STATE OF LOUISIANA IN THE INTEREST OF J.C.	*	**NO. 2018-CA-0909**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2018-151-08-DQ-C, SECTION "C"
Honorable Candice Bates Anderson, Judge
* * * * * *
Judge Regina Bartholomew-Woods
* * * * * *
(Court composed of Chief Judge James F. McKay, III, Judge Edwin A. Lombard, Judge Regina Bartholomew-Woods)

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AFFIRMED
JANUARY 10, 2019

In this juvenile delinquency appeal, J.C.[1] appeals his delinquency adjudication for attempted simple burglary and attempted resisting an officer. For the reasons that follow, we affirm the juvenile court's delinquency adjudication and corresponding disposition.

FACTUAL BACKGROUND

On May 26, 2018, Benjamin Shelton ("Mr. Shelton") drove from Alexandria, Louisiana to New Orleans, Louisiana to attend the Bayou Country Superfest. Mr. Shelton purchased a three (3) day parking pass, and parked his black 2015 Chevrolet pick-up truck in a parking lot located at 1001 Loyola Avenue. On the following Monday, May 28, 2018, Mr. Shelton returned to his vehicle and discovered that the back glass was shattered. Also, two (2) guns, a .45 caliber handgun and a Remington 870 shotgun, were missing from the vehicle. In response to the report of a burglary, New Orleans Police Department ("NOPD") Officer Patrick Garner ("Officer Garner") and Detective Michael Cure ("Det.

[1] Pursuant to the requirements of confidentiality of juvenile proceedings as set forth in La. Ch.C. art. 412, the juvenile, who was fifteen (15) at the time of the charged offenses, is referred to by his initials, J.C.

Cure") arrived at the parking lot. Also, crime scene technicians arrived at the scene, dusted for fingerprints, and sought DNA samples. Together, Officer Garner and Det. Cure, watched video surveillance of the incident.[2] At the adjudication hearing, Det. Cure testified as follows:

> On the video itself I observed the subject [sic] black male subject with short twists in his hair ride a bicycle up to the victim's vehicle. Went into the vehicle, took some things out of it, got back on the bicycle and fled [sic]. A short time later another subject on the exact same bicycle goes to that same vehicle, makes some motions on the passenger side. Which is out of view of the camera of where I could see [sic]. I believe our witnesses are still on scene. He walks away from the vehicle, walks around the circle drive of the bus station, pulls on a door handle of a vehicle, doesn't make entry. Then walks back to where his bicycle was by the victim's vehicle. Makes his way around to the driver's side, makes some motions towards that same victim's vehicle [sic]. Gets back on the bicycle.
> Rides to the entrance of the bus station. Gets off the bicycle, goes inside the bus station to the subway [sic] restaurant. Exits the Subway with a drink and some food, I guess a sandwich in a bag. Gets back on the bicycle and rides towards Calliope and then unknown.
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> The second subject was going to be a black male, he had on a white baseball cap, black rim with a dark logo to cover most of the front paneling of it. Red t-shirt, dark shorts, he had an ankle monitor on one of his legs. I can't remember which side. That's what I saw on the video.

Based on his observations, Det. Cure relayed a description of the suspects to other NOPD Sixth District officers. Det. Cure testified that on the following day, May 29, 2018, he saw an individual who matched his description of the second suspect.[3]

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[2] Officer Garner and Det. Cure were able to view, but not download, the surveillance footage. For that reason, the footage was not available to view at the adjudication hearing or made part of the record on appeal. Defense counsel objected, but the juvenile court allowed Det. Cure to testify as to what he observed and could recall.

[3] According to Det. Cure, the individual he noticed was wearing the "exact same baseball cap, exact same shirt, exact same pants," and ankle monitor; his face "matched exactly."

After recognizing the suspect, Det. Cure alerted Detective Nyketi Hickman ("Det. Hickman") who located a suspect who matched Det. Cure's description at the intersection of Martin Luther King, Jr. Boulevard and Freret Street. Det. Hickman, clad in blue jeans and an NOPD polo shirt, stepped out of her car[4] and attempted to detain J.C. who ran approximately three (3) feet. Without additional resistance, Det. Hickman arrested J.C.

PROCEDURAL HISTORY

On June 4, 2018, J.C. was charged by delinquency petition with attempted simple burglary and resisting an officer. On June 11, 2018, J.C. entered a plea of not guilty. On July 10, 2018, the juvenile court conducted an adjudication hearing; J.C. was adjudicated delinquent of attempted simple burglary and attempted resisting an officer. The juvenile court ordered a predisposition investigation.[5] On August 21, 2018, the juvenile court imposed a disposition of one (1) year as to the first count of attempted simple burglary and a disposition of six (6) months as to the second count of attempted resisting an officer, both of which to be served concurrently. The juvenile court suspended the dispositions and imposed one (1) year active probation as to both counts. J.C. appeals.[6]

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[4] It is unclear from the record whether Det. Hickman was driving a marked or unmarked car.

[5] Pursuant to La. Ch.C. art. 892, "[p]rior to entering a judgment of disposition, the court shall conduct a disposition hearing. The disposition hearing may be conducted immediately after the adjudication and shall be conducted within thirty [30] days after the adjudication." *State in Interest of W.B.*, 2016-0642, p. 4 (La. App. 4 Cir. 12/7/16, 4), 206 So.3d 974, 978.

[6] The State asserts and defense counsel concedes that J.C.'s motion for appeal was untimely filed, but the juvenile court granted the motion and the record was lodged with this Court.

