

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA IN
THE INTEREST OF D.M.**

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NO. 2012-CA-1443

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2011-294-01-DQ-F, SECTION "F"
Honorable Mark Doherty, Judge

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Judge Max N. Tobias, Jr.

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr.,
Judge Rosemary Ledet)

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AFFIRMED.

In this appeal, D.M. seeks review of the juvenile court judgment adjudicating him delinquent, finding that he committed the offense of forgery, a violation of La. R.S. 14:72. For the following reasons, we affirm.

The state filed a delinquency petition alleging that on 13 May 2011, D.M. committed the offense of forgery. Trial was held on 9 July 2012.

At trial, the state called Officer Martin Smith to testify. Officer Smith stated that he investigated a forgery that was committed at Quiznos, a sandwich shop located at 2801 Magazine Street in New Orleans. He had learned from Shannon Welch Sanders, the victim, that her credit/debit card had been taken from her vehicle. Officer Smith stated that Mrs. Sanders did not give anyone permission to use her credit/debit card. The officer determined that the credit/debit card had been utilized at Quiznos, from which he retrieved the receipt for the transaction. He stated that Mrs. Sanders indicated that that her signature did not appear on the receipt and that the signature on the receipt read “Shannon Welch” and not “Shannon Sanders.” Indicating that the time on the receipt was 3:23 p.m. on 13 May 2011, he testified that he did not check the time stamp on the cash register to verify if the time on the time stamp was correct. He stated that the Quiznos

employee working on 13 May 2011 did not know how to operate the surveillance equipment; thus, Officer Smith did not view the surveillance video on that day. He testified that he obtained a description of the perpetrator: a black male in his late teens, with a short haircut, wearing a red shirt and blue jeans. After logging the receipt into evidence, Officer Smith stated he had no further involvement with the case.

Next, Detective Jonathan Bulling testified. He stated that he conducted a follow-up investigation into the matter. Detective Bulling explained that he viewed the surveillance video from Quiznos, noting that when he went to watch the video on 16 May 2011, he observed that the time appearing on the camera was about 30 minutes faster than the actual time of day. Thus, he believed that the video of 13 May 2011 was also 30 minutes fast. He specifically viewed the video of the transaction occurring at 3:54 p.m. on 13 May 2011. He stated that the young man in the video making a credit/debit card purchase at 3:54 p.m. was identified by a Quiznos' employee as the person who signed the name "Shannon Welch" on the transaction receipt. Detective Bulling copied the video and made a still photograph of the customer to send to Mrs. Sanders. He subsequently developed D.M. as a suspect based on information received from Mrs. Sanders. He noted that the Quiznos' employee who was working on 13 May 2011, Jovan Coleman, was shown in November of 2011 a six-person photographic lineup that included a picture of D.M. He noted that at the time of the lineup, Ms. Coleman stated that she was torn between two of the photographs. Detective Bulling stated that Ms. Coleman was only 25% sure that D.M. was the perpetrator and assigned a 75% possibility that another individual in the photographic lineup signed the receipt. He stated that he wrote his first report of his investigation five months after the

incident and wrote a supplemental report on 31 May 2012 regarding the lineup presented to Ms. Coleman.

Detective Brian Phillips testified that he assisted Detective Bulling in the investigation. He printed a state identification photograph of D.M. and went to the school where Mrs. Sanders was working and asked several employees if they recognized the individual in the photograph. He stated that the employees identified D.M. as the individual in the photograph. Detective Phillips printed multiple copies of the photograph of D.M. and requested that each school employee sign the back of a photograph and write on the photograph how they knew D.M.

Jovan Coleman testified that she was working the cash register at Quiznos on 13 May 2011. She stated that she remembered a young man coming in that day and that the young man had on long pants and a shirt. She testified that when she was shown a photographic lineup months after the incident, she was not able to make a positive identification.

Mrs. Sanders testified that she is employed by ReNEW Charter Management Organization at the Batiste Cultural Arts Academy (hereafter "ReNEW"). She testified that she did not go into the Quiznos on 13 May 2011 and did not authorize anyone to use her credit/debit card or sign her name. She stated that after she received the still photograph from the video, she showed it to her coworkers. Mrs. Sanders stated that her coworkers identified the person in the still photograph as D.M., a student. Mrs. Sanders stated that she did not know D.M.

