

**STATE OF LOUISIANA IN
THE INTEREST OF H.J.**

* **NO. 2017-CA-0518**

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COURT OF APPEAL

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2016-112-07-DQ-B, SECTION "B"
Honorable Tammy M. Stewart, Judge

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Judge Regina Bartholomew Woods

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(Court composed of Judge Daniel L. Dysart, Judge Rosemary Ledet,
Judge Regina Bartholomew Woods)

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**AFFIRMED AND REMANDED
WITH INSTRUCTIONS
January 24, 2018**

In this juvenile delinquency case, the juvenile, H.J.,¹ appeals his adjudication of delinquency for simple burglary. H.J. raises three (3) assignments of error. Finding no merit in H.J.’s first two assignments of errors, we affirm the juvenile court’s adjudication of delinquency. However, we find merit in H.J.’s third assignment of error and remand with instructions.

STATEMENT OF THE CASE

On April 21, 2016, the State charged H.J. by delinquency petition with simple burglary, a violation of La. R.S. 14:62.² In its petition, the State alleged that on March 21, 2016, at approximately 10:24 p.m., H.J. entered a vehicle, a Toyota 4Runner, owned by Charles Hurme (“Hurme”) without authorization and with the intent to commit a felony or a theft therein.³ On May 26, 2016, H.J. entered a denial to the delinquency petition. On October 21, 2016, defense counsel filed a motion to dismiss petition for failure to timely prosecute, which the juvenile court denied. Thereafter, defense counsel sought appellate review of the juvenile court’s denial of its motion. This Court found no abuse of the juvenile court’s discretion and denied defense counsel’s writ.⁴ H.J.’s adjudication hearing was held on

¹ Pursuant to the requirements of confidentiality of juvenile proceedings as set forth in La. Ch.C. art. 412, the juvenile, who was fourteen (14) at the time of the charged offense, is referred to by his initials, H.J.

² La. R.S. 14:62 provides:

- A. Simple burglary is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60.
- B. Whoever commits the crime of simple burglary shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than twelve years, or both.

³ The petition states that the burglary of Hurme’s vehicle occurred in the 200 block of North Scott Street.

December 15, 2016. At the conclusion of this hearing, the juvenile court adjudicated H.J. delinquent.

On May 11, 2017, the juvenile court committed H.J. to the custody of The Department of Public Safety and Corrections for a period not to exceed six (6) months. This sentence is to run concurrent with a three (3) year sentence imposed in Jefferson Parish for carjacking.⁵ The juvenile court credited H.J. for time served. It is from this adjudication of delinquency that H.J. appeals and raises three (3) assignments of error.

STATEMENT OF THE FACTS

At the adjudication hearing, Hurme testified that upon entering his vehicle, a black 2008 4Runner, which had been parked near 3840 Bienville Street in New Orleans, he noticed that the vehicle's door was ajar and that his vehicle had been burglarized. According to Hurme, the burglary occurred on March 21, 2016. Missing from his vehicle were a business book that contained checks, fifteen hundred dollars (\$1,500.00) in cash that was stored in the vehicle's console, and other small items such as an auxiliary cord. Hurme stated that he went to work in Gentilly and then called the New Orleans Police Department ("NOPD") to report the burglary. However, NOPD never arrived at Hurme's Gentilly location. Hurme further testified that once he returned home that evening, he again contacted NOPD; this time, NOPD did report to Hurme's location. Hurme stated that he did not see the burglary occur. Hurme provided a written statement and video

⁴ *State in the Interest of H.J.*, 2016-C-1243 (La. App. 4 Cir. 12/9/16) (*unpub.*).

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surveillance footage (“the footage”) from his home to NOPD. The footage showed the area near Hurme’s home where his vehicle was parked when the burglary occurred. Hurme stated that although a person’s face can be seen on the footage, it is difficult to distinguish a person’s facial features. Hurme testified that he was unable to identify anyone from the footage. When questioned by defense counsel, Hurme was not able to say whether H.J. was the person he observed on the footage.

At the adjudication hearing, Shariffe Davis (“Det. Davis”), a detective assigned to NOPD’s First District, testified that, at the request of Burglary Detective John Mitchell, he spoke with Hurme and retrieved the footage from Hurme’s home. Once Det. Davis received the footage, he returned to the station and inserted the jump drive into the computer to ensure that the footage would play. Det. Davis testified that in doing so he observed an individual with whom he was familiar. Det. Davis explained that on the day prior to the burglary, he investigated an unrelated armed robbery, and located the subject who fit the description of the perpetrator of the armed robbery along with H.J.⁶ Although H.J. was not connected to the armed robbery, Det. Davis learned H.J.’s name. With this interaction “fresh in [his] mind,” Det. Davis knew that the person in the footage was H.J. According to Det. Davis, he remembered H.J.’s face and height. After viewing the footage and identifying H.J., Det. Davis requested the task force unit’s assistance in locating H.J. Det. Davis testified that upon arriving at H.J.’s last known address on Oak Street, he and Officer Vastola⁷ knocked on the door; Det.

