***** NOT DESIGNATED FOR PUBLICATION *****

STATE OF LOUISIANA IN THE INTEREST OF R.W.	*	**NO. 2013-CA-0076**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2012-234-02-DQ-C, SECTION “”
Honorable Candice Bates Anderson, Judge

* * * * * *

PAUL A. BONIN
JUDGE

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(Court composed of Judge Paul A. Bonin, Judge Daniel L. Dysart, Judge Sandra Cabrina Jenkins)

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AFFIRMED
MAY 23, 2013

R.W., a child, was adjudicated delinquent because the juvenile-court judge found that he knowingly possessed cocaine in violation of La. R.S. 40:967, a felony-grade offense.[1] He appeals, assigning two errors: (1) that the evidence is insufficient to support an adjudication of delinquency for the offense charged, and (2) that the trial judge erred in denying his motion to suppress the evidence.

We first consider the insufficiency of evidence claim. We review the evidence under the manifest error standard, and under that standard, we find that the evidence is sufficient and that the trial judge was not clearly wrong in adjudging R.W. delinquent beyond a reasonable doubt as to every element of the offense. With respect to the denial of the motion to suppress the evidence, we review the factual findings made by the district court in making its decision under the clearly wrong standard and the reasonableness of the search *de novo*. Because

[1] The disposition, which the child does not contest, was twelve months in the custody of the Office of Juvenile Justice, with the execution of the sentence suspended and R.W. placed on active probation for twelve months. Further conditions of R.W.'s sentence are: he is to have no further violations of the law, he is to be drug screened every thirty days, he is to stay away from his eighteen-year-old former girlfriend, and he is to stay away from anyone who associates with any type of gang, especially the Mid-City Killers. R.W. was also required to enroll in school immediately, and his ankle bracelet was ordered to be put back on for another two weeks. Before the district court's disposition, R.W. had been required to wear an ankle bracelet, was restricted to going only to and from school, and given a curfew of 6:00 p.m. on weekdays and 8:00 p.m. on weekends. R.W. was also required to pay $205.00 in fees.

we find that the district court was not clearly wrong in its fact-finding and that the school dean's search of R.W.'s backpack was reasonable, we conclude that the admission into evidence of the cocaine itself was not error. Accordingly, we affirm the adjudication and disposition.[2]

We explain our decision in the following Parts.

I

In this Part we address the claim of R.W. that the evidence is insufficient to support his adjudication as a delinquent. We first consider the standard of review and the legal precepts which we apply to such a claim in a juvenile-adjudication proceeding. Then we turn to a discussion of the statutory violation and of all the evidentiary facts. Finally, we set out why the evidence is sufficient to support the delinquency adjudication.

A[3]

In a juvenile-adjudication proceeding, the State must prove the child delinquent beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 368. (1970). This standard for the State's burden of proof in a juvenile delinquency proceeding is "no less strenuous than the proof standard required in a criminal proceeding against an adult." *State in the Interest of A.G. and R.N.*, 630 So. 2d 909, 910 (La. App. 4 Cir. 12/30/93). This burden of proof stems from the application of the Fourteenth Amendment's Due Process clause which requires the application of the

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[2] We have, as we always do, inspected the record for errors patent and have detected none. *See* La. Ch.C. art. 104(1) and La. C.Cr.P. art. 920(2). *See also State in the interest of A.H.*, 10-1673, p. 9 (La. App. 4 Cir. 4/20/11), 65 So.3d 679, 685 (in which we determined that conducting an error patent review in juvenile delinquency cases was warranted).

[3] This section is essentially replicated from *State in Interest of T.M.,* 11- 1328, pp. 2-5 (La. App. 4 Cir. 3/28/12), 88 So. 3d 1228, 1231-1232 *rev'd on other grounds by State ex rel T.M.*, 12-0964 (La. 12/14/12), 104 So. 3d 418.

"essentials of due process and fair treatment" during the adjudication hearing. *In re Winship*, *supra* at 359. Importantly, the State must prove beyond a reasonable doubt *each and every* element of the offense. *See Jackson v. Virginia*, 443 U.S. 307, 316 (1979). And, of course, by statute, R.W. enjoys the same protection: "[i]n order to adjudicate a child a 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.