DISCUSSION

On appeal, J.C. raises one (1) assignment of error: whether the juvenile court erred in adjudicating J.C. delinquent because the evidence was insufficient to sustain a delinquent adjudication.

This Court adheres to 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 no errors patent.

Here, J.C.'s sole assignment of error addresses the sufficiency of the evidence. This Court has stated

> [i]n 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.*, [19]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.*, [19]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.*, [19]96-2511, p. 3 (La. App. 1 Cir. 6/20/97), 696 So.2d 668, 670; *Interest of D.M.*, [19]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.

Attempted Simple Burglary

J.C. was charged with attempted simple burglary, a violation of La. R.S. 14:27[7] and La. 14:62, which defines simple burglary as "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." To obtain an adjudication of delinquent, the State must prove that J.C. attempted to "enter[] a structure, either movable or immovable, without authorization, and [with] the intent to commit a felony or theft therein." *State in Interest of S.L.*, 2011-883, p. 10 (La. App. 5 Cir. 4/24/12), 94 So.3d 822, 832, citing La. R.S. 14:62; *State v. Vortisch*, 2000-67 (La. App. 5 Cir. 5/30/00), 763 So.2d 765, 768. The State is required to also prove the identity of perpetrator. *State in Interest of K.D.*, 2013-1274, p. 6 (La. App. 4 Cir. 4/9/14), 140 So.3d 182, 186.

This Court, in *State in Interest of Nelson*, 533 So.2d 91 (La. Ct. App.1988), found the evidence sufficient to affirm a juvenile's adjudication of delinquency for

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[7] Attempt is defined, in pertinent part, by La. R.S. 14:27 (A) and (C) as follows:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.
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> . . .
>
> C. An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.

attempted simple burglary. In *Nelson*, the juvenile was "[c]aught in the act of scraping fresh putty from the window the only reasonable hypothesis is that appellant was trying to remove the pane so that he could enter the house. The question is what was his purpose or intention for breaking into the house. The trial court found that his intention was to commit a theft of felony and the evidence does exclude any other reasonable hypothesis." *Id*.

Here, J.C.'s adjudication of delinquency rests on Det. Cure's observation of the surveillance footage. Admittedly, Det. Cure saw J.C. make "some motions" toward Mr. Shelton's truck, but not enter into the vehicle or remove any items from the vehicle. However, J.C. actions must be considered in light of Det. Cure's observations of the first suspect who "[w]ent into the vehicle, took some things out of it, got back on the bicycle and fled." Det. Cure further testified that "a short time later," J.C. arrived on the "exact same bicycle" that the first subject had ridden to the scene. Additionally, Det. Cure observed J.C. pull on the door handle, likely in an attempt to make entry, of another vehicle parked in close proximity to Mr. Shelton's vehicle. This Court noted that "our jurisprudence reflects that 'when circumstantial evidence forms the basis of [a] 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.'" *Id*. This Court also recognized that "the elements must be proven such that every reasonable hypothesis of innocence is excluded." *Id.* The actions of the first subject

and J.C., when coupled together, provide evidence sufficient to adjudicate J.C. delinquent of attempted simple burglary.

Attempted Resisting and Officer

J.C. was adjudicated delinquent of attempted resisting an officer, in violation of La. R.S. 14:108, which provides, in pertinent part, that "[r]esisting an officer is the intentional interference with, opposition or resistance to, or obstruction of an individual acting in his official capacity and authorized by law to make a lawful arrest, lawful detention, or seizure of property or to serve any lawful process or court order when the offender knows or has reason to know that the person arresting, detaining, seizing property, or serving process is acting in his official capacity."[8]

At the adjudication hearing, Det. Hickman testified that, based on the description provided by Det. Cure, she observed J.C., stopped and exited her vehicle; J.C. ran "less than three [3] feet" and was detained by Det. Hickman. She also testified that Det. Cure arrived and was able to "positively identif[y]" J.C.

J.C.'s adjudication of delinquency for attempted resisting an officer is based on J.C. running "less than three [3] feet." According to La. R.S. 14:108(B)(1)(a), obstruction can be "[f]light by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest." This Court has reasoned that "[a]lthough there is no requirement that the defendant be given any

[8] Further, La. C.Cr.P. art. 215.1 provides, in pertinent part, that "[a] law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions."

particular type of notice, an essential element to a conviction under R.S. 14:108 is "the defendant's knowledge of his arrest or impending detention. *State v. Knowles*, 40,324, p. 19 (La. App. 2 Cir. 12/30/05), 917 So.2d 1262, 1273 (citing *State v. Nix*, 406 So.2d 1355 (La.1981); *State v. Hines*, 465 So.2d 958 (La. App. 2 Cir.1985))." *State in Interest of J.T.*, 2011-1646, p. 18 (La. App. 4 Cir. 5/16/12, 18), 94 So.3d 847, 859.

This Court, in *State in Interest of S.P.*, 2011-1598 (La. App. 4 Cir. 5/2/12, 8), 90 So.3d 528, 534, affirmed a juvenile's adjudication of delinquency and reasoned that it was "undisputable that [the juvenile] knew they were police officers acting in an official capacity." Here, Det. Hickman, clearly outfitted in an NOPD polo shirt, acted in her official capacity and had reasonable suspicion when she arrested J.C. The evidence is sufficient to adjudicate J.C. delinquent of attempted resisting an officer.

CONCLUSION

For the aforementioned reasons, the evidence is sufficient to adjudicate J.C. delinquent of attempted simple burglary and attempted resisting an officer. Accordingly, J.C.'s delinquency adjudication and corresponding disposition is **AFFIRMED**.