NO. COA01-1147

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

IN THE MATTER OF:
WILLIAM S.

Pender County
No. 01 J 07

Appeal by defendant from order entered 16 March 2001 by Judge Elton G. Tucker in Pender County District Court. Heard in the Court of Appeals 13 May 2002.

*Attorney General Roy Cooper, by Assistant Attorney General J. Bruce McKinney, for the State.*

*Kevin E. Heckart for respondent-appellant.*

TYSON, Judge.

William S. ("respondent") appeals from the trial court's order adjudicating him a delinquent juvenile after the trial court found him guilty of misdemeanor assault by pointing a gun.

## I. Facts

The State's evidence tended to show that on the afternoon of 20 September 2000, after exiting a school bus near his residence, respondent, a twelve-year-old boy, retrieved his toy broken pellet pistol from the side of the road. It was disputed at the bench trial whether or not defendant pointed the broken pellet pistol at Arletha Batts ("Batts"), the school bus driver.

At the hearing Batts testified that she saw the pellet pistol,

it appeared to be real, respondent pointed it at the school bus, and it scared her. Jaseeka Batts, the driver's daughter, was also riding the bus that day and testified that she observed respondent pointing the pellet pistol toward the bus.

Respondent admitted to having retrieved the broken pellet pistol from the side of the road, next to his mailbox, right after exiting the school bus. Respondent had placed the pellet pistol on the side of the road in some weeds earlier that morning prior to entering the bus. Respondent testified that his brother gave him the pellet pistol as a toy because it was broken. Respondent testified that he did not point the pellet pistol at anyone.

Respondent's mother, Kay Simmons ("Simmons"), testified on her son's behalf. Simmons testified that she spoke with respondent on the evening after the incident, and that his account of the events was consistent with his testimony at the hearing. On the evening following the event, Simmons also spoke with Christina Gephardt ("Gephardt"), another student who had exited the bus with respondent. Based upon her conversation with Gephardt, and her conversations with her son, Simmons stated that she believed "100 percent" of her son's story about the incident. Gephardt was unable to be located to testify at the hearing. Respondent was charged approximately six months after the event, and Gephardt had moved. Simmons further testified that respondent used the broken pellet pistol as a toy, and played with it around the house with his other toys, "just being a 12 year old . . . ." She testified that respondent "knew he would get in trouble if he took it to

school, so he hid it in the weeds where he hides his bike so that he wouldn't get in trouble."

Respondent's brother, Justice Simmons, testified that he gave the pellet pistol to his brother because it was broken. He also testified that respondent's testimony at trial had not changed from when respondent told him what had happened.

Respondent testified that he did not point the pellet pistol at the school bus, and Ms. Batts and her daughter testified that he did.

After denying respondent's motion to dismiss, the trial court adjudicated respondent a delinquent juvenile for "unlawfully and willfully" assaulting Ms. Batts by intentionally pointing a gun in violation of G.S. § 14-34. The court placed respondent on probation for six months. Respondent appeals.

II. Motion to Dismiss

Respondent contends that the trial court erred in denying his motion to dismiss the charge against him arguing that there was insufficient evidence to find him guilty of pointing the broken pellet pistol at Batts. We agree.

It is well settled that a juvenile is "'entitled to have the evidence evaluated by the same standards as apply in criminal proceedings against adults.'" *In re Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001)(quoting *In re Dulaney,* 74 N.C. App. 587, 588, 328 S.E.2d 904, 906 (1985)). Accordingly, when a juvenile respondent "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.'" *Id.* (quoting *State v. Powell,* 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980) (citations omitted)). Substantial evidence is that amount of evidence which a reasonable mind "'might accept as adequate to support a conclusion.'" *State v. Cody*, 135 N.C. App. 722, 727, 522 S.E.2d 777, 780 (1999)(quoting *State v. Jordan,* 321 N.C. 714, 717, 365 S.E.2d 617, 619 (1988) (citations omitted)). We consider the evidence in the light most favorable to the State, and the State is entitled to every reasonable inference which may be drawn from the evidence. *State v. Pugh*, 138 N.C. App. 60, 67, 530 S.E.2d 328, 333 (2000).

