

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0093

September Term, 2014

IN RE: JUWAN S.

Wright,
Hotten,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned)

JJ.

Opinion by Thieme J.

Filed: January 23, 2015

The Circuit Court for Montgomery County, sitting as a juvenile court, found appellant, Juwan S., to have been involved in the theft of a bottle of fruit punch, which, if committed by an adult, would constitute theft having a value under \$1,000. The juvenile court committed him to the Department of Juvenile Services for placement. Appellant presents one question for our review, which we quote:

Did the [j]uvenile [c]ourt err in denying [a]ppellant's motion to dismiss the petition where the State alleged in the petition that [a]ppellant committed a misdemeanor offense other than the one the intake officer had authorized for the petition?

For the reasons below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2013, Jarrett Phillips, a loss prevention officer employed by CVS Caremark, observed appellant in the CVS store on Wayne Avenue in Silver Spring. Phillips testified that appellant was "acting a little suspicious, a little nervous." So, Phillips followed appellant and witnessed him take a 10 ounce fruit punch, and conceal it in his right pants pocket. As appellant exited, Phillips stopped him, and took him to a room in the back of the store where he ordered appellant to empty his pockets and asked for his name and identification. Appellant produced \$13 in cash and the fruit punch. The fruit punch appellant stole was on sale for \$0.99.

Appellant moved to dismiss the petition in this case because, he argued, the State exceeded its authority under Maryland Code, Courts and Judicial Proceedings (CJP) Article, 3-8A-10. Appellant was charged by criminal citation on the day of the incident, which was later dismissed because he was a juvenile. Robin Brown, a legal assistant with the State's

Attorney's Office forwarded a memorandum to the family crimes division of the police department, indicating that appellant was charged with theft having a value under \$100. The family crimes division then forwarded the information to the Department of Juvenile Services (DJS). DJS conducted a jurisdictional inquiry, and then forwarded the matter on to the State's Attorney's Office. On the front of the referral, DJS indicated that the offense committed was theft having a value under \$100. The State's Attorney then filed a petition alleging that appellant committed theft under \$1,000. Appellant alleged that this change in the offense violated § 3-8A-10. After hearing argument on the motion, the Court ruled:

Looking at 3-8A-10, the statutory scheme in the first place indicates that the intake officer of DJS will make an inquiry within a period of time after a complaint or a citation is referred, as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child. A determination is then made as to whether or not there should be authorization for the filing of a petition or a peace order, that being the second step. We're not dealing with a felony so that the provisions of 4(i) really do not apply, but rather, then in section d-1, the intake officer may authorize the filing of the petition if the court has jurisdiction and that judicial action is in the best interest of the public or child. And part of that is that the intake officer can consider restitution as to whether that is also a consideration in whether or not the matter should be referred for judicial action.

In this particular case, it's clear that the documents themselves, from the initial erroneous charging as an adult by the officer, and also as then determined after review by the intake officer, were to be considered as misdemeanor thefts under \$100 based upon the value of the item that is alleged to have been taken, which then follows over into - unless - into the particular item at least is then specified in the petition which was filed on December 19th, 2013 by the State's Attorney's Office in this case. I have reviewed that statutory scheme, and based upon the allegation in this case I don't believe that the State is bound to, in a theft situation such as this - and that's the one that's before this court, but I would state that it in all probability goes even beyond simply a theft charge but I'll confine my remarks and my holding to a theft

charge such as we're dealing with here, I don't think that the State's Attorney is in its prosecutorial decision bound to or limited by the specific amount that may have been recommended by the intake officer for charging purposes. There's not a specification anywhere in 3-8A-10 that the State is bound by the determination as to a particular charge that's authorized, and particularly not with regard to gradation of offenses as is indicated herein. I think that the State correctly argues that what is charged is a theft, that that was what was considered to be in both the public's interest as well as in the respondent's interest, for the State to proceed to petition which the State has done. So accordingly, based on those reasons, I don't find that there has been a noncompliance which is - causes a jurisdictional defect in the petition, and accordingly I'll deny the motion to dismiss.

Following testimony and closing argument, the Court ruled that it was convinced beyond a reasonable doubt that appellant was involved in the offense of theft having the value of under \$1,000. The court ordered appellant committed to the Department's care for placement in accordance with a commitment related to a different matter in Prince George's County.¹

DISCUSSION

I.

Appellant asserts that the court erred in denying his motion to dismiss the petition. Specifically, he argues that the statutory scheme set forth in CJP § 3-8A-10 implicitly requires the State's Attorney to only file a delinquency petition based on the alleged commission of an offense referenced in the intake officer's referral. The State makes three contentions. First, it argues that CJP § 3-8A-10 authorizes the State's Attorney to decide

¹Case number JA13-1216.

which delinquent acts to allege in a petition. Second, the State asserts that it did not change the nature of the offense alleged in the petition, because value is not an element of theft. It then follows, according to the State, that a charge of theft below \$100 and a charge of theft below \$1,000 punish the same crime, theft. Finally, the State contends that there was no prejudice here, and, as such, dismissal was not appropriate.