A child who is the subject of a delinquency adjudication proceeding enjoys Due Process safeguards. *See In re Gault,* 387 U.S. 1 (1967). "All rights guaranteed to criminal defendants by the Constitution of the United States or the Constitution of Louisiana, except the right to trial by jury, shall be applicable in juvenile court proceedings brought under this Title." La. Ch.C. art. 808. This includes, of course, the opportunity to confront and cross-examine his accusers, have adequate safeguards against self-incrimination, and protection against erroneously admitted hearsay testimony. *See In re Gault*, 387 U.S. 1 (1967); La. Ch.C. art. 808.

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. Consequently, under La. Cont. art. V, § 10(B), the appellate court must review both the law and facts when the court reviews juvenile adjudications. 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 ex rel. C.N.*, 11-0074, p. 5 (La. App. 4 Cir. 6/29/11), 69 So. 3d 711, 714.

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. *State in the Interest of D.R.*, 10-0405, p. 9 (La. App. 4 Cir. 10/13/10), 50 So. 3d 927, 932. This "clearly wrong" standard is broader than the constitutional minimum standard of review granted by *Jackson v. Virginia*. This minimal standard of review provided by *Jackson* must be satisfied for either an adult conviction or a juvenile adjudication in order to fulfill the Due Process requirement of the Fourteenth Amendment. *Id.* p. 14, at 935-36. "[A] juvenile adjudicated a delinquent would be entitled to a *Jackson v. Virginia* review but for Louisiana's provision that a less deferential, or a broader, standard is available to the juvenile." *Id.* p. 13, at 934. So, this standard of review as seen in *Batiste*, entitles a child adjudicated a delinquent in Louisiana to a "broader scope and standard of review than the minimum required by the Due Process Clause." *Id.* 10-0405, p. 14, 50 So. 3d at 935.

The *Jackson* standard of review requires a review of the facts tilted in favor of the prosecution. *Jackson v. Virginia*, 443 U.S. 307, 326 (1979). In *State ex rel. D.M.*, we stated that "[a]ll facts which may have been *theoretically* proved by the prosecution are accepted; the review is not limited to those facts which the fact-finder *actually* found, perhaps discarding or disregarding some but not all

prosecutorial 'facts' or prosecutorial inferences." *State in Interest of D.M.*, 11-0462, p. 9 (La. App. 4 Cir. 11/2/11), 80 So. 3d 18, 23 (emphasis added), *rev'd on other grounds by State in Interest of D.M.*, 11-2588 (La. 6/29/12), 91 So. 3d 296.

Additionally, the *Jackson v. Virginia* review requires only that *any* rational trier of fact be convinced beyond a reasonable doubt, but the *Batiste* standard looks to "this *particular* trier of fact and whether his or her decision that there was proof beyond a reasonable doubt is not clearly wrong and is reasonable." *Id*. Even though the use of this *Batiste* standard provides a broader scope of review than *Jackson v. Virginia*, the Batiste standard "remains highly deferential to the function and findings of the trier of fact, the juvenile judge." *Id*.

Thus, in performing our review function in a juvenile-adjudication proceeding, we must determine whether the trial judge's factual findings as to whether each and every essential element of the offense charged has been proved beyond a reasonable doubt are reasonable and not clearly wrong. If the findings as to any one essential element are unreasonable and clearly wrong, we must conclude that the evidence is insufficient to sustain the adjudication of the child delinquent.[4]

B

Cocaine is scheduled as a controlled dangerous substance. *See* La. R.S. 40:964, Schedule II A(4). Schedule II A covers substances that are of vegetable

[4] A review under the *Jackson v. Virginia* standard is made on "all of the evidence." *Jackson,* 443 U.S. at 319. *See also Lockhart v. Nelson,* 488 U.S. 33, 39-41 (1988) (all evidence includes evidence erroneously admitted). Under this standard, inadmissible evidence erroneously admitted is considered in a challenge to the sufficiency of evidence even if, had it been properly excluded, the remaining evidence would have been insufficient for a finding of guilt beyond a reasonable doubt. *State v. Hearold,* 603 So. 2d 731, 734 (La. 1992).

origin or chemical synthesis. Cocaine is product of vegetable origin as it is made through an extraction of coca leaves. R.W. was found in possession of crack cocaine. Crack, cocaine, and un-extracted coca leaves all fall under La. R.S. 40:964, Schedule II A(4).

