MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

D.W.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Plaintiff

August 6, 2024

Court of Appeals Case No.
23A-JV-2775

Appeal from the Marion Superior Court

The Honorable Danielle P. Gaughan, Judge

The Honorable Peter P. Haughan, Magistrate

Trial Court Cause No.
49D15-2305-JD-4181

Memorandum Decision by Chief Judge Altice

Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

[1] D.W. was adjudicated a delinquent for committing two acts of child molesting and one act of dissemination of matter harmful to minors, each a felony if committed by an adult. On appeal, D.W. presents two issues for our review:

> 1. Did the delinquency petition sufficiently provide D.W. with adequate notice of the charges against him?
>
> 2. Did the manner in which the trial court advised D.W. of his rights constitute fundamental error?

[2] We affirm.

Facts & Procedural History

[3] D.W. is one of six children born to S.L. (Mother). He is the second oldest, born on March 4, 2006. He has one older brother and one younger brother, A.O., who was born on February 23, 2015. He also has three younger sisters.

[4] At some point, Mother noticed that the children were acting differently, and she suspected that D.W. was molesting his siblings. In 2020, the day before D.W.'s fourteenth birthday, Mother kicked D.W. out of the house after he assaulted one of his younger sisters and kicked a hole in the wall. D.W. went to live with

his father, W.W. (Father). At some point after D.W. was no longer living in his Mother's house, A.O. told Mother that D.W. began molesting him at a very young age and that it stopped after D.W. was sent to live with Father.

[5] On May 21, 2023, the State filed a petition alleging D.W. was a delinquent child for committing two acts of child molesting, one as a Level 3 felony and one as a Level 4 felony if committed by an adult, and dissemination of matter harmful to minors, a Level 6 felony if committed by an adult. The State amended the allegations two times, with the final allegations regarding child molesting reading as follows:

> Count I – Child Molesting, a Level 3 Felony I.C. 35-42-4-3(a)
>
> Between January 1, 2012 and March 3, 2020, [D.W.] did knowingly or intentionally perform or submit to sexual intercourse or other sexual conduct as defined in Ind. Code Sec. 35-31.5-2-221.5 with A.O. a child under the age of fourteen years, that is eight (8) years old;
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> Count II – Child Molesting, a Level 4 Felony I.C. 35-42-4-3(b)
>
> Between January 1, 2012 and March 3, 2020, [D.W.] did perform or submit to fondling or touching with A.O., a child under the age of fourteen years, that is (8), with the intent to arouse or satisfy the sexual desires of the child or respondent.

Appellant's Appendix Vol. II at 71.[1]

[6] D.W. appeared with counsel at an initial hearing on May 24, 2023. Father was also in attendance. The court read the allegations against D.W. and then confirmed with the State that it was not seeking waiver to adult court. D.W.'s counsel then waived "further formal reading of D.W.'s rights and dispositional alternatives" and requested that a denial of the allegations be entered on behalf of D.W. The court then addressed D.W.:

> [T]here will be a form . . . listing all of your rights and disposition alternatives and you most likely have already signed it and it hasn't been or ordered or brought into the court's electronic database system. But there'll be a form listing your rights and dispositional alternatives. Uh Mr. Thurston [D.W.'s counsel at the hearing] or someone from the Public Defender Agency will go over those with you. They're just a listing of all the rights that you have at this point. You're not giving up or waiving any right at this point. So they will provide that to you and I will enter a denial on your behalf. So formally, you have denied the charges.

Supplemental Transcript at 7. The court set a fact-finding hearing for June 14, 2023, which was twenty days later.

[7] At the fact-finding hearing, D.W. was represented by counsel and had the opportunity to confront and cross-examine witnesses against him. A.O., who was eight years old at the time of the hearing, and Mother testified for the State.

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[1] The time period alleged for the offenses and the age of the victim stayed the same through all amendments.

D.W. called one of his younger sisters as a witness on his behalf and, after knowingly and intentionally waiving his right to remain silent, D.W. testified, denying the allegations. At the conclusion of the evidence, the trial court entered true findings for the three delinquent acts. At the dispositional hearing held on October 26, 2023, the juvenile court ordered D.W. placed on probation, with a suspended commitment to the Indiana Department of Correction, and released D.W. to Father. D.W. now appeals. Additional facts will be provided as necessary.

Discussion & Decision

1. Sufficiency of Delinquency Petition

[8] D.W. argues that there were "[s]erious errors" with the delinquency petition that "deprived [him] of adequate notice of the charges against him." *Appellant's Brief* at 10. Acknowledging that he did not move to dismiss the petition or otherwise object before the trial court, D.W. claims that the lack of notice amounted to fundamental error.

[9] Principles of fundamental fairness govern juvenile delinquency proceedings, and those principles include the right to adequate notice of the charges. *In re K.G.*, 808 N.E.2d 631, 635 (Ind. 2004). Among other things, a petition alleging a delinquent act must contain "[a] citation to the statute that the child is alleged to have violated" and "[a] concise statement of the facts upon which the allegations are based." Ind. Code § 31-37-10-3(B), (C). Although juvenile proceedings are civil in nature, the purpose of a delinquency petition is similar

to a charging information in a criminal proceeding—"to provide a defendant with notice of the crime of which he is charged so that he is able to prepare a defense." *Hernandez v. State*, 220 N.E.3d 68, 71 (Ind. Ct. App. 2023) (citing *State v. Katz*, 179 N.E.3d 431, 441 (Ind. 2022)). "[E]ven where a charging instrument may lack appropriate factual detail, additional materials such as the probable cause affidavit supporting the charging instrument may be taken into account in assessing whether a defendant has been apprised of the charges against him." *State v. Laker*, 939 N.E.2d 1111, 1113 (Ind. Ct. App. 2010) (citing *Patterson v. State*, 495 N.E.2d 714, 719 (Ind. 1986)).

