

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-12-785

RB

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2013

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[No. JV-12-301]

HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED; REMANDED FOR
REDISPOSITION

LARRY D. VAUGHT, Judge

Appellant RB appeals this case from the Circuit Court of Garland County, Juvenile Division, which returns to us after our order for rebriefing. *RB v. State*, 2013 Ark. App. 145. The briefing deficiencies we noted have been corrected, and we now consider RB's merit-based arguments that (1) substantial evidence fails to support the circuit court's finding that he was delinquent of obstruction of governmental operations; (2) the circuit court erred in allowing the State to orally petition to revoke his suspended imposition of sentence (SIS); and (3) the circuit court erred in revoking his SIS because he had not been transported to the Department of Youth Services (DYS) at the time the alleged new offenses occurred. We affirm the delinquency adjudication but remand for redispotion.

The State petitioned, under the juvenile code, to adjudicate RB and make disposition on the State's allegations of multiple aggravated assaults, classified as Class D felonies, and



misdemeanor carrying a weapon. The circuit court ordered RB to appear for a May 10, 2012 “designation/adjudication disposition.” The record before us contains no account of that hearing. However, on May 14, 2012, RB was ordered to appear for a May 31 adjudication hearing. In its written order, entered on May 31, 2012, the circuit court stated that it possessed jurisdiction of the parties and subject matter pursuant to Arkansas Code Annotated § 9-27-318(i) and -306(a)(1) (Repl. 2012).¹ The order reflects that RB pled true to four counts of aggravated assault and that the court accepted his admission, adjudicated him as an extended–juvenile–jurisdiction offender, and adjudicated him delinquent. The order reflects the following disposition:

Pursuant to A.C.A. 9-27-506, the juvenile defendant, as an Extended Juvenile Jurisdiction (EJJ) offender, shall be committed to the Division of Youth Services (DYS) and the court suspends a 3 year sentence to the Arkansas Department of Corrections pending further review.

Shortly thereafter, on June 6, 2012, the State petitioned the court under the juvenile code to adjudicate and make disposition on allegations that while being held in the Garland County Juvenile Detention Center (awaiting transfer to DYS), RB had committed the offenses of first-degree assault and obstructing governmental operations. These allegations were based on an incident where RB allegedly refused a request to return to his room and

threatened to use force with [juvenile detention center] deputies and resisted by kicking and at[t]empting to get away with his hands and feet. The detention center

¹We stated in our previous opinion that on May 31, 2012, RB was found delinquent of “four counts of aggravated assault and carrying a weapon.” *R.B.*, 2013 Ark. App. 145, at 1. The court’s May 31 order makes no finding of the weapons charge, but its June 14 order recites that on May 31, RB was found guilty of four counts of aggravated assault and carrying a weapon.



had to stop its classes that were in process and call the adult detention [center]for assistance. [RB] fought the deputies while they were at[t]empting to restrain him and take him to holding.

At a June 14, 2012 hearing, the circuit court heard testimony from Lt. Belinda Cosgrove, who is an employee of the detention center. She stated that on June 5, 2012, around 5:10 p.m., RB refused to return to his room in defiance of her direct instruction to do so. According to Cosgrove, RB's refusal "went on for probably two hours" despite her efforts to "talk to him" and pleading "please, please, please go to your room." Cosgrove testified that she explained to RB that he needed to return to his room so that she would be able to secure the facility for the night. However, according to Cosgrove, RB did not comply with her requests and remarked "several times" that he was "a DYS kid" and he knew that she was not permitted to "spray or taze" him.

Despite multiple failed attempts to convince RB to return to his room so that she could restore order in the facility, Cosgrove explained that she was forced to call for back-up assistance from four of her co-officers stationed at the adult-detention center. Upon their arrival, a struggle with RB ensued. The event was captured in a video recording that was submitted into evidence. The video shows RB physically assaulting the officers by kicking and hitting them while resisting their control.

After considering the testimony and video evidence, the circuit court orally found that RB "committed the crime of assault in the first degree. [RB] jeopardized the safety and security of the staff at Juvenile Detention as well as could have created basically a riot, endangering many folks, causing serious injury or death." The case proceeded to the disposition phase, and the State orally petitioned the circuit court to revoke the EJJ suspended



sentence imposed on May 31, 2012, and commit RB to the ADC. The court's written order of June 14, 2012, adjudicated RB delinquent of obstruction of governmental operations and four counts of first-degree assault. The circuit court further granted the revocation of the EJJ suspended sentence and imposed an adult sentence of three years and ordered him to be removed from the DYS placement list and sent him to the ADC. It is from this adjudication, revocation, and resulting adult sentence that RB now appeals.

We first consider RB's contention that the State failed to introduce sufficient evidence to support his obstruction-of-governmental-operations adjudication.² In reviewing a juvenile-delinquency case, we look at the record in the light most favorable to the State to determine whether there is substantial evidence to support the conviction. *D.B. v. State*, 2010 Ark. App. 433, at 3. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without mere speculation or conjecture. *Id.* A person commits the offense of obstructing governmental operations when he "[k]nowingly obstructs, impairs, or hinders the performance of any governmental function." Ark. Code Ann. § 5-54-102(a)(1) (Repl. 2005).

Here, RB was given a lawful command to return to his room by a law-enforcement officer and failed to abide by it. RB's refusal obstructed Cosgrove's ability to secure the facility for the evening and impaired the orderly function of the detention center. The videotape of

²RB does not appeal the sufficiency of the evidence to support his four assault adjudications.



the encounter and the testimony of Cosgrove support the circuit court's obstruction adjudication of RB, and we affirm the adjudication.

Next, we turn our attention to the adult sentence that followed RB's most recent adjudication and revocation. Although the circuit court's assumption of extended juvenile jurisdiction over RB and the resulting sentence were not challenged below, we consider the matters on our own motion. *Lucas v. State*, 319 Ark. 752, 894 S.W.2d 891 (1995) (finding that questions of jurisdiction may be heard on the appellate court's own motion even in the absence of an objection below); *Cline v. State*, 2011 Ark. App. 315 (finding that because it is jurisdictional in nature, the issue of an illegal sentence can be raised sua sponte, even if not raised on appeal or objected to below). In its May 31, 2012 order, the circuit court stated that it possessed jurisdiction pursuant to Arkansas Code Annotated § 9-27-318(i) (Repl. 2009). That subsection provides that "the criminal division of circuit court may enter an order to transfer as an extended juvenile jurisdiction case" if the juvenile is fourteen through seventeen years of age and is charged with crimes enumerated in subdivision (c)(2) of the statute.

However, RB was not charged with any of the statute's enumerated crimes—capital murder, first-degree murder, kidnapping, aggravated robbery, first-degree battery, or terroristic act. Ark. Code Ann. § 9-27-318(c)(2). Therefore, because RB had not been charged with any of the qualifying offenses, the circuit court's May 2012 declaration of extended juvenile jurisdiction was in error as was the resulting June 14 sentence that committed RB to the ADC for a term of three years. We remand the case to the circuit court for disposition consistent with this opinion.



Cite as 2013 Ark. App. 377

Affirmed; remanded for redistribution.

GRUBER and GLOVER, JJ., agree.

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