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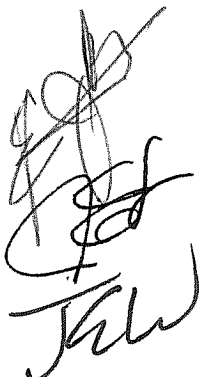
STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KJ 1902

STATE OF LOUISIANA IN THE INTEREST OF M.J.



Judgment Rendered: February 9, 2007

**Appealed from the
City of Thibodaux, Ward Two
Of the Parish of Lafourche, Louisiana
Case No. 3539**

The Honorable David M. Richard, Judge Presiding

**Camille A. Morvant, II
District Attorney
Kristine M. Fussell
Assistant District Attorney**

**Counsel for Appellee
State of Louisiana**

**Margaret S. Sollars
Thibodaux, Louisiana**

**Counsel for Defendant/Appellant
M.J.**

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

GAIDRY, J.

The fourteen year-old juvenile, M.J., was charged by juvenile petition as delinquent on the basis of commission of attempted manslaughter, a violation of La. R.S. 14:27 and 14:31(A). M.J. entered into a plea agreement under *State v. Crosby*, 338 So.2d 584 (La. 1976), whereby she pleaded guilty to attempted manslaughter in exchange for a two-year sentence, which would be suspended after she served ninety days in juvenile detention.

M.J. appeals the denial of her motion to quash the petition. After reviewing the record, we affirm M.J.'s adjudication and disposition.

FACTS

On July 2, 2006¹, M.J. stabbed another juvenile, N.C., several times, causing N.C. to sustain a collapsed lung. M.J. does not deny the stabbing, but claims that N.C. instigated the fight.

M.J. was placed in the juvenile detention facility on July 3, 2006. The state filed the petition for delinquency on July 6, 2006, and an adjudication hearing was scheduled for July 25, 2006.

At the July 25, 2006 hearing, the state orally moved to continue the adjudication. In support of its request for a continuance, the prosecutor explained that the reason for the continuance was that the victim had been hospitalized following the July 2 incident and had not been released from the hospital until July 6 or 7. The victim was finally able to go to the Children's advocacy Center on July 11, 2006, where she was interviewed by the investigating detective. The prosecutor noted that the investigation was not complete at that time and that none of the witnesses the state attempted to subpoena had been served, including the victim.

¹ The date of the incident is July 2, 2006. However, the petition states that the incident occurred on July 3, 2006.

The trial court granted the continuance and set the adjudication hearing for August 22, 2006. Counsel for M.J. objected to the continuance and filed a motion to quash based on the failure to follow the time limits for holding an adjudication hearing as set forth in La. Ch. Code art. 877. The trial court denied the motion to quash and M.J. sought writs to this court. In our decision of *State of Louisiana in the Interest of M.J.*, 2006-1587 (La. App. 1st Cir. 8/17/06)(unpublished writ action), this court denied M.J.'s writ application.²

On August 22, 2006, M.J. entered a *Crosby* plea to attempted manslaughter and was sentenced to two years that would be suspended following M.J. serving ninety days in juvenile detention.

DISCUSSION

Through a counseled assignment of error, M.J. argues that the trial court abused its discretion in ruling that "good cause" was shown when the state was unprepared to go forward with the adjudication hearing within the time limits set forth in La. Ch. Code art. 877. Therefore, M.J. argues that her motion to quash/dismiss the petition should have been granted.

La. Ch. Code art. 877 provides:

A. If the child is continued in custody pursuant to Chapter 5 of this Title, the adjudication hearing shall commence within thirty days of the appearance to answer the petition.

B. If the child is not continued in custody, the adjudication hearing shall commence within ninety days of the appearance to answer the petition.

C. If the hearing has not been commenced timely, upon motion of the child, the court shall release a child continued in custody and shall dismiss the petition.

D. For good cause, the court may extend such period.

² This appeal is before the same panel that reviewed the previous writ in this matter.

The Louisiana Supreme Court noted in *State, in Interest of R.D.C., Jr.*, 93-1865, (La. 2/28/94), 632 So.2d 745, 749, that in considering what constitutes “good cause,” the judge should be mindful of those situations or causes beyond the control of the state that may impinge on its ability to prepare for a hearing.

In the present case, the trial court specifically found that the state presented good cause for the extension of the time limitation for the adjudication hearing. The trial court noted that the state bears the burden of proof and that the state needed more time to interview witnesses. The trial court stated that, through no fault of the state, the serious and complex nature of this attempted manslaughter case would require more time to investigate. Moreover, we note that the record also reflects that the trial court ordered a psychological evaluation of M.J., which required a continuance of the original hearing date. Finally, we note that the parties had originally determined that September 14, 2006, was a compatible day for all parties and the trial court to hold the adjudication hearing, but the trial court accommodated the defense request to hold the hearing as soon as possible and set the August 22, 2006 date.

Based on the circumstances reflected in this record, we cannot say the trial court erred in granting the state’s continuance. The victim sustained injuries requiring hospitalization, and it was nine days after this incident before the investigating detective could interview her. Further, many of the subpoenas issued by the state for the witnesses and the victim herself were not returned, which further impeded progress of this matter. Under these circumstances, we cannot say the trial court erred in granting the state’s motion to continue and denying M.J.’s motion to quash/dismiss.

This assignment of error is without merit. M.J.'s adjudication of delinquency and disposition are affirmed.

ADJUDICATION AND DISPOSITION AFFIRMED.