NO. COA06-1125

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

D.A.J.

Alamance County
No. 05 JB 018

Appeal by juvenile from orders signed 27 April 2006 by Judge Ernest J. Harviel in Alamance County District Court. Heard in the Court of Appeals 21 March 2007.

Geoffrey W. Hosford for juvenile appellant.

Attorney General Roy Cooper, by Assistant Attorney General Charlene Bell Richardson, for the State.

McCULLOUGH, Judge.

Juvenile appeals from district court orders adjudicating the juvenile as delinquent and imposing a level 3 disposition. We affirm.

FACTS

The district attorney alleged that juvenile D.A.J. ("D.A.J.") committed the delinquent act of felonious larceny of a firearm and violation of the terms and conditions of his probation.

The State presented evidence which tended to show the following: On 5 April 2006, Michael Woznick, II ("Woznick, II"), Wesley Deese ("Wesley"), Jordan Faucette ("Jordan") and D.A.J. were at Woznick, Sr.'s house watching television and playing games for

about 2 hours. No one else was at home that day. At some point during the 2 hours, Woznick, II showed the other boys his father's gun. After showing the boys the gun, Woznick, II placed the gun back on the shelf exactly like it was. At approximately 6:00 p.m., Woznick, II, dropped the three other boys off at Chandler's house. Chandler was a friend of the boys.

After dropping the other boys off at Chandler's house, Woznick, II, returned to Woznick, Sr.'s house. When Woznick, II, went into the kitchen, he noticed that the gun case was not in its normal place. Woznick, II, opened the case, and the gun was not there. The missing gun was a Ruger .357. Woznick, II, called Jordan's family and D.A.J.'s father in an effort to locate the gun. Then, Woznick, II, called his father to report that the gun was missing.

During the time that the boys were at Woznick, Sr.'s, they were not always together. D.A.J. went into the kitchen by himself to get something to drink approximately twenty minutes before Woznick, II gave the boys a ride to Chandler's. In addition, Wesley testified that he went to the bathroom while at Woznick, Sr.'s house. Wesley testified that the bathroom was located off a room next to where they were watching television.

Woznick, Sr., testified that he was employed at the Town of Gibsonville Police Department. Woznick, Sr., also testified that the Ruger .357 belonged to him and that it was his first duty weapon. He also stated that the gun was kept in a closed plastic

case on top of a cabinet about 8 feet high in the corner of the kitchen.

Jordan testified that D.A.J. talked about having a gun while the boys were at Chandler's. In addition, Jordan testified that about an hour after they arrived at Chandler's, D.A.J. called someone known as "B," and that "B" came to Chandler's house. Jordan's testimony was that he and Wesley stayed in Chandler's house, and only D.A.J. went out to meet "B." After D.A.J. met with "B," D.A.J. called his father and began to walk home.

Wesley testified that on 5 April, he, Woznick, II, Jordan and D.A.J. were together. Wesley also testified that, while the boys were at Woznick, Sr.'s house, D.A.J. went by himself to get a drink. Wesley confirmed that while they were at Chandler's, a man came up and that he and Jordan stayed in Chandler's while D.A.J went outside. Wesley further testified that he heard D.A.J. use the phone at Chandler's house. In addition, Wesley testified that when he and Jordan got back to Jordan's house, Jordan told him that D.A.J. told him about a gun.

Detective J.T. Walker of the Alamance County Sheriff's Department testified over objection that Wesley told him that D.A.J. told him that "if they stayed with their story, then ... everything would be okay." D.A.J. never told Detective Walker that he took the gun. Detective Walker said he talked with D.A.J. about "B," and that D.A.J. gave him a telephone number and a location where "B" might be staying.

At the close of the State's evidence, D.A.J. moved to dismiss the petition for insufficient evidence. The trial court denied the motion. D.A.J. presented no evidence and renewed his motion to dismiss at the close of all the evidence. Then, the trial court adjudicated D.A.J. delinquent.

The trial court then turned to the issue of whether D.A.J. violated the conditions of his probation. D.A.J. admitted leaving the youth focus substance abuse program, but denied the allegation related to the adjudication discussed above. The trial court committed D.A.J. to the Youth Development Center for an indefinite period not to exceed his 18th birthday.

D.A.J. appeals.

I.

D.A.J. contends the trial court erred in denying his motion to dismiss and in adjudicating D.A.J. delinquent because the State did not present sufficient evidence. We disagree.

The standard for review on a motion to dismiss for insufficient evidence is whether the State has offered substantial evidence of each required element of the offense charged. *State v. Williams*, 154 N.C. App. 176, 178, 571 S.E.2d 619, 620 (2002). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). The fact that evidence is circumstantial does not preclude it from being substantial. *State v. Goblet*, 173 N.C. App. 112, 118, 618 S.E.2d 257, 262 (2005). The essential elements of larceny of property are:

(1) the taking of the property of another, (2) the carrying away of the property, (3) without the consent of the owner, (4) with the intent to permanently deprive the owner of the property. *Id.* at 119, 618 S.E.2d at 263.