⁶ Det. Davis encountered these two individuals on Bienville Street, which is where Hurme’s vehicle was parked when it was burglarized.

Davis observed H.J. run down the alley. The task force officers pursued and stopped H.J. near the Lafitte Housing Development; H.J. identified himself and was taken into custody.

Det. Davis testified that he met with H.J.'s guardian, L.P.⁸ at juvenile detention. According to Det. Davis, H.J. was released at some point and he, L.P., and H.J. went to the NOPD First District station where Det. Davis showed the footage and identified H.J. According to Det. Davis, H.J. said “[t]hat ain't me. I don't have that jacket.” Det. Davis further testified that L.P. responded “you don't have that jacket, but I'm looking at your face on the screen.” Det. Davis stated that H.J. continued to deny that it was him on the footage. At that point, Det. Davis terminated the interview. When questioned, Det. Davis asserted that L.P. recognized H.J. in the surveillance video. According to Det. Davis, the hat and earrings that H.J. were wearing on that day were taken into evidence because those items were identifiable on the larger screen on which the footage was shown. With L.P.'s consent, NOPD officers searched H.J.'s bedroom exclusively for property connected with the burglary of Hurme's vehicle; however, no evidence was recovered. On cross examination, Det. Davis testified that he could see H.J.'s face on the footage because he had watched the footage on a screen larger than the screen in court; Det. Davis asserted that he was able see H.J.'s features clearly on the screen in court, but that “they could be large, larger.”

⁷ This officer's name is spelled phonetically in the transcript.

⁸ The guardian's initials are used pursuant to La. Ch.C. art. 412.

When questioned at the hearing, L.P. testified that, upon viewing the footage, he asked H.J. whether that was him on the footage and implored H.J. to be truthful.

DISCUSSION

This Court has adopted a practice of conducting an errors patent review in juvenile delinquency cases. *State in Interest of W.B.*, 2016-0642, p. 4 (La. App. 4 Cir. 12/7/16), 206 So.3d 974, 978; See *State in the Interest of S.J.*, 2013-1025, p. 4 (La. App. 4 Cir. 11/6/13), 129 So.3d 676, 679 (citing *State in the Interest of A.H.*, 2010-1673, p. 9 (La. App. 4 Cir. 4/20/11), 65 So.3d 679, 685). A review of the record in this case revealed one error patent, which H.J. raised as his third assignment of error, below.

In his appellate brief, H.J. assigns the following errors:

1. Whether the evidence presented at the adjudication hearing was sufficient to prove beyond a reasonable doubt the identity of H.J. as the perpetrator of the simple burglary of Hurme's vehicle.
2. Whether the juvenile court erred in denying defense counsel's motion to dismiss for failure to timely adjudicate⁹ H.J.
3. Whether the juvenile court erred in failing to advise H.J. of the two (2) year prescriptive period for filing an application for post-conviction relief.

Assignment of Error Number One

⁹ Defense counsel erroneously captioned the pleading as a motion to dismiss for failure to timely sentence; however, the substance of the motion relates to the adjudication of H.J.

In her appellate brief, defense counsel argued that the evidence presented at the adjudication hearing was insufficient to prove beyond a reasonable doubt the identity of H.J. as one of the two perpetrators of the simple burglary of Hurme's vehicle. This Court has set out the applicable standard of review:

In a juvenile adjudication proceeding, the state must prove beyond a reasonable doubt that the child committed a delinquent act alleged in the petition. La. Ch.C. art. 883; *State in the Interest of D.M.*, 97-0628, p. 4 (La. App. 1 Cir. 11/07/97), 704 So.2d 786, 789. On appeal, the standard of review for the sufficiency of evidence, enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), is whether, 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; this standard is applicable to delinquency cases. La. C.Cr.P. art. 821. *Interest of D.M.*, 97-0628 at p. 5, 704 So.2d at 789. Further, in a juvenile delinquency proceeding, an appellate court is constitutionally mandated to review the law and facts. La. Const. art. 5, § 10(B). Accordingly, an appellate court must review the record to determine if the trial court was clearly wrong in its factual findings. *State in the Interest of L.C.*, 96-2511, p. 3 (La. App. 1 Cir. 6/20/97), 696 So.2d 668, 670; *Interest of D.M.*, 97-0628 at p. 4, 704 So.2d at 789-90.

State in Interest of K.L., 2016-1151, p. 3 (La. App. 4 Cir. 4/10/17), 217 So.3d 628, 630. Here, because the sufficiency of the evidence relies on the identity of H.J. as the perpetrator, we will address these issues simultaneously.

H.J. has been adjudicated delinquent of simple burglary, a violation of La. R.S. 14:62. Simple burglary, as contemplated by La. R.S. 14:62, is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein. Defense counsel argued that there is no eyewitness to the simple

burglary of Hurme's vehicle. Rather, the State's case hinges on an officer's identification of H.J. from video footage.

