NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA IN THE INTEREST OF R.B.	*	**NO. 2015-CA-0151**
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		COURT OF APPEAL
	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2014-129-02-DQ-C, SECTION "C"
Honorable Candice Bates Anderson, Judge
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Judge Daniel L. Dysart
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(Court composed of Chief Judge James F. McKay, III, Judge Daniel L. Dysart, Judge Rosemary Ledet)

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REVERSED; DISPOSITION VACATED;
JUDGMENT OF ACQUITTAL ENTERED

MAY 27, 2015

In this juvenile delinquency matter, the juvenile, R.B., appeals the judgment of the juvenile court adjudicating him delinquent of theft. For the following reasons, we reverse the trial court's judgment, adjudicating R.B. as delinquent, and vacate the disposition set forth therein. We further order that a judgment of acquittal be entered as to the charge of theft.

PROCEDURAL AND FACTUAL BACKGROUND

On May 9, 2014, the State filed a delinquency petition charging R.B., a fifteen year old, with one count of theft under La. R.S. 14:67 B(2).[1] More specifically, R.B. was charged with the May 8, 2014 theft of a cell phone and wallet, valued at over $500.00, without the consent of their owner, E.W.

After several continuances granted at the request of the State, the adjudication hearing was held on January 7, 2015. At the hearing, only one

[1] The Petition specifies that R.B. violated "La. R.S. 14:67 B(2)," by "taking a cell phone and wallet valued at over $500." Subpart B(2) of La. R.S. 14:67, however, pertains to penalties involving "the misappropriation or taking amounts to a value of five thousand dollars or more, but less than a value of twenty-five thousand dollars." We note that the delinquency petition does not allege a theft of anything of value exceeding $5,000. However ,"La. Ch.C. art. 844D provides that failure to comply with formal requirements of this Article shall not be grounds for dismissal of a petition or invalidation of the proceedings unless it results in substantial prejudice." *State In Interest of D.W.*, 13-114, p. 9 (La. App. 5 Cir. 9/18/13), 125 So.3d 1180, 1189, *writ denied*, 13-2478 (La. 4/4/14), 135 So.3d 639. Because the petition adequately informs R.B. of the nature of the offense with which he was charged – theft of a cell phone and wallet –

witness, New Orleans Police Officer Johnnie Harper, testified. According to Officer Harper's testimony, on May 8, 2014, he was dispatched to the 2100 block of Clara Street in response to a report of the theft of a cell phone and wallet. He met with the victim of the theft, who relayed why the police had been called. He also met with R.B., and his mother. He questioned R.B. "in the back of the unit," at which time R.B. told him that he had the wallet, but not the phone, in his possession, and he returned it to the victim, who advised that her money was missing from the wallet. Over the objections of defense counsel, Officer Harper testified that the victim identified R.B. and his mother. He likewise responded in the affirmative, again over the objection of defense counsel, when asked if he learned "whether or not the items that [R.B.] told [him] about during his statement to [him] were taken during a theft."

At the conclusion of the hearing, R.B. was adjudicated delinquent of the charge of theft of a wallet. The trial court ordered that R.B. be placed in the custody of the Office of Juvenile Justice ("OJJ") for a period of six months, but suspended the execution of that commitment, placing R.B. on active probation under the OJJ's supervision for one year. The judgment ordered R.B.'s parent to pay a monthly fee of $10.00 to the OJJ for probation supervision fees. It further ordered R.B.'s parent or guardian to pay court costs of $205.00.[2] From this judgment, R.B. timely filed this appeal.

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we do not find that the petition in any way misled R.B. *See*, *e.g.*, *State in Interest of L.A.*, 11-1138, p. 6 (La. App. 4 Cir. 2/8/12), 85 So.3d 192, 195.

[2] The judgment also provided several conditions for R.B.'s probation, none of which are relevant to this matter.