Serrano Barnes testified that he is employed by ReNEW. Mr. Barnes explained that he knew D.M. in his capacity as a behavior interventionist at the school. He testified that he viewed the still photograph from the surveillance video

and noted that he recognized what D.M. wore on Friday, 13 May 2011: a “flannel” shirt and jeans that were rolled up. He explained that D.M. was one of the more “eclectic” dressers at the school, and that what D.M. wore usually stood out. He testified that he had no doubt that D.M. was the person in the still photograph, but could not distinguish facial features on the photograph taken from the surveillance video.

Dana Rixner testified that she is also employed by ReNEW. She stated that she knew D.M. as she was his literacy teacher. She stated that she identified D.M. in the still photograph taken from the surveillance video and that she had no doubt that D.M. was the person therein. Ms. Rixner noted that she could not see the face of the person in the still photograph clearly; however, she testified that she remembered what D.M. was wearing on 13 May 2011.

Lastly, the state called Monica Cammack to testify. Ms. Cammack testified that she is employed by ReNEW. She noted that she was D.M.’s teacher in the 2010-11 school year. She stated that she viewed the still photograph taken from the surveillance video and that she had no doubt that D.M. was the person depicted. Ms. Cammack stated that Friday, 13 May 2011, was a dress down day at school and remembered that D.M. wore cuffed jeans that day. She stated that she thought she remembered seeing D.M.’s face in the still photograph, and that her identification of D.M. in that photograph was based on facial features and the clothing. She admitted that she could not clearly see the facial features on the copy of the still photograph admitted into evidence. She also stated that she was not shown a black and white still photograph.

D.M. testified that on 13 May 2011 he was still fourteen years old, but now fifteen. D.M. noted that he was familiar with the Quiznos at 2800 Magazine Street

because his bus passes it on the way to school. He stated that he had never been inside the Quiznos and he was not the individual in the surveillance video. D.M. averred that he knew that because he had never been inside a Quiznos and did not own pants like the ones in the video. D.M. testified that he did not wear pants on dress down day; rather he wore a basketball jersey on dress down day.

At the conclusion of trial, the judge determined that D.M. committed the offense of forgery and adjudicated him delinquent. Thereafter, he sentenced D.M. to the Department of Public Safety and Corrections for three months, suspended the sentence, and placed him on active probation. From that judgment, D.M. appealed.

In order to adjudicate a child delinquent, the state must prove beyond a reasonable doubt that the child committed the delinquent act alleged in the petition. La. Ch.C. art. 883. The standard for the state's burden of proof in a juvenile delinquency proceeding is "no less strenuous than the standard of proof required in a criminal proceeding against an adult." *State in the Interest of A.G.*, 630 So.2d 909, 910 (La. App. 4th Cir. 1993); *State in the Interest of G.M.*, 617 So.2d 212, 221 (La. App. 5th Cir. 1993). As a court of review, we give great deference to the juvenile court's factual findings, credibility determinations, and assessment of witness testimony. *State ex rel. W.B.*, 08-1458, p.1 (La. App. 4 Cir. 4/22/09), 11 So.3d 60, 61.

In evaluating the sufficiency of evidence to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the accused guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). The

Jackson standard of review is applicable in juvenile delinquency cases. *State in the Interest of T.E.*, 00-1810, p. 4 (La. App. 4 Cir. 4/11/01), 787 So.2d 414, 417.

In addition, La. Const. art. V, § 10(B) mandates that an appellate court review both law and facts when reviewing juvenile adjudications. “While delinquency proceedings may in many ways implicate criminal proceedings, sometimes even mimicking them, they are nonetheless *civil* in nature.” *State in the Interest of D.R.*, 10-0405, p. 5 (La. App. 4 Cir. 10/13/10), 50 So.3d 927, 930.

Therefore, as in the review of civil cases, a factual finding made by a trial court in a juvenile adjudication may not be disturbed by an appellate court unless the record evidence as a whole does not furnish a basis for it, or it is clearly wrong. *See State in the Interest of Batiste*, 367 So.2d 784 (La. 1979); *State ex rel. E.D.C.*, 39,892 (La. App. 2 Cir. 5/11/05), 903 So.2d 571; *State ex rel. T.W.*, 09-0532 (La. App. 3 Cir. 10/7/09), 21 So.3d 465; and *State in the Interest of S.S.*, 557 So.2d 407 (La. App. 4th Cir. 1990). In sum, we apply the “clearly wrong-manifest error” standard of review to determine whether there is sufficient evidence to satisfy the standard of proof beyond a reasonable doubt.

D.M. argues that the juvenile court judgment erred in adjudicating him delinquent absent proof beyond a reasonable doubt that he committed the charged offense. He avers that the evidence presented at trial does not permit a finding of guilt, because it did not show that he forged Mrs. Sanders’ signature on 13 May 2011.

