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NO. COA06-730

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

IN THE MATTER OF:

R.M.

Mecklenburg County

No. 03 J 1146

Appeal by juvenile from orders entered 20 January 2006 by Judge Regan A. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 24 January 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Gail E. Dawson, for the State.

Charlotte Gail Blake, for juvenile-appellant.

TYSON, Judge.

R.M. ("the juvenile") appeals from adjudication and dispositional orders entered finding him delinquent for: (1) armed robbery; (2) second degree kidnapping; and (3) no operators license. We affirm.

I. Background

A. State's Evidence

On 8 October 2005 at approximately 7:30 a.m., Carlos Adalberto Arguetta Andrade ("the victim") drove his tan Toyota Sienna van to work at Carocraft Cabinets in Charlotte, North Carolina. As the victim drove into the parking lot, the juvenile approached his vehicle, wearing a black jacket and hat. The juvenile pointed to

his wrist to ask for the time. The victim pointed to his wrist to indicate he was not wearing a watch. The juvenile pointed a gun at the victim and signaled for him to roll down the window. The victim complied.

The juvenile opened the vehicle's door and demanded the victim move over to the front passenger's seat. The victim complied. The juvenile entered the driver's seat of the vehicle and demanded money from the victim. The victim gave the juvenile approximately \$150.00 in cash. The juvenile drove the vehicle out of the parking lot, while the victim sat in the passenger's seat. The juvenile asked the victim whether he had any children. The victim replied he had two daughters. The juvenile threatened to kill the victim and his two daughters, if he called the police.

The juvenile drove the vehicle into a Big Lots parking lot and waved the gun at the victim to exit the vehicle. The victim asked for his house key. The juvenile gave the victim his house key and one dollar for the bus fare. After the victim exited the vehicle, the juvenile drove the vehicle out of the parking lot.

The victim asked two Big Lot's employees to call the police. The victim provided a description of the juvenile and the van to Charlotte-Mecklenburg Police officers. Shortly thereafter, Officer Richard Conn ("Officer Conn") observed the van approaching him. As Officer Conn made a u-turn to follow the van, the van sped away and ran through several stop signs. Officer Conn lost sight of the van momentarily, but Officer J.M. Helms ("Officer Helms") observed the van approaching her. Officer Helms briefly lost sight of the van,

but found it parked in the middle of the road with the keys in the ignition.

A witness reported to law enforcement officers she saw two young black males jump out of the van and run across her neighbor's yard toward nearby apartments. K-9 Officer Donald Dolinger ("Officer Dolinger") arrived with his dog, Zato, who picked up a scent from the van. Zato tracked the scent through the witness's neighbor's yard, between two apartment buildings, and stopped at the end of the buildings. Officer Dolinger saw a woman standing in the doorway of the apartment.

Officer Conn arrived on the scene and found the juvenile and another young black male inside the woman's apartment. The juvenile and the other male were detained in separate patrol cars. Law enforcement officers searched the woman's apartment and did not recover a gun from the apartment. The victim was brought to the scene and positively identified the juvenile as the person who had robbed and kidnapped him. The victim remained at the scene while law enforcement officers searched his van. Law enforcement officers returned the van to the victim, and he left the scene.

On 10 October 2005, a juvenile petition was filed that alleged the juvenile to be delinquent because he had committed: (1) armed robbery; (2) second degree kidnapping; (3) fleeing to elude; (4) reckless driving; and (4) and driving with no operators license. The State voluntarily dismissed the juvenile's charges for fleeing to elude and reckless driving.

In addition to the testimony outlined above, the juvenile's girlfriend testified that in late September or early October, the juvenile visited her at her home. He arrived alone in a tan van that the girlfriend had never seen before. The juvenile and his girlfriend sat in the van for a couple of minutes. The juvenile gave her a gun and told her to keep it. Bullets were present in a clip, but not in the gun's chamber. The juvenile's girlfriend kept the gun.

B. The Juvenile's Evidence

The juvenile testified at his adjudication hearing and stated that on 8 October 2005, he learned from his friend, Michael McGriff ("McGriff"), that the victim wanted to "pawn" his vehicle for drugs. The juvenile testified that McGriff asked the victim whether he wanted to trade the vehicle for drugs, and the victim replied in the affirmative. McGriff and the juvenile made "fake" drugs out of bread and gave the drugs to the victim. McGriff and the juvenile dropped the victim off at the store. The juvenile stated he and McGriff drove away in the vehicle and encountered law enforcement officers ten minutes later.

The juvenile testified he and McGriff jumped out of the vehicle and ran inside the juvenile's cousin's apartment. The juvenile denied possession of a gun on 8 October 2005 or that he pointed a gun at the victim.

C. Disposition

On 20 January 2006, the trial court adjudicated the juvenile to be delinquent on all remaining charges. The trial court entered

a Level 3 disposition and ordered the juvenile to be confined to a youth development center for an indefinite period or until his nineteenth birthday and that he not be placed in a wilderness camp. The juvenile appeals.

II. Issues

The juvenile argues the trial court erred because it: (1) allowed the State to amend the juvenile petition at the beginning of the adjudication hearing and (2) failed to specifically advise him of his constitutional rights prior to his testimony.