After the appeal was lodged with this Court, R.B. filed a Motion for the Entry of a Summary Judgment of Acquittal, based largely on the State's concession of reversible errors made by the trial court.

DISCUSSION

R.B. raises six assignments of error in this appeal.[3] The State concedes that two of these assignments are meritorious, warranting a reversal of the trial court's adjudication.[4] We agree; however, because we find that one assignment of error – that the evidence was insufficient to support R.B.'s adjudication – merits reversal, we need not address any of the other assignments of error. *See*, *e.g.*, *State v. Stephens*, 438 So.2d 203, 204, n. 3 (La. 1983)("[d]efendant has assigned twelve errors in the trial court. As [one] assignment merits reversal, the remaining assignments of error need not be addressed."); *State v. Stevenson*, 02-1152, p. 4 (La. App. 4 Cir. 1/22/03), 839 So.2d 203, 206.

Sufficiency of the Evidence

Louisiana Children's Code article 883 provides that, "[i]n order for the court to adjudicate a child delinquent, the state must prove beyond a reasonable doubt that the child committed a delinquent act alleged in the petition." The constitutional standard for testing the sufficiency of evidence was set forth by the

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[3] Those assignments of error include: (1) the trial court's repeatedly allowing continuances of the trial for "good cause"; (2) the trial court's error in allowing the hearsay testimony of Officer Harper about the victim's statement when the victim did not testify at trial; (3) the evidence was insufficient to support R.B.'s adjudication; (4) the trial court erred in allowing R.B.'s statement because it was not voluntary; (5) the trial court erred in adjudicating R.B. delinquent based on R.B.'s statement; and (6) R.B. was denied effective assistance of counsel,

[4] The State concedes that the evidence was insufficient to warrant R.B.'s adjudication and that the trial court erred in allowing Officer Harper to testify as to statements made by the victim because that testimony consisted solely of inadmissible hearsay. The State declined to address the remaining assignments of error on the basis that those assignments of error are made moot by the meritorious assignments of error.

United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, (1979), "which dictates that to affirm a conviction 'the appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt.'" *State v. Hamed*, 13-1655, p. 3 (La. App. 4 Cir. 8/13/14), 147 So.3d 1191, 1193, citing *State v. Captville*, 448 So.2d 676, 678 (La. 1984). In a juvenile delinquency proceeding, the State's burden of proof is the same as in a criminal proceeding against an adult, which is to prove beyond a reasonable doubt every element of the offense alleged in the petition. *See State ex rel. C.J.*, 10-1588, p. 3 (La. App. 4 Cir. 4/20/11), 63 So.3d 1133, 1137; *State ex rel. K.M.*, 10-0649, p. 4 (La. App. 4 Cir. 9/29/10), 49 So. 3d 460, 463.

R.B. was charged with the offense of theft, defined by La. R.S. 14:67 as "the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations." La. R.S. 14:67 A. An "essential" element of the crime of theft is "[a]n intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking." *Id*.

As the State concedes, the testimony in this matter failed to establish the elements of the offense of theft. The sole witness to testify at the adjudication hearing was Officer Harper. While Officer Harper indicated that R.B. admitted that the wallet at issue was in his possession, there was no testimony whatsoever as to how the wallet came to be in his possession. Similarly, while Officer Harper testified that, through his investigation, he learned that the wallet R.B. "told him

about" had been the subject of a theft, again, there was no testimony linking R.B. to the taking of the wallet.

Moreover, while Officer Harper testified that the victim identified both R.B. and his mother, there was no testimony that the victim identified R.B. as the perpetrator of the theft. Rather, the victim simply "identified" R.B. and his mother. The victim did not testify at trial and accordingly, the record is devoid of any evidence that R.B. actually "misappropriate[ed] or [took] … anything of value" as required by La. R.S. 14:67.[5] In reviewing the record, we find that there is insufficient evidence to support a finding beyond a reasonable doubt that R.B. committed the offense of theft. We therefore reverse the trial court's adjudication of R.B. as delinquent, and we vacate the disposition set forth by the trial court in its January 7, 2015 judgment.