Cocaine has a high potential for abuse and, if abused, may lead to severe psychological or physical dependence. *See* La. R.S. 40:963 B(1, 3). Cocaine does, however, have currently accepted medical uses in treatment in the United States. *See* La. R.S. 40:963 B(2).

"It is unlawful for any person knowingly or intentionally to possess [cocaine] unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, as provided in R.S. 40:978 while acting in the course of his professional practice." La. R.S. 40:967 C.

Thus, the essential elements for a conviction of possession of cocaine that the State must prove beyond a reasonable doubt are: first, that R.W. "possess[ed] a controlled dangerous substance"; and second, that he did so "knowingly or intentionally." La. R.S. 40:967 C.

Whether a defendant's possession is sufficient to support a conviction depends on the "peculiar facts of each case." *See State v. Trahan*, 425 So. 2d 1222, 1226 (La. 1983). The peculiar facts alleged by R.W. are he was not in actual, but constructive possession of the cocaine and that the State has not proven his constructive possession. "A person may be in constructive possession of a drug even though it is not in his physical custody, if it is subject to his dominion and

control." *Id*., 425 So. 2d at 1226. "Also, a person may be deemed to be in joint possession of a drug which is in the physical custody of a companion, if he willfully and knowingly shares with the other the right to control of it." *Id*.

Factors to be considered in determining whether constructive possession is sufficient, as set forth *State v. Major*, 03-3522, p. 8 (La. 12/1/04), 888 So. 2d 798, 802, include: "(1) his knowledge that drugs were in the area; (2) his relationship with the person, if any, found to be in actual possession; (3) his access to the area where the drugs were found; (4) evidence of recent drug consumption; and (5) his physical proximity to drugs." There, constructive possession was found because the defendant exercised "dominion and control" over the car in which cocaine was found. *Id*.

The second element of the possession charge, the guilty knowledge of R.W., "may be inferred from the circumstances of the transaction and proved by direct or circumstantial evidence." *State v. Johnson*, 03-1228, p. 5 (La. 4/14/04), 870 So. 2d 995, 998.

C

During the first week of the school year, a time of the year known by the faculty as having a greater frequency of students smoking in restrooms, a female student or teacher[5] reported to Dan Davis, a physics teacher, that four male students went into the men's restroom at the same time. Upon Mr. Davis' entering the restroom, he smelled smoke and saw four students towards the back of the

[5] During his testimony, Mr. Davis first says that a student alerted him to the situation and later that it had been another teacher.

bathroom. R.W. and T.G. were facing him; two students had their backs to Mr. Davis, and he was unable to identify them. He saw R.W. hand something to T.G. that he suspected was a cigarette but could not identify with certainty. Mr. Davis was in the restroom approximately ten seconds before he left to get the security guard, Jimmy Coats.

Upon Mr. Davis' return to the restroom with Mr. Coats, only R.W. and T.G. remained in the restroom. Mr. Davis testified that only T.G. was smoking. Mr. Davis never saw R.W. smoking. Mr. Coats, however, whose testimony comes in second-hand through Officer Baldassaro, claimed that he saw R.W. actually smoking.

Mr. Coats took R.W. to the dean, Chad Broussard. Mr. Broussard's knowledge of the situation came from what Mr. Coats had reported to him, which was that R.W. was brought before him because of "an incident with smoking in a restroom." Mr. Broussard at that time was not aware that there had been four students smoking in the restroom; he thought there had been only one or two and that R.W. was brought before him because R.W. had been one of the students actually smoking. Mr. Davis did not accompany Mr. Coats in bringing R.W. to the dean; therefore, he did not tell Mr. Broussard who he had seen smoking or that he had not seen R.W. smoking.

Mr. Coats was present during Mr. Broussard's questioning and search of R.W. Mr. Broussard did not advise R.W. of any of his rights. Mr. Broussard testified that cigarettes and lighters are contraband items at the school and that it is

school policy that he can conduct a search if there is enough evidence to bring a case before him. Mr. Broussard questioned R.W. whether he had any contraband such as cigarettes or lighters on him, to which R.W. responded that he did not. Mr. Broussard, because he smelled smoke on R.W., asked him to empty his school bag and place the contents on his desk.[6] After R.W. had emptied the contents of his bag, Mr. Broussard noticed a small zipper on the outside of the bag that R.W. had not opened. Mr. Broussard directed R.W. to open that compartment, and four small bags of crack cocaine were discovered there. Mr. Broussard then called the police, who arrested R.W. upon their arrival. No cigarettes, scales, or money were found in R.W.'s school bag.