[10] Here, D.W. argues that the delinquency petition did not sufficiently allege the crimes so as to put him on notice of the charges against him. Specifically, D.W. notes that for both Counts I and II, it was alleged that he molested A.O. between 2012 and 2020 and that A.O. was eight years old. D.W. points out that it was impossible for the alleged offenses to have occurred between 2012 and 2015 as A.O. was not born until 2015. He further points out that at no point in the alleged timeframe was A.O. eight years old. He asserts that these errors impacted the preparation of his defense because the errors created uncertainty about the identity of the victim. To that point, D.W. notes that the probable cause affidavit contained allegations that D.W. molested another sibling whose date of birth and age fit the parameters alleged in the delinquency petition.

[11] Acknowledging that he did not object to the sufficiency of the delinquency petition, thus waiving any challenge thereto, D.W. argues on appeal that the

errors in the delinquency petition amount to fundamental error. "An error is fundamental, and thus reviewable on appeal, if it 'made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.'" *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (quoting *Knapp v. State*, 9 N.E.3d 1274, 1281 (Ind. 2014)). "[F]undamental error is a daunting standard that applies 'only in egregious circumstances'" where the trial judge should have corrected the situation sua sponte. *Knapp*, 9 N.E.3d at 1281 (citation omitted).

[12] Although the delinquency petition could have been more narrowly drafted, we cannot say that any misstatements contained therein created uncertainty as to the victim in terms of preparation of a defense. The probable cause affidavit provided that A.O. disclosed being molested by D.W. starting when A.O. was a young baby and continuing until D.W. was sent to live with Father more than two years prior to filing of the petition. We further note that A.O. was eight years old when the delinquency petition was filed. The delinquency petition clearly identified A.O. as the victim, the probable cause affidavit outlined A.O.'s allegations againt D.W., and A.O. then testified at the fact-finding hearing. At the fact-finding hearing, there was no confusion as to the identity of the victim. Any mistakes in the delinquency petition do not rise to the level of fundamental error.

2. Sufficiency of Advisements

D.W. argues that the trial court committed fundamental error when it failed to advise him of his rights. Ind. Code § 31-37-12-5 provides:

> The juvenile court *shall* inform the child and the child's parent, guardian, or custodian, if the person is present, of the following:
>
> (1) The nature of the allegations against the child.
>
> (2) The child's right to the following:
>
> (A) Be represented by counsel.
>
> (B) Have a speedy trial.
>
> (C) Confront witnesses against the child.
>
> (D) Cross-examine witnesses against the child.
>
> (E) Obtain witnesses or tangible evidence by compulsory process.
>
> (F) Introduce evidence on the child's own behalf.
>
> (G) Refrain from testifying against himself or herself.
>
> (H) Have the state prove beyond a reasonable doubt that the child committed the delinquent act charged.
>
> (3) The possibility of waiver to a court having criminal jurisdiction.

> (4) The dispositional alternatives available to the juvenile court if the child is adjudicated a delinquent child.

(Emphasis supplied). D.W. asserts that the court treated this statutory mandate as "discretionary" and that it "shirked" its duty by failing to comply with the mandate. *Appellant's Brief* at 15, 17.

[13] Here, the court was clearly aware of its responsibility to advise D.W. of his rights. We first note that D.W. was represented by counsel at the initial hearing. At the outset of the hearing, the court orally advised D.W. of the allegations against him and then the court confirmed with the State that it was not seeking waiver to adult court. The court thus addressed subsections (1) and (3). The court then asked counsel, "does [D.W.] waive any further formal reading of his rights and dispositional alternatives and enter denial to the charges today?" *Transcript* at 6. Counsel responded that D.W. "waive[d] further readings" and "please enter denials." *Id*. at 7. The court then addressed D.W., referencing a written advisement of rights and dispositional alternatives.[2] D.W. and Father both indicated their understanding of what the court had informed them. The court clearly demonstrated that it was aware of its duty under I.C. § 31-37-12-5, and that it would have given the oral advisements had D.W.'s counsel not waived reading of them.

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[2] There is nothing in the record reflecting whether D.W. was ever provided with the referenced written advisement of rights and dispositional alternatives.

[14] In turn, D.W. argues that his waiver did not comply with the Juvenile Waiver Statute. Ind. Code § 31-32-5-1(1) provides that "[a]ny rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only . . . by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver."[3] D.W. asserts that nothing in the record shows that he assented to his counsel's waiver of his statutory right to be advised of his constitutional rights by the court.

[15] We begin by noting that on appeal D.W. does not make any argument that his waiver was unknowing, involuntary, and not personal. Furthermore, D.W.'s counsel did not waive D.W.'s constitutional rights, and the court expressly noted on the record that D.W. was not waiving his constitutional rights. Finally, we note that at the fact-finding hearing, D.W. exercised his constitutional rights—he confronted and cross-examined witnesses, he called a witness on his own behalf, he took the stand and testified, and he held the State to its burden of proof. Even assuming error in the advisement of his constitutional rights or with compliance with the juvenile waiver statute, any such error does not rise to the level of fundamental error as clearly, D.W. was afforded all of his constitutional rights.

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[3] A child's constitutional or statutory rights may also be waived by a child's parent, guardian, custodian, or guardian ad litem if certain conditions are found, or by the child, if certain conditions are found. I.C. § 31-32-5-1(2), (3).

[16] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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