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NO. COA05-1278

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

IN THE MATTER OF:

S.C.B.

Mecklenburg County
No. 05 J 293

Appeal by juvenile from an order entered 6 June 2005 by Judge Hugh B. Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 19 April 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Dorothy Powers, for the State.

Don Willey, for juvenile-appellant.

JACKSON, Judge.

On 4 January 2005, S.C.B. ("juvenile") was a passenger in a vehicle which allegedly had sideswiped another vehicle and attempted to leave the scene. Officer D. A. Wright ("Wright"), who stopped the vehicle, testified that the four occupants in the vehicle were uncooperative and smelled of marijuana. He stated that upon pulling the vehicle over and interviewing the driver, he observed a lot of movement in the vehicle, and saw one of the passengers grab something and put it down in the back seat. Wright saw that a purse which originally had been in the front of the

vehicle, in between the driver's and passenger's seats, was now gone. He also saw that the jacket juvenile had been wearing at the time of the stop was now laying in the middle of the back seat beside where juvenile was sitting.

Wright called for backup before searching the vehicle, and Officer Lucas Veith ("Veith") responded. Veith testified that he obtained the driver's consent to search the vehicle. Two of the passengers then exited the vehicle, leaving juvenile alone in the vehicle's back seat. Before asking juvenile to exit the vehicle, Veith searched the jacket he found laying on the backseat. Upon doing so, he noticed a black purse on the floor of the back seat which was partially covered by juvenile's legs. Veith asked juvenile if the purse was hers, to which she responded "no." Veith then stated that since the purse was not hers, she would not mind if he searched it. As he reached for the purse, juvenile lunged for the purse and stated that Veith could not search it. When Veith picked up the purse, he stated it felt heavy for its size, and upon searching the purse, he found a loaded silver .22 caliber revolver.

On 23 March 2005, two juvenile petitions alleging delinquency were filed alleging juvenile had committed the misdemeanors of carrying a concealed weapon and possession of a handgun by a minor. A single juvenile summons and notice of hearing was filed on 28 March 2005, and served upon both juvenile and her parent or guardian on 3 April 2005. Only one docket number was assigned to both petitions. On 27 May 2005, juvenile filed a motion to

suppress the evidence obtained during the officer's search of the purse. At a 6 June 2005 hearing, juvenile's motion was denied and she subsequently entered admissions to the allegations contained in both petitions. Juvenile preserved the right to appeal the denial of her motion to suppress evidence. The trial court entered a disposition order ordering a Level I disposition which included, *inter alia*, six months of probation, a curfew, and community service. Juvenile appeals from the adjudication and entry of the disposition order on 6 June 2005.

We note that juvenile presents arguments in her brief only for one of her three assignments of error, thus, the assignments of error for which no argument was presented are deemed abandoned. N.C. R. App. P. 28(b)(6) (2005).

On appeal, juvenile contends the trial court lacked subject matter jurisdiction to adjudicate juvenile as delinquent and to enter disposition for the two charges when only a single summons was issued. Juvenile contends that the issuance of a single summons, when juvenile was charged with two offenses in two separate petitions, gave the trial court subject matter jurisdiction over only one of the charges. We disagree.

"Jurisdiction of the court over the subject matter of an action is the most critical aspect of the court's authority to act. Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question[, and] . . . is conferred upon the courts by either the North Carolina Constitution or by statute."

In re T.R.P., __ N.C. App. __, __, 619 S.E.2d 525, 527 (2005) (quoting *In re McKinney*, 158 N.C. App. 441, 443, 581 S.E.2d 793,

795 (2003) (citations omitted)). The issue of whether a trial court has subject matter jurisdiction over an action may be raised at any time, and this Court will review the issue when it is raised for the first time in an appeal. *In re S.D.A.*, 170 N.C. App. 354, 357-58, 612 S.E.2d 362, 364 (2005) (citing *In re J.B.*, 164 N.C. App. 394, 396, 595 S.E.2d 794, 795 (2004)). Thus, although juvenile failed to raise the issue of a lack of subject matter jurisdiction before the trial court, we now properly review the issue on appeal.

In a juvenile delinquency action, the petition stating the offenses the juvenile is alleged to have committed serves as the pleading, whereas the issuance of a summons serves as the process upon the juvenile. N.C. Gen. Stat. § 7B-1801 (2005). It is not disputed that both petitions were served on the juvenile and her mother. A petition alleging delinquency must provide the juvenile with "a plain and concise statement, . . . asserting facts supporting every element of a criminal offense" such that the juvenile is sufficiently put on notice as to "the conduct which is the subject of the allegation." N.C. Gen. Stat. § 7B-1082 (2005). Once a petition has been filed with the clerk of court, alleging that the juvenile is delinquent, "the clerk shall issue a summons to the juvenile and to the parent, guardian, or custodian requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons." N.C. Gen. Stat. § 7B-1805(a) (2005). The summons and

petition must then be served upon the juvenile, and the parent, guardian or custodian. N.C. Gen. Stat. § 7B-1806 (2005).