D

We find that the juvenile court judge was not clearly wrong or manifestly erroneous in her factual findings and that she was reasonable in concluding beyond a reasonable doubt that R.W. knowingly possessed cocaine.

As stated in Part I-A, *ante*, juvenile proceedings are civil proceedings, and accordingly, the judge here was entitled to make "reasonable evaluations of credibility and reasonable inferences of fact, " which "should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." *State in the Interest of D.R.*, 10-0405, p. 7, 50 So. 3d at 931.

[6] The testimony of Off. Baldassaro differs on this one point. Off. Baldassaro testified that no search was conducted because R.W., at the direction of Mr. Broussard, dumped out the contents of his school bag onto the ground. Off. Baldassaro was not present for the search; he reports information that was given to him by Mr. Coats, who did not testify, and Mr. Broussard, who gave a different testimony at trial.

We first address the issue of R.W.'s knowledge of the cocaine. He argues that one of the other three youths in the bathroom with him could have placed the cocaine in his school bag without his knowledge. The State points to the fact that R.W. was reluctant to open the small compartment in the bag that contained the cocaine as evidence that he knew there was cocaine in the compartment. We find that the circumstantial evidence of R.W.'s reluctance to open the compartment containing the cocaine is sufficient to establish that he knew of the cocaine.

We next address R.W.'s argument that this is a case of constructive possession not actual possession and that the State has failed to prove that R.W. constructively possessed the cocaine. As discussed, *ante*, to determine whether R.W.'s constructive possession was sufficient to convict, he must have exercised sufficient "dominion and control" over the cocaine. Four of the factors listed in *Major*, 03-3522, p. 8, 888 So. 2d at 802, are relevant to R.W.: "his knowledge that drugs were in the area," "his access to the area where the drugs were found," "evidence of recent drug consumption," and his "physical proximity to drugs." R.W. clearly had immediate access to the drugs; R.W. needed only unzip one compartment on his school bag to access the drugs. R.W.'s physical proximity to the drugs is extraordinarily close; he remained no more than a couple feet away from his school bag at any time. R.W. tested negative for cocaine, which weighs in his favor because it shows that he was at least not a habitual user of cocaine and, therefore, less likely to have been in possession of cocaine; however, this does not

outweigh the fact that he was carrying cocaine in a school bag, the ownership of which he never denied.

We find R.W.'s possession similar to that of the defendant in *Major*, *supra*. In *Major*, the defendant was stopped for a minor traffic violation and professed to be the renter of the automobile he was driving. During a search to which the defendant consented, over 400 grams of cocaine were discovered underneath the car's dashboard. The Supreme Court determined that the defendant exercised "dominion and control" over the cocaine "by virtue of his dominion and control over the vehicle as the driver and professed renter." *Id*., p. 8, 888 So. 2d at 802. Similarly, R.W. was carrying the school bag and acted like the owner of the bag.

As R.W. was the sole person holding the school bag that contained the controlled dangerous substance, we find that the juvenile court judge was not manifestly erroneous or clearly wrong in finding beyond a reasonable doubt that R.W. had sufficient "dominion and control" to be adjudicated delinquent for possession of cocaine. The juvenile court judge was not manifestly erroneous or clearly wrong in reasonably inferring that R.W.'s reluctance to open the compartment of his school bag containing the cocaine showed beyond a reasonable doubt that R.W. knew that there was cocaine in that compartment. Because both elements of La. R.S. 40:967 C have been established beyond a reasonable doubt, we find that the juvenile court judge was not manifestly erroneous or clearly wrong in finding the evidence sufficient to find R.W. delinquent beyond a reasonable doubt.

II

Now we turn our consideration to the claim of R.W. that the trial judge erred in denying his motion to suppress the evidence. In this Part we consider the standard of review and the legal precepts which apply to a claim that the child's Fourth Amendment rights have been violated while attending school and then set out why the trial judge did not abuse her discretion in denying the suppression motion.

