W. that day. The State filed a delinquency petition the next morning. It alleged K.W. engaged in conduct which, if committed by an adult, would constitute domestic battery, a Level 6 felony.

[3] The petition contained several errors, including an incorrect middle name for K.W. and both a correct and an incorrect name and address for his mother. The petition also alleged that K.W. "did recklessly, knowingly, or intentionally slap his mother" when the correct mens rea was "knowingly or intentionally." App. Vol. II, p. 20.

[4] The trial court conducted an initial hearing the morning the delinquency petition was filed. At the hearing, after conferring with his appointed counsel, K.W. told the court he was ready to proceed with an immediate fact-finding hearing. Tr. Vol. II, p. 5. The court obliged, and the State presented its case.

[5] After the State rested, K.W. moved for a directed verdict, which the court denied. Tr. Vol. II, p. 8. K.W. later testified that he shoved his mother in

response to her attack on him but did not slap her. The court found K.W. had engaged in conduct equivalent to domestic battery, but as a Class A misdemeanor, and ordered him to serve four months on probation and 120 days in detention, with 119 days suspended.

Discussion and Decision

[6] K.W. claims he was deprived of due process through the cumulative effect of various procedural oddities. We first note that K.W. did not object on due process grounds in the trial court. Thus, he has waived his due process claim on appeal. *See Pigg v. State*, 929 N.E.2d 799, 803 (Ind. Ct. App. 2010) (noting due process rights generally are waived if raised for the first time on appeal); *see also McBride v. Monroe Cnty. Off. Fam. & Child.*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2004) (finding procedural due process claim waived when raised for the first time on appeal). But we have discretion to address K.W.'s due process claim, despite his waiver, and will apply that discretion here. *See, e.g.*, *Lee v. State*, 43 N.E.3d 1271, 1275 (Ind. 2015); *Pigg*, 929 N.E.2d at 803.

[7] The Due Process Clause of the Fourteenth Amendment to the United States Constitution generally applies to juveniles alleged to be delinquent children. *In re Gault*, 387 U.S. 1, 30 (1967). A juvenile alleged to be a delinquent is entitled to the "common law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial." *K.A. v. State*, 938 N.E.2d 1272, 1274 (Ind. Ct. App. 2010). These principles include the right to notice of the charge and an opportunity for hearing. *Id.* The standard

for determining what due process requires in a particular juvenile proceeding is "fundamental fairness." *K.S. v. State*, 114 N.E.3d 849, 853 (Ind. Ct. App. 2018). Whether a juvenile's due process rights were violated is a question of law that we review de novo. *A.M. v. State, 134 N.E.3d 361, 365 (Ind. 2019), reh'g denied*.

I. Merits of Due Process Claim

[8] K.W. argues that a combination of six irregularities deprived him of due process. His overriding claim is that the State did not comply with Indiana Code § 31-37-10-3(3). That statute requires that a delinquency petition contain, among other things, the child and parent's name and address and "a concise statement of the facts upon which the allegations are based, including the date and location at which the alleged act occurred." Ind. Code § 31-37-10-3(3)(B). The failure to properly follow statutory requirements may violate a person's procedural due process rights. *See A.P. v. Porter Cnty. Off. Fam. & Child.*, 734 N.E.2d 1107, 1117 (Ind. Ct. App. 2000) (holding State's failure to comply with statutes related to child in need of services and termination of parental rights proceedings deprived parents their due process rights). But here we find the alleged errors neither individually nor collectively deprived K.W. of due process.

A. Names and Address

[9] K.W. first points to the delinquency petition's erroneous listing of his middle name, his mother's full name, and his mother's address. The juvenile petition incorrectly listed K.W.'s middle name as "County," referred to his mother

twice by a different name, and inconsistently noted her address (once correctly and once incorrectly). K.W. acknowledges that the errors in the names, standing alone, are insignificant. Appellant's Br., pp. 11-12. He offers no argument about whether the error in his mother's address was material.

[10] Essentially, K.W. alleges a variance between the delinquency petition and the evidence at the fact-finding hearing. A variance is fatal only if it misled and prejudiced K.W. in the preparation and maintenance of his defense. *See Coy v. State*, 999 N.E.2d 937, 945 (Ind. Ct. App. 2013). K.W. does not argue that these minor errors misled or prejudiced him, and in any case, the record does not support such a claim. K.W. was detained just after the altercation with his mother. At the initial hearing the next day, the trial court made clear that K.W. was in court because he was alleged to have slapped his mother in their home the prior day. Tr. Vol. II, pp. 4-5. Both K.W. and his mother testified to the same incident inside the home, although each accused the other of the slap. K.W. fails to note, and we fail to see, how he was misled or prejudiced by the errors in names or address in the delinquency petition.

B. Wrong Mens Rea and Omission of Elements

[11] K.W. next claims the delinquency petition's recitation of the wrong mens rea and omission of the elements of domestic battery, when combined with the name and address errors, deprived him of due process.

1. Mens Rea

[12] The juvenile petition alleged K.W. "recklessly, knowingly, or intentionally" slapped his mother. App. Vol. II, p. 20. Yet, the domestic battery statute requires knowing or intentional conduct—a more stringent level of culpability. Ind. Code § 35-42-2-1.3(a); *see Hamilton v. State*, 783 N.E.2d 1266, 1269 (Ind. Ct. App. 2003) (finding offense with "reckless" mens rea involved lesser culpability than offense with "knowing" or "intentional" mens rea).

