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NO. COA06-38

NORTH CAROLINA COURT OF APPEALS

Filed: 05 September 2006

IN THE MATTER OF:
M.E.W.

New Hanover County
No. 05 J 168

Appeal by juvenile from judgment entered 30 August 2005 by Judge J.H. Corpening, II in New Hanover County District Court, Juvenile Session. Heard in the Court of Appeals 17 August 2006.

Attorney General Roy Cooper, by Assistant Attorney General Karen A. Blum, for the State.

Sofie W. Hosford for juvenile-appellant.

STEELMAN, Judge.

Juvenile appeals the trial court's order adjudicating him delinquent and responsible for committing the offense of sexual battery in violation of N.C. Gen. Stat. § 14-27.5A. For the reasons discussed herein, we find no error.

The State's evidence tended to show the following: On 20 January 2005, T.B., then nine years old, was in the library at her elementary school when she saw the juvenile showing everyone there a condom. T.B. testified she heard the juvenile telling his friends that he was going to use the condom on a certain person. T.B. reported the incident to Ms. Brenda Rice, a fourth grade teacher at the school. Several other students confirmed to Ms.

Rice that the juvenile had shown them a condom and was telling them "what he [was] going to do to the girls with the condom and, um, things like that[.]" Ms. Rice informed the principal of what she had heard and that she had checked the juvenile's desk, but the condom was not there.

The juvenile was sent to Assistant Principal Natalie Stalling's office. Ms. Stalling inquired about the situation, but the juvenile denied having the condom at school. The juvenile asked to use the bathroom and Ms. Stalling permitted him to use her private bathroom so he could not leave the office, but instructed him not to flush the commode. After Ms. Stalling allowed the juvenile to leave her office, she inspected the bathroom and found a condom wrapper behind the commode. At the hearing, the juvenile admitted he had a condom at school and left it in Ms. Stalling's bathroom. However, he denied ever telling anyone what he planned to do with the condom.

When T.B. returned home, she told her mother the juvenile had a condom at school that day and she did not feel comfortable around him. T.B.'s mother called the principal the next morning about the incident.

The next day, T.B. was in art class with the juvenile. The juvenile and another boy were throwing clay and the juvenile threw clay at T.B. who was working at another table. T.B. asked the juvenile not to throw clay at her. The juvenile got up and walked toward T.B.'s table and grabbed her between her legs in her "private parts" as he passed by. The juvenile then walked around

the table and started laughing. T.B. told the juvenile to stop, leave her alone, and not touch her.

When Ms. Rice came to get the students at the end of art class, T.B. asked to speak to her. Ms. Rice took her into the hallway, where T.B. told her that the juvenile had touched her in her private area during art class and that she was embarrassed by it. Ms. Rice sent T.B. to speak with the principal, to whom she recounted the same incident. The juvenile admitted hitting T.B. with the clay, but denied touching her in her private area.

The juvenile was charged with sexual battery and the matter came on for hearing at the Juvenile Session of New Hanover District Court. At the close of all the evidence, the juvenile made a motion to dismiss the charge of sexual battery by reason of the failure of the evidence to support all of the elements of the charge. The trial court denied this motion. On 17 May 2005, the trial court adjudicated the juvenile delinquent and responsible for committing the offense of sexual battery. The court continued the disposition hearing until 30 August 2005 pending resolution of two additional charges against the juvenile. The trial court entered a disposition order on 30 August 2005 resolving all three offenses. The trial court placed the juvenile on probation for twelve months, ordered that he complete both sexual offender treatment and a level three treatment program, and have no contact with the victim. The juvenile appeals.

In his first argument, the juvenile contends the trial court erred in denying his motion to dismiss the charge of sexual battery

because the State did not present sufficient evidence that he committed the battery for the purposes of sexual gratification. We disagree.

In order to survive a motion to dismiss based on the insufficiency of the evidence, the State must present substantial evidence of each element of the offense charged. *In re T.C.S.*, 148 N.C. App. 297, 301, 558 S.E.2d 251, 253 (2002). In addition, such evidence must be "sufficient to convince a rational trier of fact beyond a reasonable doubt of defendant's guilt." *Id.* (citations and internal quotation marks omitted). We review the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference. *Id.* It is irrelevant whether the State's evidence is direct, circumstantial, or both; the test for resolving a challenge to the sufficiency of the evidence is the same. *Id.* This standard, which applies in criminal trials against adults, also applies when evaluating the evidence in a juvenile hearing. *In re T.S.*, 133 N.C. App. 272, 275, 515 S.E.2d 230, 232 (1999).

The essential elements of sexual battery are: (1) sexual contact with another person; (2) by force or against the person's will; and (3) for the purpose of sexual arousal, gratification or abuse. N.C. Gen. Stat. § 14-27.5A (2005). Specifically, the juvenile contends the State failed to present sufficient evidence he made sexual contact with the victim for the purpose of sexual arousal or gratification. This Court has held that although "intent is seldom provable through direct evidence[,] . . . intent

to arouse or gratify sexual desires may [not] be inferred in children under the same standard used to infer sexual purpose to adults." *T.S.*, 133 N.C. App. at 276, 515 S.E.2d at 233. We reasoned the legislature's addition of this requirement in a similar juvenile statute indicated a "recognition that a lewd act by adult standards may be innocent between children, and unless there is a showing of the child's sexual intent in committing such an act[,] " the child cannot be held criminally accountable. *Id.* Since the juvenile's intent to act for the purpose of sexual arousal or gratification cannot be inferred from the very act itself, as is the case in certain adult proceedings, the State may meet its burden by presenting some evidence of "[t]he child's maturity, intent, experience, or other factor indicating his purpose in acting[.]" *Id.* at 277, 515 S.E.2d at 233.

We find the evidence when viewed in the light most favorable to the State was sufficient to establish that the juvenile made sexual contact with the victim for the purpose of sexual arousal or gratification. A reasonable inference of intent indicating the juvenile acted with the purpose of sexual arousal or gratification could be drawn from the fact the juvenile, who was nine years old: (1) brought a condom to school; (2) was overheard telling other students whom he planned to use the condom on; and (3) attempted to hide the condom wrapper in the bathroom immediately after the assistant principal asked him if he had anything at school he should not. All of this occurred the day before the juvenile

inappropriately touched T.B. Furthermore, the juvenile laughed after he touched T.B. in her private parts.

The State also put on sufficient evidence that the contact was against the victim's will. T.B. testified she did not want the juvenile touching her there, she told him to stop and leave her alone, his touching her there embarrassed her, she immediately told her teacher what had happened, and also told her mother upon returning home that day. Thus, the evidence considered in the light most favorable to the State sufficiently establishes the juvenile touched the victim against her will.

In the instant case, the juvenile does not contend the State failed to provide sufficient evidence that the contact constituted "sexual contact," therefore, we need not address this element of the crime.

This argument is without merit.

The juvenile also contends the trial court erred in adjudicating the juvenile delinquent for committing sexual battery because the State failed to prove beyond a reasonable doubt that he committed the offense for the purpose of sexual gratification.

In order to support an adjudication of delinquency, the State must present substantial evidence of every essential element of the crime charged. *In re Heil*, 145 N.C. App. 24, 29, 550 S.E.2d 815, 819 (2001). For the reasons stated above, we hold the State presented substantial evidence of the essential elements of sexual battery. This argument is without merit.

For the reasons discussed herein, we find the juvenile's arguments to be without merit and we find the trial court did not err in denying the juvenile's motion to dismiss.

AFFIRMED.

Judges LEVINSON and STEPHENS concur.

Report per Rule 30(e).