Assault by pointing a gun requires the State to prove that: (1) the accused pointed a gun or pistol at a person, (2) without legal justification. N.C. Gen. Stat. § 14-34 (1999); *In re J.A.*, 103 N.C. App. 720, 724, 407 S.E.2d 873, 875 (1991). This statute is not a strict liability statute and our Courts have "stated that the provisions of G.S. § 14-34 are subject to the qualification that for a violation of the statute to occur, the pointing of a gun must be intentional and without legal justification." *State v. Gullie,* 96 N.C. App. 366, 368, 385 S.E.2d 556, 557 (1989); (citing *State v. Adams*, 2 N.C. App. 282, 163 S.E.2d 1 (1968); *State v. Thornton*, 43 N.C. App. 564, 259 S.E.2d 381 (1979); *Lowe v. Dept. of Motor Vehicles*, 244 N.C. 353, 93 S.E.2d 448 (1956)). "The gun must be pointed intentionally and not accidentally." *State v. Evans*, 40 N.C. App. 730, 733, 253 S.E.2d 590, 592 (1979) (citing *State v. Kluckhohn*, 243 N.C. 306, 90 S.E.2d 768 (1956)). Our Court has

stated that "these cases also clearly stand for the principle that the absence of legal justification is not an element of the offense to be established by the State; rather, the presence of legal justification is a defense which must arise upon the evidence." *Gullie*, 96 N.C. App. at 368, 385 S.E.2d at 557 (1989).

Assaults are "general intent crimes and thus require a showing that defendant acted intentionally." *State v. Elliott*, 137 N.C. App. 282, 287-88, 528 S.E.2d 32, 36 (Lewis, J. dissenting) (citations omitted), *rev. per curiam on dissenting opinion,* 352 N.C. 663, 535 S.E.2d 32 (2000). Even though assaults "are [not] specific intent crimes, that does not mean . . . that intent is not an element of each offense . . . . [A]ssaults are still general intent crimes and thus require a showing that defendant acted intentionally." *Id.* "In prosecutions for 'general-intent offenses' the State need only prove that the defendant intended to do the act which the law declares criminal. '(I)ntent in the meaning of the criminal law is present in all cases where the act is done voluntarily or willingly . . . .'" *State v. Caddell*, 287 N.C. 266, 296, 215 S.E.2d 348, 366-67 (1975) (quotation omitted). Even though the evidence shows that a defendant might actually, or accidentally, have pointed a gun at someone, the offense has not occurred unless the defendant *intended* to point the gun. *State v. Kluckhohn,* 243 N.C. 306, 310-11, 90 S.E.2d 768, 771 (1956) (emphasis added).

Here, Batts testified that she stopped the bus and respondent exited. Ms. Batts testified that as she began backing the school bus to exit the dead end street, she noticed respondent walk toward

the side of the road, and look in the tall grass. Batts testified that a student yelled, "Ms. Batts, he has a gun." Batts stopped the school bus, looked in respondent's direction, and testified that respondent "was standing pointing -- with the gun pointed toward the school bus, not toward the driver, the whole school bus . . . ." Batts also testified that respondent was "not walking; he's standing still with the gun in his hand," and "he was standing there with a gun pointing." Batts' daughter testified that she "turned around and I looked and I saw Billy pointing a gun at the bus." Batts also testified that "Billy has never really given [her] any problems." The uncontradicted testimony was that respondent did not want to get in trouble so he placed his broken pellet pistol on the side of the road that morning before entering the bus to go to school. Defendant testified that he picked up his broken toy pellet pistol and began walking home.

After thoroughly reviewing the entire record, the evidence shows that respondent picked up his broken toy pellet pistol with his hand, from the side of the road, was seen with the broken pellet pistol in his hand, that the pellet pistol could have been facing the direction of the school bus while respondent stood in the street, and that respondent walked home. There is no evidence that it was respondent's purpose or conscious object to point a "gun" at a "person," that the pellet pistol was pointed at any particular person, or that the broken pellet pistol was pointed specifically at Batts as charged and as found by the trial court.

The trial court erred by denying respondent's motion to

dismiss for insufficiency of the evidence. In light of our holding, we do not reach respondent's other assignment of error.

The adjudication and disposition orders of the trial court are reversed.

Reversed.

Judges GREENE and HUDSON concur.

Report per Rule 30(e)