A

On review of a motion to suppress evidence, we apply the "clearly erroneous standard" to questions of fact and review *de novo* the ultimate determination of reasonableness. *State v. Pham*, 01-2199, p. 3 (La. App. 4 Cir. 1/22/03), 839 So. 2d 214, 218.

Citing *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), R.W. argues that the State failed to prove the reasonableness of Mr. Broussard's search of his school bag; and, therefore, the cocaine found during that search should have been inadmissible. The Supreme Court in *T.L.O.* stated that "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." 469 U.S. at 341. Notably, however, the reasonableness standard espoused in *T.L.O.* "stops short of probable cause." *Id*., 469 U.S. at 341.

In *T.L.O.*, a female student was caught smoking cigarettes in a school restroom, and, when questioned whether she was smoking cigarettes, she asserted that she had not been smoking and did not smoke at all. 469 U.S. at 328. The

assistant vice principal was justified in searching her purse for cigarettes because he was looking for evidence of her alleged violation of a school rule, smoking cigarettes, and was trying to undermine her defense that she did not smoke. *Id.*, 469 U.S. at 345-346. While removing cigarettes from her purse, however, the assistant vice principal also found rolling papers, evidence of marijuana use, which prompted a deeper search into the purse, which ultimately revealed evidence of distributing marijuana. *Id*., 469 U.S. at 328. The assistant vice principal's reasonable suspicion that T.L.O. may have cigarettes in her purse justified the search. *Id*., 469 U.S. at 346. The discovery of rolling papers upon the removal of the cigarettes gave him reasonable suspicion to further search the purse. *Id*., 469 U.S. at 347.

After noting "reasonableness" as the appropriate standard, the Supreme Court explained a two-part inquiry for determining the reasonableness of a search performed by a teacher or school administrator: "first, one must consider 'whether the ... action was justified at its inception,' … second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place.'" *Id*., 469 U.S. at 341, *quoting Terry v. Ohio*, 392 U.S. 1, 20 (1968).

R.W. asserts a deficiency in this first criterion, arguing that the search was not "justified at its inception" because there were not, as the Supreme Court explains the point, "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of

the school." *Id*., 469 U.S. at 342. R.W. has not contested that the search was improper because of its scope.[7]

R.W. argues that there was no testimony that he personally had been smoking in the bathroom; and, without providing testimony that he was smoking, the State has not established reasonableness of the search of his school bag at the outset. If there was no basis for a suspicion that he had been smoking, the act of searching his backpack for cigarettes would not have been justified at its inception.

B

Mr. Broussard's search of R.W. was justified at its inception because there was reasonable suspicion that he had been violating the rules of the school. Mr. Davis testified that he saw R.W. associating with T.G., who was smoking. Mr. Davis further testified that R.W. handed something, which was assumed by Mr. Davis to be a cigarette to T.G., and T.G. was observed smoking shortly after that point. It was, therefore, reasonable for Mr. Davis to suspect that R.W. had cigarettes or smoking paraphernalia on his person because another student was able to smoke after R.W. handed him something.

Mr. Broussard had reasonable grounds to search R.W. because Mr. Coats had observed him actually smoking, and Mr. Broussard smelled the contraband on R.W. while questioning him. After he had a reasonable suspicion that R.W. possessed contraband cigarettes and R.W. did not admit to possessing them, Mr.

[7] The Supreme Court explained reasonableness of the scope of the search as follows: "Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *T.L.O,* 469 U.S. at 342.

Broussard was justified in his search of R.W.'s school bag for the cigarettes. *See T.L.O.*, *supra*. The fact that no cigarettes were ultimately found does not negate the reasonableness of Mr. Broussard's search from its inception.

We find that the juvenile court judge was not manifestly erroneous or clearly wrong in determining that Mr. Broussard had reasonable suspicion that R.W. had been smoking. Because Mr. Broussard's reasonable suspicion of a violation of a school rule justified the search at its inception and because the search was not improper as to its scope or the manner in which it was performed, we find that the search was reasonable and the admission of the evidence found during that search, therefore, admissible.

CONCLUSION

We find that the district court was not clearly wrong in finding that there was sufficient evidence to find R.W. delinquent beyond a reasonable doubt. We also find that there were reasonable grounds for searching R.W. such that the search was reasonable from the outset.

DECREE

The adjudication of R.W. as delinquent for the possession of cocaine is affirmed. And the disposition is affirmed.

AFFIRMED