R.B.'s Motion for Judgment of Acquittal

We next address the Motion for the Entry of a Summary Judgment of Acquittal filed by R.B. in this Court on April 8, 2015. In that Motion, counsel for R.B. notes that, because R.B. was adjudicated delinquent and received a suspended disposition, certain conditions of probation were imposed, he remains on probation, and he was required to pay a monetary fine. Counsel for R.B. seeks a judgment of acquittal from this Court pursuant to Rule 2-11.3 of the Uniform Rules of the Courts of Appeal.

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[5] As noted, the State concedes that the trial court erred in allowing the introduction of the victim's statements through the testimony of Officer Harper. We agree with the State that those statements are inadmissible hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted." La. C.E. art. 801C. "Hearsay is not admissible except as otherwise provided by this Code or other legislation." La. C.E. art. 802. While there are exceptions to the hearsay rule, as set forth in articles 803 through 804 of the Code of Evidence, none of those exceptions apply to this matter. Although, technically, Officer Harper's statements are hearsay,

Rule 2-11.3 provides that "[c]ases may be assigned for summary disposition with or without oral argument when the court so orders." Rule 2-11.3 merely sets forth the manner by which an appellate court may "assign [a] case for summary disposition without oral argument." *State v. Robinson*, 33,720, p. 6 (La. App. 2 Cir. 6/21/00), 764 So.2d 190, 195; *See also*, *Maddens Cable Serv., Inc. v. Gator Wireline Servs., Ltd*., 509 So.2d 21, 22, n. 4 (La. App. 1 Cir. 1987)("[s]ummary disposition of an appeal is authorized by Rule 2-11.3, Uniform Rules-Courts of Appeal"); *State v. Hicks*, 41,906, p. 1 (La. App. 2 Cir. 12/20/06), 945 So.2d 959, 960 ("we assign this appeal for summary disposition without oral argument under URCA 2-11.3.").

This appeal was lodged on February 11, 2015 and appellate briefing deadlines were set forth at that time. R.B. timely filed his appellate brief, as did the State. No requests for oral argument were made by either party; and on March 25, 2015, the matter was placed on the May 6, 2015 docket. The State's Motion, filed on April 8, 2015 seeking a summary disposition of this matter, is made moot by this opinion.

However, based on our finding that the evidence is legally insufficient to support a finding beyond a reasonable doubt that R.B. committed the offense of theft, we enter a judgment of acquittal on the charge of theft. *See*, *e.g*., *State v. Interest of W.T.B*., 34,269, p. 3 (La. App. 2 Cir. 10/20/00), 771 So.2d 807, 810 ("the accused may be entitled to an acquittal if a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could not reasonably conclude that all of the elements of the offense have been proven beyond a

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as we noted, they do not actually implicate R.B. for the offense of theft or tend to prove any fact necessary for an adjudication for the crime of theft.

reasonable doubt"). *See also*, *In re State ex rel. M.L.L.*, 08-363 (La. App. 3 Cir. 8/20/08), 994 So.2d 600; *State v. Rideaux*, 05-446, p. 16 (La. App. 3 Cir. 11/2/05), 916 So.2d 488, 498 ("the evidence was insufficient to prove beyond a reasonable doubt the responsive verdict of indecent behavior with a juvenile. Accordingly, the conviction for molestation of a juvenile is reversed and the sentence is vacated. We order, adjudge, and decree a judgment of acquittal on this count.").

CONCLUSION

Based on the foregoing, we reverse the juvenile court's judgment adjudicating R.B. delinquent for the crime of theft, and we vacate the disposition set forth in the trial court's judgment adjudicating R.B. delinquent. We further order an acquittal on the charge of theft.

REVERSED; DISPOSITION VACATED;
JUDGMENT OF ACQUITTAL ENTERED