There is substantial evidence of each of these elements in this case. First, there is evidence of the taking and carrying away. The uncontroverted evidence illustrates that Woznick, II, Jordan, Wesley, and D.A.J. were the only people in Woznick, Sr.'s house on 5 April 2006 when Woznick, II, showed the boys his father's gun. Then, prior to the boys leaving for Chandler's house, D.A.J. went to the kitchen by himself to get a drink. No other testimony offered at the hearing illustrates that any of the other boys went to the kitchen alone prior to going to Chandler's. Approximately twenty minutes after D.A.J. went into the kitchen to get a drink, the boys left for Chandler's house. It was at Chandler's house that D.A.J. indicated to Jordan that he had a gun. Then D.A.J. called a man known as "B" to come over to Chandler's. D.A.J. went outside to meet "B" while the other boys stayed inside Chandler's house. Detective Walker was assigned to investigate the stolen gun. When he interviewed D.A.J., he asked the juvenile about "B." D.A.J. provided Detective Walker with "B"'s telephone number and a location where "B" might be staying.

There is also evidence that the gun was taken without the consent of Woznick, Sr., with the intent to permanently deprive him of the gun. The evidence showed that Woznick, II, called Jordan's family and D.A.J.'s father in an effort to locate the gun. In

addition, Woznick, Sr., testified that the gun was missing and he gave the serial number of the gun to investigators. Also, by the time of the trial, which was three weeks after the gun was stolen, the gun was still missing.

Accordingly, we disagree with D.A.J.'s contention.

II.

D.A.J. contends the trial court erred in permitting Detective Walker to testify about what Wesley told him concerning statements purportedly made to Wesley by D.A.J. D.A.J. asserts the testimony constituted inadmissible hearsay evidence. We disagree.

In the instant case, the court permitted Detective Walker to testify, over objection, about what Wesley had told him that D.A.J. had said to Wesley. Specifically, the testimony was that Wesley told Detective Walker that D.A.J. told Wesley that everything would be okay if the boys all kept their stories the same. D.A.J. asserts this testimony is hearsay and that the trial court committed reversible error by admitting it. However, "'[t]he mere admission by the trial court of incompetent evidence over proper objection does not require reversal on appeal.'" *In re Morales*, 159 N.C. App. 429, 433, 583 S.E.2d 692, 694 (2003) (citation omitted). "'[T]he appellant must . . . show that the incompetent evidence caused some prejudice.'" *Id.* (citation omitted). Further, "[i]n a bench trial, 'the court is presumed to disregard incompetent evidence.'" *Id.* (citation omitted).

Here, D.A.J. cannot show the testimony caused some prejudice. First, the transcript demonstrates that the testimony was

disregarded by the trial court when it summarized the State's evidence:

> COURT: Okay. Let's, you have Jordan saying that [D.A.J.] said he had a gun. You have the[m] all saying that he went to the kitchen and got a drink. And you have perhaps that he called someone other than his father. That Mr. B came over to Chandler's house. Other than that, what do you have?
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> MS. JEFFRIES: Umm, that, that then [D.A.J.] left a short time later. That he, he did talk to the detective about it, that giving all this information of B and that would be all.

In addition, there was substantial circumstantial evidence of D.A.J.'s guilt presented by State. Accordingly, we disagree with D.A.J.

III.

D.A.J. contends the trial court abused its discretion in ordering a level 3 disposition because the State failed to prove that D.A.J.'s culpability in the offense justified the most serious punishment authorized by statute. We disagree.

The North Carolina General Statutes state:

> In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S. 7B-2508, the court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon:
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> (1) The seriousness of the offense;
>
> (2) The need to hold the juvenile accountable;

> (3) The importance of protecting the public safety;
>
> (4) The degree of culpability indicated by the circumstances of the particular case; and
>
> (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c) (2005). Both the State and D.A.J. agree that the delinquency history level is high and the offense was serious for the purposes of dispositional alternatives. Therefore, the trial court had the option of imposing either a level 2 or a level 3 disposition. N.C. Gen. Stat. § 7B-2508 (2005).

The trial court did not abuse its discretion by imposing a level 3 disposition. The need to hold D.A.J. accountable was great since he violated the terms of his probation and was unsuccessfully discharged from the youth focus substance abuse group home. The importance of protecting the public was great since D.A.J. had a severe drug problem and was adjudicated for stealing a firearm. In addition, the recommendation submitted to the trial court indicated that D.A.J. was at a high risk of re-offending and had a medium needs level. The offense, larceny of a firearm, is classified as serious. *See id.* Thus, the trial court properly exercised its discretion by committing D.A.J. to the Department of Juvenile Justice and Delinquency Prevention for placement in a Youth Development Center. Accordingly, we disagree with D.A.J.

Affirmed.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).