The Louisiana Supreme Court, in *State v. Neal*, opined that

[A]s a general matter, when the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the state is required to negate any reasonable probability of misidentification. *State v. Smith*, 430 So.2d 31, 45 (La. 1983); *State v. Brady*, 414 So.2d 364, 365 (La. 1982); *State v. Long*, 408 So.2d 1221, 1227 (La. 1982). However, positive identification by only one witness is sufficient to support a conviction. See *State v. Mussall*, 523 So.2d 1305, 1311 (La. 1988).

2000-0674, p. 11 (La. 6/29/01), 796 So.2d 649, 658.

Similar to the present case, in *State v. Paul*, an NOPD officer “immediately” recognized the defendant by name as the robber depicted in the photo made from the surveillance video” and “also viewed the surveillance video and had no doubt that the robber depicted therein was the defendant.” *State v. Paul*, 2011-0252, p. 5 (La. App. 4 Cir. 4/18/12), 90 So.3d 1191, 1195.

In adjudicating H.J. delinquent, the juvenile court reasoned that “based on the officer’s identification in that he made it in such a short period of time when he saw him . . . the officer’s memory was much more clear . . . it seemed that it was less than 24 hours that he made the stop, saw them, got their identifications and then happened to watch this video.” The juvenile court contemplated that neither Det. Davis nor L.P. was dishonest in their testimony, but H.J.’s adjudication of delinquency was based on Det. Davis’ “identification in that close period of time and just his description . . . a young man that is fairly tall and slender build, similar

to what we saw on the video.” The Louisiana Supreme Court, in *State in the Interest of C.D.*, cautioned that “an appellate court should ordinarily not assume the role of the fact-finder to weigh the respective credibilities of the witnesses and thereby second guess the credibility determinations of the trier of fact beyond . . . sufficiency evaluations under the *Jackson* standard of review. 2011-1701, p.6 (La. 7/2/12), 93 So.3d 1272, 1276 (internal quotations, alterations, and citations omitted). For the aforementioned reasons, we find no merit in H.J.’s first assignment of error.

Assignment of Error Number Two

In its appellate brief, defense counsel argued that the juvenile court erred in denying H.J.’s motion to dismiss for failure to timely sentence defendant. On November 10, 2016, the juvenile court denied the motion to dismiss petition for failure to timely prosecute. Thereafter, defense counsel sought appellate review of the juvenile court’s denial of its motion. This Court found no abuse of the juvenile court’s discretion and denied defense counsel’s writ. In its appellate brief, defense counsel re-urges the same argument asserted in his writ. Similar to *State in the Interest of A.S.*, this Court notes that H.J.’s “prior writ application concerned the very issue he raises on appeal [and] points to no new information or evidence in support of his current argument.” 2013-0144, p. 2 (La. App. 4 Cir. 7/24/13), 156 So.3d 96, 97. This Court, in *State v. Duncan*, outlined the application of the law-of-the-case doctrine:

Under the law-of-the-case doctrine, courts of appeal generally refuse to reconsider their own rulings

of law on a subsequent appeal in the same case. *Pitre v. Louisiana Tech University*, 95-1466, p. 7 (La. 5/10/96), 673 So.2d 585, 589. This court has stated that an appellate court will not reverse its pretrial determinations unless the defendant presents new evidence tending to show that the decision was patently erroneous and produced an unjust result. *State v. Gillet*, 99-2474, p. 5 (La. App. 4 Cir. 5/10/00), 763 So.2d 725, 728. The “law of the case” doctrine applies to all prior rulings or decisions of an appellate court or the Supreme Court in the same case, not merely those arising from the full appeal process. *State v. Molineux*, 2011-0275, p. 3 (La. App. 4 Cir. 10/19/11), 76 So.3d 617, 619.

2011-0563, p. 26 (La. App. 4 Cir. 5/2/12), 91 So.3d 504, 521.

Here, the law-of-the-case doctrine is applicable; and this Court’s writ denial will not be disturbed because defense counsel failed to present any new information or evidence. As such, we find no merit in defense counsel’s second assignment of error.

Assignment of Error Number Three

In its appellate brief, defense counsel argued that the juvenile court erred in failing to advise H.J. of the two (2) year prescriptive period for filing an application for post-conviction relief. In addition to defense counsel raising this issue as an assignment of error, this Court, in its review of the record for errors patent, finds merit to this issue. There is no evidence in the record that the juvenile court advised H.J. of the two (2) year prescriptive period for filing an application for post-conviction relief as mandated by La. C.Cr.P. art. 930.8. We remand this matter to the juvenile court and instruct the juvenile court to advise H.J. in writing of the two (2) year prescriptive period for filing an application for post-conviction relief pursuant to La. C.Cr.P. art. 930.8. We further order the juvenile court to file

proof of this notice in the record. *State in Interest of C.P.*, 2012-192, (La. App. 3 Cir. 6/6/12), 91 So.3d 1273; *State ex rel. T.S.*, 2004-1111 (La. App. 5 Cir. 3/1/05), 900 So.2d 77.

DECREE

For the aforementioned reasons, we affirm the juvenile court's adjudication of delinquency and remand with instructions.

**AFFIRMED AND REMANDED
WITH INSTRUCTIONS**