NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA IN THE INTEREST OF A.D.	*	**NO. 2016-CA-0439**
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		COURT OF APPEAL
	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2015-310-01-DQ-E/C, SECTION "C"
Honorable Candice Bates Anderson, Judge
* * * * * *

Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Edwin A. Lombard, Judge Madeleine M. Landrieu)

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JUDGMENT AND DISPOSITION AFFIRMED

SEPTEMBER 28, 2016

This is a juvenile delinquency matter. The juvenile, A.D.,[1] appeals his delinquency adjudication for the offense of unauthorized use of a motor vehicle and the disposition imposed. For the reasons that follow, we affirm.

FACTS/PROCEDURAL HISTORY

On November 10, 2015, the State charged A.D. with unauthorized use of a motor vehicle, a violation of La. R.S. 14:68.4. The offense allegedly happened on or around October 31, 2015. He entered a not guilty plea. The parties appeared for the adjudication hearing on January 5, 2016 and on January 13, 2016. The following testimony was adduced at the hearings.

The State called Beverly Bautista, an employee of Enterprise-Rent-A-Car (Enterprise). Defense counsel objected when the State asked Ms. Bautista whether Enterprise had reported the car as stolen, complaining that the defense had never received discovery regarding the police report of the car's theft. The State countered that the defense was not entitled to production of the police report because A.D. was charged with unauthorized use of the vehicle, not theft of the

[1] Because the appellant is a juvenile, we reference him by the use of his initials.

vehicle; and moreover, its reference to the police report was only to show that the vehicle had been reported as stolen. The trial court agreed with the State and overruled the objection. Thereafter, Ms. Bautista identified the reported vehicle as a silver Hyundai Sonata.

Commander Shawn Ferguson testified that he was familiar with A.D. and identified him in court. He said that on October 31, 2015, he saw A.D. drive a silver vehicle, later identified as a Hyundai Sonata, past him as he was at a stop sign. Commander Ferguson ran a license plate check on the vehicle and learned it had been stolen. Commander Ferguson lost sight of the vehicle; however, he stated that approximately three or four other persons were in the car with A.D. On cross-examination, Commander Ferguson said he knew A.D. because they lived in the same neighborhood. On re-direct, Commander Ferguson stated that he had known A.D. for ten years and was positive that A.D. was the person he saw driving the vehicle. After Commander Ferguson's testimony, the matter was recessed and resumed on January 13, 2016.

On January 13, 2016, Eric Stephens, an area manager for Enterprise, testified. Mr. Stephens stated that the Hyundai had been rented and returned on October 22, 2015. He verified that A.D. had not been the authorized renter. Mr. Stephens added that no one had rented the vehicle between October 22, 2015 and October 31, 2015. He maintained that Enterprise did not authorize A.D. to drive its vehicle. Mr. Stephens said that no one saw the vehicle between October 23rd and November 20th, the day the vehicle was recovered. On cross-examination, he said he believed the vehicle was reported as stolen on October 26, 2015, after

Enterprise determined that the vehicle was not on a rental contract. He also told the trial court that Enterprise employees had to be at least eighteen years of age.

Detective Derrick Banks testified that his investigation of A.D. showed that he did not have a driver's license.

The trial court asked A.D. if he wanted to testify. After consultation with his attorney, he declined.

After hearing the testimony, the trial court adjudicated A.D. to be delinquent. The trial court noted that A.D. was only 14 years-old; did not have a valid Louisiana driver's license; and did not have permission from Enterprise to drive its car. In addition, the trial court cited the testimony of Commander Ferguson who positively identified A.D. The trial court deferred disposition to consider the PDI (pre-disposition investigation) report the Office of Juvenile Justice (OJJ) was compiling on A.D. The trial court discussed the necessity of coming up with a really good plan for A.D. and made reference to other dispositional plans that had failed.

