NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 KJ 1616

STATE OF LOUISIANA

VERSUS

M. P.

Judgment Rendered: APR 06 2018

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On Appeal from the Juvenile Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 111770

Honorable Adam Haney, Judge Presiding

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BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

McCLENDON, J.

The fourteen-year-old juvenile, M.P., was alleged to be delinquent according to petition number 111,770, filed by the State of Louisiana on August 23, 2017, pursuant to the Louisiana Children's Code.[1] The petition was based upon the alleged commission of simple robbery, a violation of LSA-R.S. 14:65 (count one); and theft, a violation of LSA-R.S. 14:67B(4) (count two). M.P. entered a denial to the allegations. Following an adjudication hearing, M.P. was adjudicated delinquent as to count one, and count two was dismissed. At the disposition hearing, the juvenile court committed M.P. to the Department of Public Safety and Corrections for a period of three years. On appeal, M.P. argues that the evidence presented by the State was insufficient to support his adjudication. For the following reasons, we affirm M.P.'s adjudication of delinquency and disposition.

FACTS

On August 18, 2017, M.P. was involved in an altercation during which he helped take a backpack from the victim, D.S., at Scotlandville Magnet High School in Baton Rouge.[2] During the altercation, the victim was hit and pushed to the ground. The high school's dean of discipline reviewed the surveillance video of the altercation, identified the juveniles involved, and contacted Deputy Jimmy Young with the East Baton Rouge Parish Sheriff's Department, who interviewed those involved. The video footage clearly showed that L.J. took the victim's backpack and threw it to M.P. The victim attempted to intercept it, but M.P. pulled it away from the victim, and the two struggled over the backpack until the victim fell to the ground, and M.P. walked away without the backpack.

SUFFICIENCY OF THE EVIDENCE

In M.P.'s sole assignment of error, he contends that the State failed to present sufficient evidence in support of his adjudication for simple robbery. Specifically, M.P. contends that the surveillance video showed that the backpack was taken by another

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[1] To protect M.P.'s identity as a minor, we have re-captioned this case and refer to him by his initials. See Uniform Rules – Courts of Appeal, Rule 5-2.

[2] The initials of the victim are used in order to keep his identity confidential pursuant to LSA-R.S. 46:1844W.

juvenile, L.J., and thrown to him. He argues that he caught it as a "defensive reflex" before returning it to the victim and walking away.

In a juvenile adjudication proceeding, the State must prove beyond a reasonable doubt that the child committed a delinquent act alleged in the petition. LSA-Ch.C. art. 883. The burden of proof, beyond a reasonable doubt, is no less severe than the burden of proof required in an adult proceeding. **State in Interest of S.T.,** 95-2187 (La.App. 1 Cir. 6/28/96), 677 So.2d 1071, 1074. In **State in Interest of Giangrosso**, 385 So.2d 471, 476 (La.App. 1 Cir. 1980), affirmed, 395 So.2d 709 (La. 1981), this court stated:

> In juvenile proceedings, the scope of review of this court extends to both law and fact. Article 5, Section 10, Constitution of 1974; see **State in Interest of Batiste,** 367 So.2d 784 (La. 1979). We must, therefore, decide if the trial judge was clearly wrong in his determination that the defendants were proven guilty beyond a reasonable doubt.

Thereafter, in **State in Interest of Giangrosso**, 395 So.2d 709, 714 (La. 1981), the supreme court affirmed, concluding that a rational trier of fact could have found, from the evidence adduced at the trial, proof of guilt beyond a reasonable doubt, citing **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), and **State in Interest of Batiste**, 367 So.2d 784 (La. 1979). See **In Interest of L.C.,** 96-2511 (La.App. 1 Cir. 6/20/97), 696 So.2d 668, 669-70.

Accordingly, on appeal the standard of review for sufficiency of the evidence enunciated in **Jackson** is applicable to delinquency cases, *i.e.*, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the State proved the essential elements of the crime beyond a reasonable doubt. **Jackson**, 443 U.S. at 319, 99 S.Ct. at 2789; see also LSA-C.Cr.P. art. 821B; **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 660; and **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988).

Further, because a review of the law and facts in a juvenile delinquency proceeding is constitutionally mandated, an appellate court must review the record to determine if the juvenile court was clearly wrong in its factual findings. See **State in Interest of D.M.**, 97-0628 (La.App. 1 Cir. 11/7/97), 704 So.2d 786, 789-90. In a juvenile case, when there is evidence before the trier of fact that, upon its reasonable

evaluation of credibility, furnished a factual basis for its finding, on review, the appellate court should not disturb this factual finding in the absence of manifest error. Reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review. **State in Interest of Wilkerson**, 542 So.2d 577, 581 (La.App. 1 Cir. 1989). The **Jackson** standard is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence. **State ex rel D.F.**, 08-0182 (La.App. 1 Cir. 6/6/08), 991 So.2d 1082, 1085, writ denied, 08-1540 (La. 3/27/09), 5 So.3d 138.

