

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-71

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

In the Matter of K.C.S.,  
Juvenile

Wake County  
No. 05J290

Appeal by respondent from juvenile adjudication and disposition orders entered 7 November 2005 by Judge Robert B. Rader in Wake County District Court. Heard in the Court of Appeals 19 October 2006.

*Roy Cooper, Attorney General, by Letitia C. Echols, Assistant Attorney General, for the State.*

*Gilda C. Rodriguez for respondent-appellant.*

MARTIN, Chief Judge.

Respondent appeals from an order adjudicating him delinquent based upon findings that he was in possession of marijuana in violation of N.C.G.S. § 90-95(d)(4).

The State's evidence tended to show that on 28 February 2005, Wake County Deputy Sheriff Jennifer Brame came across a Honda CRX stranded in the woods near Holly Springs, North Carolina. The Deputy testified that she was patrolling the area due to recent instances of littering, as well as concern regarding consumption of marijuana and hallucinogenic mushrooms in the locality. Shortly

after her arrival at the scene, Deputy Brame was joined by Deputy Carroll.

Respondent K.C.S. was a passenger in the Honda CRX. The driver consented to a search of the car, which resulted in the discovery of the remnants of four marijuana cigarettes toward the passenger side of the car. A K-9 unit arrived at the scene shortly thereafter, and a small amount of additional marijuana was recovered in the woods near the stranded CRX. The driver and K.C.S. both denied ownership of any of the marijuana.

At the adjudication hearing, the trial court denied the respondent's motion to strike the testimony of Deputy Carroll. At the close of the evidence, the respondent moved to dismiss, which the trial court also denied. Thereafter, the trial court found that the allegations with respect to simple possession of marijuana had been proved beyond a reasonable doubt, and ordered the respondent to perform twelve hours of community service, and placed him on probation for six months, subject to several conditions. The respondent appeals.

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The respondent presents two arguments in support of three of the six assignments of error contained in the record on appeal. We will not consider nor discuss the remaining assignments of error. N.C. R. App. P. 28 (a).

First, the respondent contends that the trial court erred in failing to dismiss the charges against defendant due to flaws in the juvenile petition. "[A] petition in a juvenile action serves

essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged." *In re Griffin*, 162 N.C. App. 487, 493, 592 S.E.2d 12, 16 (2004); see N.C. Gen. Stat. § 7B-1802 (2006).

A "criminal charge is constitutionally sufficient if it apprises the defendant of the charge against him with enough certainty to enable him to prepare his defense," "protect[s] him from subsequent prosecution for the same offense," and if it "enable[s] the court to know what judgment to pronounce in the event of conviction." *State v. Coker*, 312 N.C. 432, 434-35, 323 S.E.2d 343, 346 (1984).

In this case, the petition alleged that K.C.S. "did unlawfully and willfully possess marijuana, a controlled substance which is included in Schedule VI of the North Carolina Controlled Substance Act, in violation of G.S. 90-95(d)(4)." Therefore, the juvenile was apprised of the nature of his alleged offense, along with the elements of the charge: the wilful possession of a controlled substance. See N.C. Gen. Stat. § 90-95(a)(3), (d)(4) (2006).

The juvenile places great stress on the apparent confusion between Deputy Carroll and the District Attorney as to which cache of marijuana he was charged with possessing. However intriguing, the confusion is tangential to the critical statutory test: was the juvenile aware of the conduct at issue, and the offense with which he was charged. The underlying facts, language of the petition,

and even the form used to file the petition - AOC-J-331 "Juvenile Petition Possession of Schedule VI Controlled Substance" made it abundantly clear the crime with which the juvenile is accused. The information was adequate to permit him to prepare a defense. Therefore, this argument has no merit and is overruled.

Second, the respondent contends that the trial court lacked jurisdiction to try him. He premises this argument on his contention that the petition was defective. Since we have already addressed the validity of the petition, and found it conforming to the statutory requirements, this argument also lacks merit, and is overruled.

Finally, the respondent argues the trial court erred in denying his motion to dismiss because there was insufficient evidence of the alleged marijuana. The same standards of proof that apply in criminal proceedings against adults are also used to evaluate the evidence presented against juveniles in a delinquency adjudication proceeding. See *In re Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001). Upon a motion to dismiss by a juvenile respondent, the trial court must determine whether there is "substantial evidence (1) of each essential element of the offense charged, ... and (2) of [juvenile's] being the perpetrator of such offense.'" *Id.* (citations omitted).

"Substantial evidence" may consist of direct or circumstantial evidence or both. *State v. Butler*, 356 N.C. 141, 145, 567 S.E.2d 137, 140 (2002). In making this determination, the trial court must assess the evidence in the light most favorable to the State

and disregard respondent's evidence where it contradicts that of the State. See *State v. Jones*, 147 N.C. App. 527, 545, 556 S.E.2d 644, 655 (2001), *disc. review denied*, 355 N.C. 351, 562 S.E.2d 427 (2002).

Reviewing the totality of the evidence, we cannot agree with the respondent. His temporal and spatial proximity to both caches of marijuana, the strong and lingering odor in the car, the absence of any other individuals in the area, the respondent's explanations to Deputy Brame and the known usage of the area for marijuana and mushroom use are all relevant evidence "as a reasonable mind might accept as adequate to support" the trial court's conclusion that he was in simple possession of marijuana. *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990). Therefore, this argument has no merit, and is overruled.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).