The dispositional hearing took place on March 9, 2016.[2] The hearing was attended by A.D.'s father, two uncles, a social worker, and a counselor. The trial court informed A.D. that he would be placed with O.J.J. for four years, with the sentence suspended, and placed on four years active probation. The trial court also referred him to Divine Intervention, a counseling service, and gave temporary custody to one of his uncles.[3] The trial court advised A.D. that he would be placed on electronic monitoring through OJJ and placed on house arrest, and then stated it

[2] The disposition also included A.D.'s guilty plea to illegal possession of stolen things, a violation of La. R.S. 14:69(A), that arose out of Orleans Parish Juvenile Court case no. 2015-189-03-DQ-C.

[3] A.D.'s mother had died in June 2015 and his father had apparent health issues.

did not "want to use that word," an apparent reference to "house arrest." The trial court discussed curfews and heard from A.D.'s uncles regarding a weekend plan for A.D.'s supervision. The trial court also asked A.D. to write a report to discuss how he intended to make changes and do things the right way. A.D. expressed that he was ready to change. The trial court acknowledged the support of A.D.'s family, encouraged him to make better choices, and relayed that A.D. could visit his father and his siblings.

The written disposition record of March 9, 2016 reflected the following:

> 1) No notices are needed by the Clerk of Court.
> 2) The juvenile must enroll in school within 48 hours and provide proof.
> 3) He must complete 20 hours of community service and provide proof.
> 4) The juvenile is to continue with Divine Intervention Services. He is to be provided a mentor.
> 5) He is to be placed on B.I. Monitoring on strict house arrest.
> 6) The juvenile is allowed to see his father for visitation purposes only.
> 7) COUNT NUMBER — OFFENSE
> La. R.S. 14.68.4 — Unauthorized use of a motor vehicle
> La. R.S. 14.69(A) — Illegal possession of stolen things

The written disposition also reiterated A.D.'s four-year suspended sentence and active probation of four years, with the sentence to run concurrent with case no. 2015-189-03-DQ-C. The Special Conditions included:

> 2) The juvenile must enroll in and attend school every day, present no problems at home or school, receive no suspensions and forward copies of all report cards received to the Court.
> 3) The juvenile must have no further violations of the law. The juvenile must have no further arrests.
> 4) The juvenile must have no drugs, alcohol or weapons in his/her possession.
> 5) The juvenile must abide by the 6:00 p.m. curfew order on the weekdays and abide by the 8:00 p.m. curfew order on the weekends.
> 6) The juvenile must keep the Court and OJJ abreast of any change in telephone number or address. Any failure to keep the Court or OJJ abreast of any changes will result in Contempt time for 15 days.
> 7) The juvenile must abide by his parent/guardian's rules and regulations and stay away from anyone that the parent does not approve of.

This timely appeal followed.

ASSIGNMENTS OF ERROR

A.D. assigns the following errors:

1) The evidence is insufficient to support the verdict rendered by the trial judge;

2) The prosecutor erred in suppressing discovery of the initial police report regarding the theft of the car, and the trial judge erred in denying trial counsel's request for production of the document without conducting an in-camera inspection; and

3) The written judgment of disposition differs from the disposition stated at the disposition hearing.

Sufficiency of the Evidence

In general, the standard of review for an appellate court to evaluate the sufficiency of the evidence to support a conviction requires the reviewing court to determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The *Jackson v. Virginia* standard specifically requires the evidence be sufficient to convince the fact-finder "that all of the elements of the crime had been proved beyond a reasonable doubt." *See Sate ex rel. C.N.*, 2011-0074, p. 5 (La. App. 4 Cir. 6/29/11), 69 So.3d 711, 714. However, a review of the sufficiency of the evidence for juvenile adjudications mandates a more expansive review of the evidence than that put forth in *Jackson v. Virginia*; it also requires the appellate court to review the law and facts to determine if the judgment was manifestly erroneous or reasonable. *See State in the Interest of D.M.*, 2011-2588, pp. 4-5 (La. 6/29/12), 91 So.3d 296, 298-299.

In the present matter, A.D. asserts that the evidence was insufficient to convict because the State did not prove beyond a reasonable doubt that A.D. knew the car was stolen. To review this argument, we must first look at the elements that comprise unauthorized use of a motor vehicle. La. R.S. 14:68.4(A) defines unauthorized use of a motor vehicle as "the intentional taking or use of a motor vehicle which belongs to another, either without the other's consent or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the motor vehicle permanently."

