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NO. COA02-98

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

In the Matters of
DANIEL RAY RUSSELL and
BRANDON LEE SHERMAN,
Respondents.

Alamance County
No. 01 J 21, 01 J 22

Appeal by respondents from orders entered 9 July 2001 by Judge Ernest J. Harviel in Alamance County District Court. Heard in the Court of Appeals 29 October 2002.

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

John W. Cox for respondent-appellant Daniel Ray Russell.

Daniel H. Monroe for respondent-appellant Brandon Lee Sherman.

MARTIN, Judge.

Respondents appeal from orders adjudicating them delinquent, and placing them on probation, upon findings that each of them had committed three counts of injury to personal property, one count of injury to real property, one count of misdemeanor larceny, and one count of misdemeanor possession of stolen property.

Briefly summarized, the evidence presented by the State tended to show that respondent Sherman was born 31 January 1988 and respondent Russell was born 16 March 1989. They are half-brothers and, in February 2001, resided in Hickory Hill Mobile Home Park in

Alamance County. The mobile home park is located adjacent to the Burlington Airport and the evidence indicated that children from the mobile home park use a hole in the fence between the mobile home park and the airport grounds to access the airport to play and watch airplanes.

On Friday evening, 16 February 2001, Robin Mundy, a mechanic for LabCorp at its flight operation at the airport, saw the respondent juveniles and another boy at the airport. He talked with them and, at their request, showed them the inside of an airplane. On the following Sunday morning, 18 February 2001, Mr. Mundy arrived at work and discovered extensive vandalism at the airport, including damage to an International tractor owned by Joe McPherson, damage to a forklift owned by K.W. Dodson Construction, tools and equipment strewn about, and fire extinguishers which had been discharged. He also discovered that valves to fuel storage tanks owned by LabCorp had been forced open and over five thousand gallons of jet fuel and gasoline had been released. Some of the damage appeared to have resulted from the use of a hammer and from shooting a B-B gun into various gauges and instruments on the vehicles. Tools and keys had been taken from a toolbox on Mr. McPherson's tractor.

Ernest Coleman, a neighbor of the respondent juveniles, testified that at about 5:00 or 5:30 p.m. on Saturday, 17 February, he saw them come through the fence from the airport and go into their mobile home; each was carrying a box. He testified that he had also seen the respondent juveniles shooting an air pistol at

cans on the airport grounds a couple of weeks before.

Jacob Riley, a thirteen year old who lives at Hickory Hill Mobile Home Park testified that he had been at the airport on Sunday watching the airplanes, but had not gone to the hangars and had not released the fuel.

Alamance County Sheriff's Department Detective David Barr spoke with the respondent juveniles as part of his investigation of the incident. Detective Barr testified that respondents told him they had seen Steven Castle damage the tractor and the forklift. They were able to provide detailed information about the damage and the manner in which it was inflicted. They denied participating in the acts and denied any knowledge of the fuel spill. After receiving the information from the respondent juveniles, Detective Barr was able to determine that Steven Castle had been away at Eckerd Wilderness Camp since Friday, 16 February.

Respondent Sherman offered evidence tending to show that the juveniles had been disciplined by their father, Harold Russell, on the morning of 17 February and had been required to stay inside their residence for the remainder of the day until they went shopping with their mother about 3:00 p.m. They returned home about 5:00 or 5:30 p.m. Neither of their parents saw them carry any boxes into their residence. Harold Russell also testified that Jacob Riley had admitted, and subsequently denied, having released the fuel, and that Steven Castle had damaged the equipment and had shot windows with a B-B pistol on 13 February. Harold Russell testified that he took the pistol from Steven Castle and gave it to

Steven's father. Russell denied that respondent juveniles had told Detective Barr that they had gone to the airport with Steven Castle on Saturday, 17 February.

Respondent Russell offered no evidence.

Respondent juveniles assign error to the denial of their motions, made at the close of the State's evidence and at the close of all the evidence, to dismiss the charges, and to the trial court's adjudications of their delinquency. They argue, in support of those assignments of error, that the evidence was insufficient to prove that respondents were the perpetrators of the acts alleged.