In Louisiana, forgery includes “[i]ssuing, transferring, or possessing with intent to defraud, a forged writing, known by the offender to be a forged writing.” La. R.S. 14:72 B. Pursuant to La. R.S. 14:72 C(1)(a)(i), “forge” means “to alter, make, complete, execute, or authenticate any writing so that it purports to be the

act of another who did not authorize that act.” Pursuant to La. R.S. 14:72 C(2)(a), a “writing” is any “printing or any other method of recording information.”

The state charged D.M. with issuing, transferring, or possessing with intent to defraud, a forged writing known by him to be a forged writing. To show that the state failed to prove beyond a reasonable doubt that D.M. forged Mrs. Sanders’ signature, D.M. points to the fact that Ms. Coleman, the Quiznos’ employee who interacted with the perpetrator at the cash register, was 75% sure that the perpetrator was someone other than him. He notes that the face of the person in the still photograph is not clear, as admitted to by Mr. Barnes, Ms. Rixner, and Ms. Cammack. D.M. argues that Detective Bulling never reviewed the recording of the surveillance video from 3:23 p.m., the specific time on the receipt. Rather, the detective looked at the surveillance video from 3:54 p.m., and assumed that the surveillance equipment was fast by 30 minutes on 13 May 2011. (Detective Bulling based his assumption on his observation on 16 May 2011 that the surveillance equipment was dating surveillance 30 minutes fast.) D.M. argues that there is no direct evidence linking him to the Quiznos or to the signing of the credit/debit card receipt using Mrs. Sanders’ credit/debit card. Thus, he concludes that the trial court erred in finding that he committed the offense of forgery because the state elicited no facts to support the allegation that he committed a forgery on 13 May 2011.

The state is not required to merely present direct evidence linking a defendant to a crime. Circumstantial evidence may be utilized by the state. As we have noted,

...when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the

existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. This is not a separate test from *Jackson v. Virginia*, supra, but rather an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs*, 504 So.2d 817 (La. 1987).

State v. Forbs, 07-1007, pp. 4-5 (La. App. 4 Cir. 4/23/08), 983 So.2d 954, 956-57, quoting *State v. Spencer*, 01-1066, pp. 4-5 (La. 4 Cir. 11/14/01), 802 So.2d 811, 814.

In this case, Ms. Coleman provided a description of the perpetrator to the police soon after the occurrence of the forgery. She could not identify the perpetrator from a photographic lineup containing six photographs. However, the police neglected to perform a photographic lineup until many months after the incident. Three days after the incident, Detective Bulling viewed the surveillance video and testified that a Quiznos' employee identified the individual in the surveillance video as the individual who signed "Shannon Welch" on a receipt on 13 May 2011. Mrs. Sanders testified that she did not authorize anyone to utilize her credit/debit card. Detective Bulling obtained a still photograph of the individual identified by the Quiznos' employee and emailed it to Mrs. Sanders. Several coworkers of Mrs. Sanders identified the individual in the still photograph as D.M. Mrs. Sanders' coworkers identified D.M. by the clothing in the photograph. Friday, 13 May 2011, was a dress down day. Mr. Barnes, Ms. Rixner, and Ms. Cammack all testified that they had no doubt that the individual in the still photograph was D.M.

We are aware that the time on the transaction receipt, 3:23 p.m., does not match the time on the surveillance video. However, Detective Bulling explained he noticed the time discrepancy on 16 May 2011. Further, Detective Bulling showed a Quiznos employee the video from 3:54 p.m. and the employee identified the individual in the video as the individual who signed “Shannon Welch” on the receipt.

Counsel for D.M. noted the problems with the time on the surveillance video, and the fact that the still photograph lacked a clear facial shot. However, the court weighed the testimony of the witnesses, and apparently found the state’s witnesses credible. This finding should not be disturbed unless it is clearly contrary to the evidence. *State v. Nelson*, 08-0584, p. 7 (La. App. 4 Cir. 12/17/08), 3 So.3d 57, 62. It is not. Based on the testimony and evidence presented at trial, a reasonable trier of fact could have found, beyond a reasonable doubt, that D.M. was the perpetrator of the forgery. Therefore, the court’s adjudication of delinquency based on D.M.’s committing the offense of forgery is supported by the evidence and must be upheld.

Accordingly, the judgment of the juvenile court adjudicating D.M. delinquent is affirmed.

AFFIRMED.