We agree with the State that the statute does not require the accused to know that the vehicle was stolen in order to prove unauthorized use of a motor vehicle. Our review of the record reveals the State presented testimony from Enterprise employees to establish the vehicle belonged to Enterprise and that Enterprise did not give its consent to A.D. to use its vehicle. The record shows the State also elicited testimony from Commander Ferguson who positively identified A.D. as a user of the vehicle and established that A.D. did not have a valid driver's license. Based upon our review of the facts and law, this evidence meets the requirements of La. R.S. 14:68.4 to prove unauthorized use of a vehicle; and hence, supports A.D's delinquency adjudication. Because we conclude the findings of the juvenile judge were not manifestly erroneous and were reasonable, this assignment of error is without merit.

Suppression of the Police Report

This assignment of error contends the trial court erred by declining to order the State to produce the police report of the theft of the Enterprise car and by denying A.D.'s request for production without first conducting an in-camera inspection of the police report.

The parties acknowledge that discovery in juvenile cases is governed by the Code of Criminal Procedure.[4] In particular, the discovery of police reports is governed by La. C.Cr. P. art. 718, which provides:

> Subject to the limitation of Article 723 of this Code, and except as otherwise prohibited by law, **upon written motion** of the defendant, the court shall order the district attorney to permit or authorize the defendant to inspect and copy, photograph or otherwise reproduce law enforcement reports created and known to the prosecutor made in connection with the particular case, and to permit or authorize the defendant or an expert working with the defendant, to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof that are within the possession, custody, or control of the state, and that are intended for use by the state as evidence in its case in chief at trial, or were obtained from or belong to the defendant. (Emphasis added).

In the present matter, A.D. concedes that his trial counsel made no written motion requesting pre-trial discovery and that the request for the police report came only after the State had attempted to use the report at trial to examine an Enterprise employee. As the State was not required to produce the police report because the defendant failed to file a written motion seeking the report, the only discovery the State would have been required to produce was "any evidence constitutionally required to be disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny." *See* La. C.Cr.P. art. 723(B).

A violation of the State's duty to disclose exculpatory *Brady* material occurs where 1) the evidence is favorable to the accused; 2) the State has either willfully or inadvertently suppressed the evidence; and 3) prejudice has ensued. *Strickler v. Greene*, 527 U.S. 263 at 281-82, 119 S.Ct. at 1948, 144 L.Ed 286 (1999). Here, element two is absent. Because A.D. did not file a written motion to request production of the police report, he cannot show that the report was either willfully or intentionally suppressed. Furthermore, our analysis of elements one and three

[4] La. Ch.C. art. 866 provides: "Discovery shall be as provided in the Louisiana Code of Criminal Procedure."

shows that A.D. failed to make any showing that the police report contained information to compel its disclosure under *Brady*.

A.D. suggests the police report was potentially exculpatory or favorable because it may have identified the thief and showed that the alleged thief might have had the apparent authority to give A.D. permission to use the vehicle. However, sheer speculation that the police report might have contained favorable information is not sufficient to establish that the report's contents would have materially aided in A.D.'s defense. *See State v. Wells*, 2011-0744, p. 10 (La. App. 4 Cir. 4/13/16), 191 So.3d 1127, 1138. Indeed, the un-contradicted testimony of the owner's employees rebuts this defense because they uniformally testified that A.D. did not have authority to use the Enterprise vehicle.

Next, A.D. cannot prove any prejudice from the failure to disclose the police report. The information he speculates that may have been contained in the report, such as the identification of those involved in the car's theft, is not probative of any of the components required to prove unauthorized use of a vehicle, the charge for which A.D. was adjudicated delinquent. The record shows the trial court acknowledged as much when it denied the request for production by noting that A.D. had been charged with unauthorized use of a vehicle, and not theft.

A.D. presents no evidence to show that the police report's contents were probative, let alone exculpatory. Given the lack of a showing of a discovery violation and no demonstrable prejudice shown to A.D., we find no error in the trial court's decision to suppress the police report without conducting an in-camera inspection.

