

NOT DESIGNATED FOR PUBLICATION
STATE OF LOUISIANA IN * **NO. 2010-CA-1138**
THE INTEREST OF R.W.
*
COURT OF APPEAL
*
FOURTH CIRCUIT
*
STATE OF LOUISIANA

APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2010-034-01-DQ-E, SECTION "E"
Honorable Tracey Flemings-Davillier, Judge

Judge Dennis R. Bagneris, Sr.

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Paul A. Bonin, and Judge Daniel L. Dysart)

Leon A. Cannizzaro, Jr.
District Attorney
Alyson Graugnard
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR STATE OF LOUISIANA

Pascale Belizaire Watson
JUVENILE REGIONAL SERVICES, INC.
1820 St. Charles Avenue
Suite 205
New Orleans, LA 70130
COUNSEL FOR APPELLANT, R. W.

JANUARY 26, 2011

REVERSED AND REMANDED

R.W. appeals the judgment of the Juvenile Court for the Parish of Orleans, adjudicating him delinquent pursuant to La. R.S. 14:95.1, possession of a firearm by a person convicted of certain felonies. For the reasons set forth below, we find the trial court erred in denying R.W.’s motion to quash the petition, which asserted that a juvenile cannot be adjudicated delinquent of an offense requiring a prior “conviction”.

Facts and Procedural History

On February 1, 2010, New Orleans Police Department (NOPD) Officers Robert Hurst and Jason Burns responded to a call of an armed robbery and stolen vehicle in the 1500 block of Joliet Street. Arriving on the scene, the officers observed, and began to follow, a vehicle fitting the description of the stolen vehicle. At that time, R.W. exited the passenger side of the vehicle, and fled, while holding a handgun in his right hand. Officer Hurst gave chase. Officer Hurst testified that while in pursuit, R.W.’s right hand hit the side of a fence, and the handgun fell to the ground. Officer Hurst lost sight of R.W., but he was apprehended forty minutes later by other officers. At trial, Officer Hurst identified R.W. as the individual that fled from the stolen vehicle. The handgun, a loaded

semi-automatic, was retrieved from the scene by the NOPD crime lab. The gun was identified at trial as the same one Officer Hurst saw in R.W.'s hand.

R.W. was charged by delinquency petition with violating: 1) La. R.S. 14:95.1, relative to a convicted felon in possession of a firearm (based on R.W.'s prior delinquency adjudication for carjacking in case no. 2006-242-01-DQ-C); 2) La. R.S. 14:108, relative to resisting an officer; and 3) La. R.S. 40:966, relative to possession of marijuana, second offense. The marijuana charge was later dismissed.

R.W. denied the offenses charged and filed a motion to quash the petition pursuant to La. Ch.C. art. 875 and La. C.Cr.P. art 532, asserting that the offense charged is not punishable under a valid statute. More specifically, R.W. argued that a juvenile cannot be charged as a second offender under La. R.S. 14:95.1, because a prior juvenile adjudication is not a "conviction."

The matter was brought to trial on April 20, 2010. Before proceeding on the merits, the trial court denied the motion to quash the petition, stating: "prior delinquency adjudications can be used in support of the offense charged, a felon with a firearm."

After hearing testimony from Officer Hurst, R.W. was adjudicated delinquent on one count of felon in possession of a firearm and one count of resisting an officer. R.W. was committed to the Department of Public Safety and Corrections for a period of time not to exceed six months on each count, with the commitments to run consecutive to each other. The court suspended six months of the commitment and ordered R.W. placed on one year active probation upon his release. This timely appeal followed.

Discussion

On appeal, R.W. argues that the trial court erred in denying the motion to quash. R.W. further argues that even if a delinquency adjudication could be used as a predicate conviction to prosecute R.W. under La. R.S. 14:95.1, the State failed to carry its burden of proving that R.W. had a prior adjudication for a felony offense. We find merit in R.W.'s first assignment of error.

Recently, in *State in the Interest of I.P.*, 2010-0882 (La. App. 4 Cir. 12/8/10), --- So.3d. ---, 2010 WL 5035051, this Court specifically addressed the issue of whether a juvenile can be validly charged under a statutory provision that requires a prior "conviction" as a predicate. In that case, I.P. was charged pursuant to La. R.S. 14:95(C), illegal carrying of weapons, second offense. As in the present case, the juvenile filed a motion to dismiss the petition, arguing that a juvenile cannot be charged as a second offender under the statute. The trial court denied I.P.'s motion to dismiss. On appeal, we held that the trial court erred in denying the motion, stating:

The rules of statutory construction are straightforward. The distinction between an adjudication and conviction is grounded in the unique notion of the juvenile system which is purposefully non-criminal or civil in nature and purportedly focused on rehabilitation. *See In re C.B., R.B., T.C., S.C., et al*, 97-2783 p. 7-18 (La.3/4/98), 708 So.2d 391, 395-401 (full discussion of the philosophy underlying the Louisiana juvenile justice system). Any perceived shortcomings in this system and its underlying rationale may not be remedied by judicially eliminating legislatively mandated distinctions between the criminal and juvenile justice systems. The Louisiana Supreme Court has explicitly stated that "[a] juvenile adjudication is not a conviction of any crime." *Brown*, [20]03-2788, p. 20; *In re C.B.*, p. 17. Thus, by the clear terms of the statute which requires a prior conviction, a juvenile cannot be charged with an offense under La.Rev.Stat. 14:95(C). See La.Rev.Stat. 1:3 (words shall be construed according to the common and approved usage of the language). Nor do we find persuasive the State's argument that its discretion to bring charges in the civil juvenile justice system should be unfettered based on Article 6 of the Louisiana Code of Criminal Procedure. We do not underplay the seriousness of a juvenile being arrested for a second time carrying an illegal weapon, particularly in the midst of a Mardi Gras day

crowd, but, as the State concedes, the State can bring a prior adjudication to the juvenile court's attention in other ways, such as during the sentencing phrase.¹

State in the Interest of I.P., 2010-0882 at p. 2.

Following the rationale set forth in *State in the Interest of I.P.*, and considering the clear pronouncement by the Louisiana Supreme Court that a juvenile adjudication is not a “conviction” (*See State v. Brown*, 2003-2788, p. 20 (La. 07/06/04), 879 So.2d 1276, 1289; *In re C.B.*, 97-2783, p. 17 (La. 3/4/98), 708 So.2d 39, 400.), R.W.’s prior juvenile adjudication cannot be used as a predicate under La. R.S. 14:95.1, which requires a prior conviction. Accordingly, we find the trial court erred in denying R.W.’s motion to quash the petition in connection with the offense charge under La. 14:95.1

Decree

For the foregoing reasons, we reverse and set aside the ruling of the trial court and remand the matter for further proceedings consistent with this opinion.

REVERSED AND REMANDED with the offense charged under La. 14:95.1.

For the foregoing reasons, we reverse and set aside the ruling of the trial court and remand the matter for further proceedings consistent with this opinion.

REVERSED AND REMANDED

¹ On January 7, 2011, the State filed writs with the Louisiana Supreme Court in *State in the Interest of I.P.* That matter is pending at this time.