Pursuant to section 7B-1805, a juvenile summons must be printed on a form supplied by the Administrative Office of the Courts, and must include the following:

- (1) Notice of the nature of the proceeding and the purpose of the hearing scheduled on the summons.
- (2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing.
- (3) Notice that, if the court determines at the adjudicatory hearing that the allegations of the petition are true, the court will conduct a dispositional hearing and will have jurisdiction to enter orders affecting substantial rights of the juvenile and of the parent, guardian, or custodian,
- (4) Notice that the parent, guardian, or custodian shall be required to attend scheduled hearings and that failure without reasonable cause to attend may result in proceedings for contempt of court.
- (5) Notice that the parent, guardian, or custodian shall be responsible for bringing the juvenile before the court at any hearing the juvenile is required to attend and that failure without reasonable cause to bring the juvenile before the court may result in proceedings for contempt of court.

N.C. Gen. Stat. § 7B-1805(b) (2005). Thus, the purpose of the juvenile summons is to provide notice to the juvenile and the juvenile's parent or guardian of the juvenile's rights, and of the date and time of the pending hearings. In delinquency proceedings, juveniles are entitled to "[a]ll rights afforded adult offenders except the right to bail, the right of self-representation, and the

right of trial by jury." N.C. Gen. Stat. § 7B-2405(6) (2005). These rights include "[t]he right to written notice of the facts alleged in the petition." N.C. Gen. Stat. § 7B-2405(1) (2005). In the criminal prosecution of an adult, an adult defendant is entitled to an indictment or criminal summons that informs the defendant of the nature of the crime of which he is accused. *State v. Coker*, 312 N.C. 432, 437, 323 S.E.2d 343, 347-48 (1984). Our courts have long held that juvenile delinquency proceedings are not "criminal prosecutions," and a finding of delinquency is not synonymous with a "conviction of a crime." *In re Burrus*, 275 N.C. 517, 529, 169 S.E.2d 879, 886-87 (1969), *aff'd*, 403 U.S. 528, 29 L. Ed. 2d 647 (1971); *see also In re N.B.*, 167 N.C. App. 305, 308, 605 S.E.2d 488, 490 (2004). Thus, "[s]o long as proceedings in the juvenile court meet the requirements of due process, they are constitutionally sound and must be upheld." *Id.* at 529, 169 S.E.2d at 887. These requirements include the juvenile's right to notice, "which would be deemed constitutionally adequate in a civil or criminal proceeding; that is, notice must be given to the juvenile and his parents sufficiently in advance of scheduled court proceedings to afford them reasonable opportunity to prepare, and the notice must set forth the alleged misconduct with particularity." *Id.* at 530, 169 S.E.2d at 887 (citing *In Re Gault*, 387 U.S. 1, 18 L. Ed. 2d 527 (1967)).

In a juvenile delinquency proceeding, the juvenile petition and summons, when served together, act as an indictment or criminal summons would in an adult criminal prosecution, in that

the petition provides the juvenile and his parent or guardian with notice of the offenses he is alleged to have committed and the facts giving rise to the charges, and the summons provides notice of the hearing. See N.C. Gen. Stat. § 7B-1082 (2005); N.C. Gen. Stat. § 7B-1805 (2005); N.C. Gen. Stat. § 15A-303 (2005); N.C. Gen. Stat. § 15A-644 (2005). Thus, when a petition and summons have been issued in accordance with our statutes, the juvenile and his parent or guardian are given proper notice of the charged offenses and the forthcoming hearings on the matters, such that due process is satisfied.

In the instant case, the petitions alleging carrying a concealed weapon and possession of a handgun by a minor satisfied the statutory requirements, and were served upon juvenile and her parent or guardian, along with a single summons. Juvenile contends the issuance of a single summons, rather than a separate summons for each petition constituted error and prevented the trial court from acquiring subject matter jurisdiction over both petitions. Juvenile does not challenge the sufficiency of the summons apart from the fact there was only one summons rather than two. Juvenile relies on *In re Mitchell*, 126 N.C. App. 432, 485 S.E.2d 623 (1997), in support of her argument that when only one summons is issued for two separate petitions, the trial court acquires jurisdiction over only one of the petitions. However, in juvenile's case, neither party disputes that juvenile and her parent were both properly served with the summons and both petitions. Neither party contends that both petitions were not attached to the summons as required by

section 7B-1805(a), or that the petitions or summons failed to provide proper notice of the offenses charged and the hearing on the charges. Also, we find nothing in our juvenile delinquency statutes that requires separate summons be issued for each petition alleging delinquency when all documents in the case are under one file or docket number.

Juvenile's reliance on *Mitchell* is misplaced. In *Mitchell*, we held the trial court lacked subject matter jurisdiction because no summons whatsoever had been issued in the case. *Id.* at 433, 485 S.E.2d at 624. In the instant case, a summons was issued, and it was properly served upon juvenile and her parent or guardian. The contents of the summons complied with the statutory requirements, and it was properly attached to the juvenile petitions. We therefore hold the trial court had jurisdiction over the subject matter alleged in both petitions, and thus the trial court had the authority to adjudicate juvenile as delinquent and to enter dispositions against juvenile for both petitions. Juvenile's assignment of error is overruled.

Affirmed.

Judges TYSON and GEER concur.

Report per Rule 30 (e).