Judgment of Disposition

This assignment of error argues that in the event this Court does not set aside the delinquency adjudication, then the disposition should be remanded to the trial court for clarification because the written judgment of disposition does not

coincide in all respects with the "oral" disposition. Examples of this alleged conflict between the dispositions include A.D's claim that the written judgment stated that A.D. was under "strict house arrest," whereas the transcript indicated the trial court expressly did not place A.D. under house arrest. He also asserts the written disposition imposed specific curfews and other special conditions that were not discussed at the oral disposition. A.D. adds that the trial court orally told him to write a report that was not included in the written disposition. A.D. argues that where a conflict exists between minute entries and a transcript, the transcript prevails over the written judgment. *State v. Lynch*, 441 So.2d 732, 734 (La. 1983). Accordingly, he suggests this Court should order a remand to clarify the alleged conflicts between the written judgment and the transcript.

Before we review the merits of this assignment of error, we consider it necessary to first determine whether the trial court complied with the guidelines for entering a judgment of disposition and the legality of the sentence imposed. La. Ch.C. art. 902 mandates that all parties are to be present when the court enters a judgment of disposition. La. Ch.C. art. 903(A)(1) provides in part that before entering a judgment of disposition, the court shall orally inform the child and shall state for the record the considerations taken into account and the factual basis for imposing the particular disposition. La. Ch.C. art. 903(B) provides that the court shall enter a written judgment specifying 1) the offense for which the child has been adjudicated a delinquent; 2) the nature of the disposition; 3) the agency, institution, or person to whom the child is assigned: 4) the conditions of probation, if applicable; 5) any other applicable terms and conditions regarding the disposition; and 6) the maximum duration of the disposition and, if committed to the custody of the Department of Public Safety and Corrections, the maximum term of the commitment. La. R.S. 14.68.4(B) provides that "whoever commits the offense of unauthorized use of a motor vehicle shall be fined not more than five

thousand dollars or imprisoned with or without hard labor for not more than ten years or both."

The record here shows compliance with art. 903(A) and art. 902. The trial court discussed with A.D. the reasons for the disposition and the effort to craft a meaningful sentence to positively impact A.D. The record also reveals that A.D. was represented by counsel and supported by numerous family members with whom the trial court interacted in devising the disposition plan.

The written disposition also comports with the guidelines put forth in art. 903(B). It specifies the offense for which the child was adjudged delinquent, the nature of the disposition, the entity to which the child was assigned, the conditions of probation, and the duration of the sentence.

As referenced, the duration of the sentence, four years suspended, with four years of active probation, falls well within the sentencing range for the offense of unauthorized use of a vehicle. [5] Moreover, La. Ch.C. art. 897(B)[6] allows the trial

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[5] As previously noted herein, the disposition also included sentencing for violation of La. R.S. 14:69, illegal possession of stolen things.

[6] La. Ch.C. art. 897(B) provides the conditions of probation as follows:

(1) The court shall impose all of the following restrictions:

(a) Prohibit the child from possessing any drugs or alcohol.

(b) Prohibit the child from engaging in any further delinquent or criminal activity.

(c) Prohibit the child from possessing a firearm or carrying a concealed weapon, if he has been adjudicated for any of the following offenses and probation is not otherwise prohibited: first or second degree murder; manslaughter; aggravated battery; aggravated, forcible, or simple rape; aggravated crime against nature; aggravated kidnapping; aggravated arson; aggravated or simple burglary; armed or simple robbery; burglary of a pharmacy; burglary of an inhabited dwelling; unauthorized entry of an inhabited dwelling; or any violation of the Uniform Controlled Dangerous Substances Law which is a felony or any crime defined as an attempt to commit one of these enumerated offenses.

(2) The court may impose any other term and condition deemed in the best interests of the child and the public, including:

(a) A requirement that the child attend school, if the school admits the child.

(b) A requirement that the child perform court-approved community service activities.