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 is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990). In making this determination, the trial court must assess the evidence in the light most favorable to the State and disregard respondents' evidence where it contradicts that of

the State. See *State v. Jones*, 147 N.C. App. 527, 556 S.E.2d 644 (2001), *disc. review denied*, 355 N.C. 351, 562 S.E.2d 427 (2002). "Substantial evidence" may consist of direct or circumstantial evidence or both. *State v. Butler*, 356 N.C. 141, 145, 567 S.E.2d 137, 139-40 (2002). "For purposes of a motion to dismiss, evidence is deemed less than substantial if it raises no more than mere suspicion or conjecture as to the defendant's guilt." *Id.*

Respondent juveniles argue that the State introduced exculpatory statements by respondents and then failed to contradict them by other evidence. Specifically, respondent juveniles contend the State's evidence showed, at most, their "mere presence" at the scene of the alleged acts and, citing *State v. Aycoth*, 272 N.C. 48, 157 S.E.2d 655 (1967), such evidence is insufficient to rebut their exculpatory statements introduced by the State. Thus, they argue, relying on *State v. Gaines*, 260 N.C. 228, 132 S.E.2d 485 (1963), they were entitled to dismissal of the charges. After a thorough review of the transcript, we reject respondents' arguments.

While the State introduced statements by respondent juveniles to Detective Barr in which they denied involvement in the vandalism and alleged it had been done by Steven Castle, there was other evidence which contradicted their statements. Billy Chatman of K.W. Dodson Construction testified that a foreman of Dodson had been present at the site on the morning of 17 February and had not reported any damage to the forklift at that time. Mr. McPherson testified that he had last seen his tractor undamaged sometime during the week before 17 February. There was also evidence that

respondent juveniles had been seen leaving the airport property on the late afternoon of 17 February, carrying boxes, and that Steven Castle, the person they claimed was responsible for the damage, was not even in town at the time. Such evidence adequately contradicts respondents' exculpatory statements with respect to the damage done to the machinery and supports a reasonable inference, i.e., substantial evidence, that respondent juveniles were responsible for the damage to the equipment.

Respondents made no exculpatory statements concerning the tools that were taken from Mr. McPherson's tractor. The State's evidence also tended to show, however, that the missing tools had been located in an unlocked toolbox in the floorboard of the tractor and that defendants were seen coming through the hole in the fence on 17 February carrying boxes of a size sufficient to hold the hammers, wrenches, and keys allegedly stolen. Circumstantial evidence is sufficient to survive a motion to dismiss if it is substantial, *State v. Butler, supra*, and, "in considering circumstantial evidence, an inference may . . . be made from an inference." *State v. Childress*, 321 N.C. 226, 232, 362 S.E.2d 263, 267 (1987); *State v. Bostic*, 121 N.C. App. 90, 101, 465 S.E.2d 20, 26 (1995). We hold that, from the State's evidence, a finder of fact could reasonably infer that respondent juveniles stole Mr. McPherson's tools from the tractor in the course of their vandalism of the tractor.

With respect to the charges of injury to personal and real property arising from the release of LabCorp's jet fuel and

gasoline, the State introduced into evidence statements by the respondent juveniles in which they denied any knowledge of the fuel spill. However, the State also introduced evidence that the valves to the fuel storage reservoirs had been forced open, most likely, in the time period between the morning of 17 February when the Dodson foreman was present and 9:00 a.m. on 18 February when the spill and damage were discovered. Viewed in the light most favorable to the State and coupled with the evidence that respondent juveniles committed the other offenses at the site, we hold the evidence shows more than respondents' "mere presence" at the site during the period the offense was likely committed and contradicts respondents' exculpatory statements. Mr. Mundy's testimony included descriptions of other damage at the site, including fire extinguishers that had been discharged and thrown on the ground, boxes of lights and other building supplies from Dodson Construction thrown down a hill, and tools lying around on the ground. A reasonable inference may be drawn from the evidence of widespread damage and disarray at the site that the fuel spill, coming from valves forced open with tools found nearby, was part of a common plan of vandalism.

We hold the trial court properly denied respondent juveniles' motions to dismiss the charges and the orders from which they appeal are affirmed.

Affirmed.

Judges GREENE and BRYANT concur.

Report per Rule 30(e).