IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-814

Filed: 5 January 2016

Buncombe County, No. 15 JB 13

IN THE MATTER OF: K.S.D.

Appeal by juvenile from orders entered 26 March 2015 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 28 December 2015.

Attorney General Roy Cooper, by Assistant Attorney General Kimberly N. Callahan, for the State.

Meghan Adelle Jones for juvenile-appellant.

BRYANT, Judge.

Where the evidence is sufficient to establish that a juvenile's conduct substantially interfered with the operation of the school, we hold that the trial court properly denied K.S.D.'s [1] motion to dismiss the petition for disorderly conduct.

On 24 November 2014, the juvenile, K.S.D., arrived five to ten minutes late to his science class taught by Grant Rescorla ("Rescorla") at A.C. Reynolds High School. K.S.D. informed Rescorla that he was having a bad day. Rescorla, who had begun his

[1] Initials are used to protect the identity of the minor child pursuant to N.C. R. App. P. 3.1 (2013).

lesson plan, replied, "Okay. Have a seat." Mrs. Kuster, a math teacher, followed K.S.D. into the science class and asked Rescorla for K.S.D.'s name. Rescorla wrote K.S.D.'s name on a piece of paper and handed it to Kuster. K.S.D. subsequently called Kuster a "b—ch and a "f—ing b—ch." When a substitute teacher tried to calm K.S.D. down, K.S.D. replied, "You don't know me. Don't tell me what to do, you effing B."

Rescorla told K.S.D. to go into the hallway, then called for an administrator to come to the classroom. Assistant principal Jeff Burleson ("Burleson") and school resource officer Bill Hensley responded to the call and saw K.S.D. sitting at a desk outside the science classroom. K.S.D. told them "I haven't done a GD thing" and slid a book off the desk and onto the floor. Burleson went into the classroom and asked Rescorla to give him a summary of the incident. Burleson escorted K.S.D. back into the classroom for him to retrieve his book bag. As K.S.D. exited the classroom, the juvenile stated, "this is bullshit" and threw his book bag across the hallway and against the wall. The school resource officer then handcuffed K.S.D.

Rescorla testified that it took approximately ten to fifteen minutes for him to settle his classroom and return to instructing his students after K.S.D. disrupted his class. Burleson testified that it is extremely disrespectful "[w]hen you call [a teacher] a f—ing b—ch in front of everybody" and tell the teacher you do not have to do as you are told. Burleson further testified that "when you get to that level of extreme disrespect, the educational environment is gone."

On 23 January 2015, a petition was filed against K.S.D. alleging he committed the offense of disorderly conduct in violation of N.C. Gen. Stat § 14-288.4(a)(6) (2013). Judge Andrea F. Dray held an adjudication hearing during the 23 March 2015 Session of the District Court of Buncombe County. At the close of the State's evidence, K.S.D. moved to dismiss and presented no evidence in defense. The trial court denied the motion to dismiss, found K.S.D. responsible, and adjudicated him delinquent. On 26 March 2015, the trial court entered a disposition order imposing twelve months of supervised probation, twenty hours of community service, and a curfew from 4:00 PM to 6:00 AM on school days. Counsel for K.S.D. entered a notice of appeal.

On appeal, K.S.D. contends the trial court erred in denying his motion to dismiss the petition for disorderly conduct. We disagree.

"Where the juvenile moves to dismiss, 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.' " *In re Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)). "The evidence must be considered in the light most favorable to the State, and the State is entitled to receive every reasonable inference of fact that may be drawn from the evidence." *In re Brown*, 150 N.C. App. 127, 129, 562

S.E.2d 583, 585 (2002) (citing *State v. Easterling*, 300 N.C. 594, 604, 268 S.E.2d 800, 807 (1980)).

N.C. Gen. Stat. § 14-288.4 prohibits the following:

> (a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:
>
> . . .
>
> (6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.

N.C. Gen. Stat. § 14-288.4(a)(6) (2013). "Our Supreme Court has held that the conduct must cause 'a substantial interference with, disruption of and confusion of the operation of the school in its program of instruction and training of students there enrolled." ' *In re M.G.*, 156 N.C. App. 414, 416, 576 S.E.2d 398, 400 (2003) (quoting *State v. Wiggins*, 272 N.C. 147, 154, 158 S.E.2d 37, 42 (1967), *cert. denied*, 390 U.S. 1028, 20 L. Ed. 2d 285 (1968)).

K.S.D. cites to *In re Pineault*, 152 N.C. App. 196, 566 S.E.2d 854 (2002) and *In re M.G.* as providing guidance for identifying behavior which constitutes a violation of N.C. Gen. Stat. § 14-288.4(a)(6). In *Pineault*, a teacher was conducting class when she heard a juvenile angrily tell a fellow student, "F--k you." *Pineault,* 152 N.C. App. at 197, 566 S.E.2d at 856. The teacher had to stop teaching the class and escort the

juvenile to the principal's office and report what the juvenile had done. *Id.* This Court held that "given the severity and nature of [the juvenile's] language, coupled with the fact that [the teacher] was required to stop teaching her class for at least several minutes, that [the juvenile's] actions substantially interfered with the operation of [the teacher's] classroom . . . ." *Id.* at 199, 566 S.E.2d at 857.

In *In re M.G.,* this Court upheld an adjudication where a teacher was delayed for several minutes from his lunch duty assignment when the teacher heard a juvenile "yell 'shut the f—k up' to a group of students" and had to escort the juvenile to the school detention center to report the misconduct. *In re M.G.,* 156 N.C. App. at 415, 576 S.E.2d at 399. Based upon these cases, K.S.D. argues that his actions did not amount to "substantial interference" because his actions did not require Rescorla to step away from his class nor did his actions greatly affect the staff's activities. We are unpersuaded by K.S.D.'s argument.

Here, K.S.D. used severe profanity as did the juveniles in *Pineault* and *In re M.G.* While in *Pineault* and *In re M.G.* the juveniles mainly directed their profanity toward other students, K.S.D., however, directed the profanity toward the math and substitute teachers and disregarded their authority. Although Rescorla was not required to step away from the classroom, the evidence shows that he had to stop teaching his class, call for an administrator, then explain to the assistant principal what had happened, thereby taking his attention away from the classroom for several

minutes. Further, K.S.D.'s behavior required the attention of school officials, including the assistant principal, teachers, and the school resource officer. As a result of K.S.D.'s behavior, these officials stopped teaching and performing various administrative duties to attend to him. Finally, according to the assistant principal's testimony, "the educational environment is gone" after such extreme disrespect. Thus, we conclude that the evidence, viewed in the light most favorable to the State, was sufficient to establish that K.S.D.'s conduct substantially interfered with the operation of the school. Accordingly, the trial court properly denied K.S.D.'s motion to dismiss.

AFFIRMED.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).