We begin by setting forth the relevant language of Maryland Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article § 3-8A-10:

(c)(1) Except as otherwise provided in this subsection, in considering the complaint, the intake officer shall make an inquiry within 25 days as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child.

(2) An inquiry need not include an interview of the child who is the subject of the complaint if the complaint alleges the commission of an act that would be a felony if committed by an adult or alleges a violation of § 4-203 or § 4-204 of the Criminal Law Article.

(3) Subject to the provisions of § 3-8A-10.1 of this subtitle, in accordance with this section, the intake officer may, after such inquiry and within 25 days of receiving the complaint:

(i) Authorize the filing of a petition or a peace order request or both;

(ii) Propose an informal adjustment of the matter; or

(iii) Refuse authorization to file a petition or a peace order request or both.

(4)(i) If a complaint is filed that alleges the commission of an act which would be a felony if committed by an adult or alleges a violation of § 4-203 or § 4-204 of the Criminal Law Article, and if the intake officer denies

authorization to file a petition or proposes an informal adjustment, the intake officer shall immediately:

1. Forward the complaint to the State's Attorney; and
2. Forward a copy of the entire intake case file to the State's Attorney with information as to any and all prior intake involvement with the child.

(ii) The State's Attorney shall make a preliminary review as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child. The need for restitution may be considered as one factor in the public interest. After the preliminary review the State's Attorney shall, within 30 days of the receipt of the complaint by the State's Attorney, unless the court extends the time:

1. File a petition or a peace order request or both;
2. Refer the complaint to the Department of Juvenile Services for informal disposition; or
3. Dismiss the complaint.

(iii) This subsection may not be construed or interpreted to limit the authority of the State's Attorney to seek a waiver under § 3-8A-06 of this subtitle.

While mindful of the State's assertion that the offense alleged in the petition was of the same nature as the offense the intake officer referenced in their authorization to file a petition, we first examine whether § 3-8A-10 requires the State's Attorney only to file a petition with reference to the offense mentioned in the intake officer's referral.

We have outlined the principles of statutory interpretation:

Our predominant mission is to ascertain and implement the legislative intent, which is to be derived, if possible, from the language of the statute (or Rule) itself. If the language is clear and unambiguous, our search for legislative intent ends and we apply the language as written and in a commonsense

manner. We do not add words or ignore those that are there. If there is any ambiguity, we may then seek to fathom the legislative intent by looking at legislative history and applying the most relevant of the various canons that courts have created.

Downes v. Downes, 388 Md. 561, 571 (2005) (citations omitted). We are also mindful that “the State's Attorneys retain the broad discretion they have historically enjoyed in determining which cases to prosecute, which offenses to charge, and how to prosecute the cases they bring.” *Evans v. State*, 396 Md. 256, 298 (2006).

The statute begins by providing that “the intake officer shall make an inquiry within 25 days as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child.” CJP § 3-8A-10(c)(1). Then, the intake officer may choose to authorize, or refuse to authorize the filing of a formal petition of delinquency. CJP § 3-8A-10(c)(3)(i)&(iii). The officer may also choose to propose an informal adjustment in the matter. CJP § 3-8A-10(c)(3)(ii). Nowhere in the statute does it mention that the State’s Attorney is in any way limited by the intake officer’s characterization of the alleged offense. Rather, the statute directs the intake officer to determine whether jurisdiction exists and whether judicial action is in the child’s best interests, then to take one of the three courses of action outlined above. CJP § 3-8A-10(c)(1). The intake officer’s purview extends only to the authorization or denial of authorization to file a petition, or to proposing an informal adjustment, no further. Furthermore, sections 3-8A-13(a) and 3-8A-13(b) specifically refer to the State’s Attorney specifying the offenses the minor is accused of committing in preparing the petition alleging delinquency. They provide that “[p]etitions alleging

delinquency . . . shall be prepared and filed by the State’s Attorney[,]” and “shall set forth in clear and simple language the alleged facts which constitute the delinquency, and shall also specify the laws allegedly violated by the child.” CJP § 3-8A-13(a); CJP § 3-8A-13(b). We, therefore, are persuaded that the State’s Attorney retains its broad discretion as to what charges to bring in a given case, and that the plain language of CJP § 3-8A-10 does not constrain that discretion in any way.

Relying on *State v. Patrick A.*, 312 Md. 482 (1988), appellant asserts that a State’s Attorney cannot file a petition alleging the commission of an offense different than that alleged in the complaint. In *Patrick A.*, the Court of Appeals held that the State may not file a petition of delinquency prior to a preliminary investigation by an intake officer. *Id.* at 490. It follows, according to appellant, that the State’s Attorney may also not file a petition alleging the commission of an offense different from that alleged in the complaint which was the subject of the intake officer’s inquiry. We disagree. The intake officer’s function is to determine whether jurisdiction exists, and how the case should proceed. Once the intake officer makes the determination to authorize the filing of a petition, the State’s Attorney then may exercise its discretion in alleging an offense. We affirm.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY, SITTING AS A JUVENILE
COURT, AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**