[13] K.W. has failed to establish he was prejudiced by this error. K.W. waited until the State rested before objecting to the error in the mens rea recitation from the delinquency petition. At that time, the parties and the trial court acknowledged reckless conduct did not qualify under the domestic battery statute. Tr. Vol. II, pp. 8-9. The trial court later found that K.W. had engaged in conduct equivalent to Class A misdemeanor domestic battery. *Id.* at 14. K.W. only points out the error in the petition but does not contend that the trial court applied the wrong standard. We fail to see how that pleading error misled or prejudiced K.W., given that he objected mid-hearing and the record contains no indication that the trial court applied the incorrect mens rea.

2. Elements

[14] K.W. also alleges the delinquency petition's omission of the elements of domestic battery contributed to a deprivation of his due process rights. The petition alleged K.W. "recklessly, knowingly, or intentionally slap[ped] his mother, [M.W.], in the face. . . ." App. Vol. II, p. 20. Under these facts,

domestic battery, as a Class A misdemeanor, would require proof that the person knowingly or intentionally touched a family or household member in a "rude, insolent, or angry manner." I.C. § 35-42-2-1.3(a). K.W. challenges the omission of the "rude, insolent, or angry manner" language.

[15] But Indiana's Juvenile Code does not expressly require that a delinquency petition cite the elements of the alleged offense. Instead, it specifies that the petition cite the statute alleged to have violated and provide a concise statement of facts on which the allegations are based. Ind. Code § 31-37-10-3(3)(B)-(C). The petition complied with those requirements. In any case, the parties discussed the elements of domestic battery mid-hearing, and the record supports the trial court's finding that the State proved them beyond a reasonable doubt.

C. Cumulative Effect

[16] K.W. contends all of those "errors" misled him into believing he was accused of conduct equivalent to criminal recklessness, not domestic battery, and his defense was generally prejudiced as a result. But the record disproves his claim. At the start of the initial hearing on the delinquency petition, the court noted that "[t]he petition alleging delinquency names one count of domestic battery." Tr. Vol. II, p. 4. The court then asked K.W.'s counsel whether he had "reviewed the allegations with [K.W.]." *Id.* K.W.'s counsel answered that he had and K.W. "is denying it." *Id.* K.W. could not reasonably have believed under these circumstances that he was accused of acts equating to criminal recklessness, instead of domestic battery.

D. Timing of Proceedings

[17] The last in K.W.'s litany of errors concerns the speed with which the proceedings were conducted. K.W. was detained just after the Sunday afternoon altercation, his initial hearing on the delinquency petition was the next morning, and his fact-finding hearing immediately followed the initial hearing. K.W. acknowledges he expressly agreed to an immediate fact-finding hearing. By so doing, he invited any error in the timing of the hearing. *See Matter of J.C.*, 142 N.E.3d 427, 432 (Ind. 2020) (finding juvenile could not benefit from error he invited). Invited error forecloses appellate review. *Nix v. State*, 158 N.E.3d 795, 800-01 (Ind. Ct. App. 2020), *trans. denied*.

[18] Invited error notwithstanding, K.W. has established no harm from the expedited proceeding. He suggests only that the speed of the proceedings "raises serious questions" as to whether the State conducted a preliminary investigation consistent with statutory requirements. *See* Ind. Code § 31-37-8-1(c) ("If the prosecuting attorney has reason to believe the child has committed a delinquent act, the prosecuting attorney shall instruct the intake officer to make a preliminary inquiry to determine whether the interests of the public or of the child require further action); Ind. Code § 31-37-8-2 (specifying the contents of a preliminary inquiry in a juvenile delinquency proceeding). K.W. does not point to any deficiencies in the preliminary inquiry filed in his case or the adequacy of the investigation which preceded it. Bare assertions of error with only speculative claims of prejudice are unavailable for appellate review. *Turner v. State*, 508 N.E.2d 541, 548 (Ind. 1987). In any case, the timing of the

fact-finding hearing occurred within statutory boundaries. *See* Ind. Code § 31-37-11-2 (a) (requiring that where a child is in detention and a delinquency petition has been filed, the fact-finding or waiver hearing must be commenced not later than 20 days, excluding Saturdays, Sundays, and legal holidays, after that filing date).

[19] As we find no violation of K.W.'s due process rights, we affirm the trial court's judgment.[1]

Robb, J., and Pyle, J., concur.

[11] Although the errors in the juvenile petition did not deprive K.W. of due process, the State should exercise greater caution in future filings. The record reflects the probation officer drafted and signed the delinquency petition. Tr. Vol. II, p. 4; App. Vol. II, p. 20. By signing it, she affirmed under the penalties for perjury that the statements within the petition were true. App. Vol. II, p. 20. The prosecutor told the court that he "just signed it" and "didn't read it." *Id.* He appeared to be referring to signing the request to file the delinquency petition but not reading the actual delinquency petition. Tr. Vol. II, p. 4; App. Vol. II, pp. 14, 20. Given that K.W. faced an extended loss of liberty and long-term consequences of a delinquency adjudication, this matter deserved greater attention to detail than either the probation officer or prosecutor accorded it.