As applicable here, LSA-R.S. 14:65A defines simple robbery as "the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon." Louisiana Revised Statutes 14:24 provides that all persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals. The defendant's mere presence at the scene is not enough to "concern" him in the crime. Only those persons who knowingly participate in the planning or execution of a crime may be said to be "concerned" in its commission, thus making them liable as principals. A principal may be connected only to those crimes for which he has the requisite mental state. **State ex rel D.F.**, 991 So.2d at 1085. However, "[i]t is sufficient encouragement that the accomplice is standing by at the scene of the crime ready to give some aid if needed, although in such a case it is necessary that the principal actually be aware of the accomplice's intention." **State ex rel K.J.C.**, 09-0658 (La.App. 1 Cir. 9/11/09) (unpublished) (citing **State v. Anderson**, 97-1301 (La. 2/6/98), 707 So.2d 1223, 1225 (per curiam)). Simple robbery is a general intent crime. See LSA-R.S. 14:10(2); **State v. Davis**, 12-0386 (La.App. 1 Cir. 11/2/12), 111 So.3d 100, 103. An offender has the requisite general intent when, from the circumstances, the prohibited result may reasonably be expected to follow from the offender's

voluntary act, irrespective of any subjective desire on his part to have accomplished such result. **Id.** Although general intent is a question of fact, it may be inferred from the circumstances of the transaction. See **State v. Johnson**, 03-1228 (La. 4/14/04), 870 So.2d 995, 998-99.

The victim testified at the adjudication hearing. According to the victim, when he was walking to get lunch, one of three other students asked him if he wanted to purchase a belt. As he was telling the student that he did not want to purchase the belt, another student walked up and took his backpack, which contained $20.00. The victim was able to retrieve his backpack, but was hit and pushed to the ground during the altercation.

M.P. testified that as he walked up to the area where the other juveniles were standing, the backpack was thrown to him by an unknown person, and his only two options were to catch the backpack or let it hit him. He claimed that he was trying to "get loose" from the victim while he and the victim struggled over the backpack. When asked why he did not just give the victim his backpack or let go of it, M.P. stated, "As you can see, he has me at the same time. . . . One arm on the [backpack] and one arm on me." M.P. continued to explain, "He's still trying to get his [backpack], and I'm still trying to get him to let me go at the same time. And as we are going to the crowd, he finally let me go and I let him go, and he tripped over my shoe and fell." M.P. pointed out that after the backpack fell to the ground, he did not pick it up. He testified that it was not his intent to take the backpack.

At the conclusion of testimony, the juvenile court stated:

> It's apparent that [L.J.] tosses [M.P.] the backpack. And I think when [M.P.'s] story falls apart, it's clearly apparent on the video that he is trying to rip that backpack away from the victim. His arms are fully extended and he is pulling on that backpack, trying to get it away from the victim. ... It's clear that he's grabbing it and he's pulling as hard as he can.

In support of his argument, M.P. attempts to distinguish this court's recent opinion, **State in the Interest of T.H.**, 17-0890 (La.App. 1 Cir. 11/1/17), 233 So.3d 662. In that opinion, T.H. was adjudicated delinquent based on one count of first degree rape and one count of simple robbery for his participation in stealing the victim's cellular telephone and her rape. According to the victim's testimony, she was on one

side of a fence with two male juveniles, and T.H. was on the other side of the fence. Although T.H. was not with the juveniles when they originally took the victim's phone, he participated in tossing her phone around in a circle with the other two juveniles despite her request that they return the phone. T.H. admitted that one of the juveniles threw the phone to him and asked him to hold it, but stated that he gave it back to that juvenile. T.H. argued that the crime was complete at the time the phone was taken. In response, this court found such a narrow view unsupported by the evidence and noted:

> The Supreme Court has found that the element of force or intimidation need not occur before or contemporaneously with the taking, but rather recognized that the elements of the crime can be proven by evidence that it occurred in the course of completing the crime. **State v. Meyers**, 620 So.2d 1160, 1163 (La. 1993). In this case, during the sequence of events transpiring from the taking of [the victim's] phone, the running away with the phone, and [the victim] following to retrieve the phone, T.H. was present as [the victim] attempted to retrieve the phone, at which point he was aware of the taking of the phone. Yet, not only did T.H. remain silent as to the acts of [the other two juveniles], but he helped them to retain the phone, thereby concerning himself in this crime despite his lack of initial participation therein. Any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that T.H. was guilty of simple robbery as a principal herein.

State in the Interest of T.H., 233 So.3d at 671.

The juvenile in the instant case argues that the above-referenced case is distinguishable because M.P.'s "involvement was much more attenuated." M.P. contends that unlike T.H., who had "enough time" to learn the stolen nature of the phone and to try to intervene, he did not have such an opportunity. M.P. further argues that his "action was a reaction to being aggressively grabbed by this other youth whose desire to retrieve his backpack was not known to M.P." We disagree. Contrary to M.P.'s assertion that he was "merely a bystander," the video clearly depicts him fighting over the backpack with the victim and consistently pulling it toward himself. The video also reveals that M.P. watched as L.J. grabbed the backpack out of the victim's hands. Based on our review of the surveillance video of the altercation, as well as the testimony presented at the adjudication hearing, we find that any rational trier of fact, viewing the evidence in the light most favorable to the State, could have found beyond a reasonable double that M.P. was guilty of simple robbery. Further, after

undertaking our State's constitutionally mandated review of the law and facts in a juvenile proceeding, we find no manifest error by the juvenile court in its adjudication on this count.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, we affirm the juvenile court's adjudication of delinquency and disposition.

ADJUDICATION AND DISPOSITION AFFIRMED.