(c) A requirement that the child make reasonable restitution to any victim for any personal or property damage caused by the child in the commission of the delinquent act.

court to impose the conditions of probation that were outlined in the written disposition. Therefore, we conclude the trial court complied with the guidelines for entering a judgment of disposition and that the disposition imposed was legal in all respects. Having made that determination, we now turn to whether a conflict exists between the written disposition and the transcript.

This Court recognizes that as per *State v. Lynch*, 441 So.2d at 734, where a discrepancy exists between the sentence imposed in the transcript and the sentence stated in the minute entries, the transcript prevails. In *State v. Lynch*, the minute entry contradicted the transcript as to whether the defendant had been fully advised of his *Boykin*[7] rights at the time of his felony plea bargain. Similarly, in *State in Interest of D.D.*, 2011-1384, pp. 5-6 (La. App. 3 Cir. 3/7/12), 86 So.3d 171, 175, the transcript prevailed over the minute entry where the minute entry stated the juvenile's confinement was to be served "without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence" and the transcript did not impose those restrictions; accordingly, the matter was remanded for the minute entry to accurately reflect the transcript. However, when we scrutinize the transcript and the written disposition in the present matter, we conclude no conflicts exist that require this Court to vacate or remand the written disposition for clarification.

(d) A requirement that the child participate in any program of medical or psychological or other treatment found necessary for his rehabilitation.

(e) A requirement suspending or restricting the child's driving privileges, if any, for all or part of the period of probation. In such cases, a copy of the order shall be forwarded to the Department of Public Safety and Corrections, which shall suspend the child's driver's license or issue a restricted license in accordance with the order of the court.

(f) A requirement prohibiting the child from possessing a firearm or carrying a concealed weapon.

(g) A requirement that the child pay a supervision fee of not less than ten nor more than one hundred dollars per month, payable to the Department of Public Safety and Corrections or other supervising agency, to defray the costs of supervision. The amount of the fee shall be based upon the financial ability of the payor to pay such a fee. The court may order a parent, tutor, guardian, or other person who is financially responsible for the care of the child to be responsible for payment of all or part of any supervision fee imposed.

A.D. principally alleges that a conflict exists between the transcript of the disposition and the written disposition because the minutes stated A.D. was under strict house arrest whereas the transcript showed the trial court expressly did not place him under house arrest. The record reveals the trial court stated the following:

> Because right now he's going to placed on the electronic monitor through OJJ, and he will be placed on house arrest—Well, I don't want to use that word, he will be placed on curfew where he gets to go to school. But then he needs to come home from school.

We find the trial court's reluctance to use the word or phrase "house arrest" does not bear out A.D.'s assertion that the trial court expressly asserted he was not on house arrest. Thus, while we find there may be some confusion between the transcript and the written disposition, we do not find an express conflict. Indeed, upon review of the transcript in its totality, the limitations placed on A.D.'s activities, i.e., the electric monitoring and the admonition that he was to go to school and then back home, are consistent with house arrest. Regardless, no explicit, clear-cut contradiction exists between the transcript and the written disposition, as was found in *Lynch* or in *In Interest of DD*.

Similarly, A.D's other claims—that the transcript did not outline a specific curfew or specify special conditions that required the juvenile to obey his guardians, keep the court and OJJ abreast of his current address and telephone number, or his claim that the transcript required him to submit a written report to the trial judge and the minute entry did not—do not demonstrate the existence of a conflict between the transcript and the written disposition. When we compare the transcript and the written disposition, the disposition plan discussed in the transcript, notably, the imposition of curfews, electronic monitoring, compliance

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[7] *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

with adult authority, mandatory school attendance, admonitions to stay out of trouble, and the actual sentence imposed, the transcript corresponds with the sentence and the special conditions outlined in the written disposition. Moreover, we note that the trial court had the authority to impose the sentence and all the special conditions outlined in the written disposition.

A.D.'s sentence and the special probation conditions outlined in the written disposition were legal in all respects. We find no express conflicts between the written disposition and the transcript that would warrant a reversal or a remand for clarification. Accordingly, this assignment of error lacks merit.

CONCLUSION

Wherefore, based on the foregoing reasons, we affirm the judgment of delinquency and the disposition imposed.

JUDGMENT AND DISPOSTION AFFIRMED