III. Amendment of Juvenile Petition

The juvenile argues the trial court should not have allowed the State to amend the juvenile petition at the beginning of the adjudication hearing. We disagree.

A. Standard of Review

The trial court's allowance of an amendment to a juvenile petition rests within its "sound discretion," if the petition "sufficiently alleged the offense" charged and the "amendment in no way changed the nature of the offense." *In re Jones*, 11 N.C. App. 437, 438, 181 S.E.2d 162, 162, *appeal dismissed*, 279 N.C. 616, 184 S.E.2d 267 (1971).

B. Analysis

Under N.C. Gen. Stat. § 7B-2400 (2005), "The court may permit a petition to be amended when the amendment does not change the nature of the offense alleged. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations."

"Juvenile proceedings in this State are not criminal prosecutions and a finding of delinquency in a juvenile proceeding is not synonymous with the conviction of a crime." *Jones*, 11 N.C. App. at 438, 181 S.E.2d at 162. "Nevertheless, a juvenile cited under a petition to appear for an inquiry into his alleged delinquency is entitled to the constitutional safeguards of due process and fairness." *Id.* (citing *In re Burrus*, 275 N.C. 517, 169 S.E.2d 879, [*aff'd*, 403 U.S. 528, 29 L. Ed. 2d 647 (1969)]; *In re Alexander*, 8 N.C. App. 517, 174 S.E.2d 664 [(1970)]). "These safeguards include notice of the charge or charges upon which the petition is based." *Id.* (citing *In re Gault*, 387 U.S. 1, 18 L. Ed. 2d 527 (1967)). In *Jones*, this Court held that allowing an amendment to the petition alleging larceny rested within the sound discretion of the trial court when the amendment "in no way changed the nature of the offense but simply identified more specifically the owner of the property allegedly stolen." 11 N.C. App. at 438, 181 S.E.2d at 162.

At the juvenile's adjudication hearing, the State moved to amend the juvenile petition: (1) to add the word "van" to "Toyota Sienna;" (2) to add the word "all" to indicate the total value of the money and the van; (3) to add "Arguetta" to "Carlos Adalberto Andrade" to reflect the victim's full name; (4) to add "in violation of GS 14-87, class D felony" to "GS 14-87;" (5) to add "2nd degree kidnapping" to "and kidnap;" (6) to add "restraining" to the juvenile's kidnapping charge; (7) to add "armed robbery in violation of" to "GS 14-39;" (8) to clarify "a Class E felony

maximum commitment 19 [sic] months or until 19th birthday;" (9) to add "The Juvenile is a delinquent as defined by GS 7B-1501(7) in that on or about the date shown in the county named above the juvenile unlawfully and willfully did" to the description of the no operators license charge; and (10) to add "in violation of" to "GS 20-7(A)" and "a class 2 [sic] misdemeanor maximum commitment 60 days or 18th birthday." Defense counsel responded, "I don't have any objection, Your Honor. The State has already notified me on some of these several days previously that she intended to make these amendments."

The trial court properly granted the State's motion to amend. The amendments did not change the "nature of the offenses alleged." N.C. Gen. Stat. § 7B-2400. The juvenile had prior notice of the amendments and admitted the State had informed him of "some of these" amendments several days before the adjudication hearing. The juvenile did not object to the amendments. The juvenile was given a reasonable opportunity to prepare a defense or objection to the amended allegations. This assignment of error is overruled.

IV. Prior Notice of Rights

The juvenile asserts the trial court failed to specifically advise him of his constitutional right against self-incrimination. The juvenile argues the trial court violated his constitutional rights by failing to comply with N.C. Gen. Stat. § 7B-2405 and *In re T.E.F.*, 359 N.C. 570, 614 S.E.2d 296 (2005). We disagree.

Under N.C. Gen. Stat. § 7B-2405 (2005):

The adjudicatory hearing shall be a judicial process designed to determine whether the

juvenile is undisciplined or delinquent. In the adjudicatory hearing, the court shall protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law:

- (1) The right to written notice of the facts alleged in the petition;
- (2) The right to counsel;
- (3) The right to confront and cross-examine witnesses;
- (4) The privilege against self-incrimination;
- (5) The right of discovery; and
- (6) All rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.

The juvenile asserts the trial court failed to protect his "privilege against self-incrimination" and "[a]ll his rights afforded to adult offenders" by failing to advise him specifically prior to his testimony that he had the right to remain silent. The juvenile argues our Supreme Court's holding in *In re T.E.F.* applies, and the trial court's failure to comply with N.C. Gen. Stat. § 7B-2407 is error. Under N.C. Gen. Stat. § 7B-2407 (2005):

- (a) The court may accept an admission from a juvenile only after first addressing the juvenile personally and:
 - (1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile;
 - (2) Determining that the juvenile understands the nature of the charge;
 - (3) Informing the juvenile that the juvenile has a right to deny the allegations;

(4) Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;

(5) Determining that the juvenile is satisfied with the juvenile's representation; and

(6) Informing the juvenile of the most restrictive disposition on the charge.

(b) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile personally, the court shall determine whether there were any prior discussions involving admissions, whether the parties have entered into any arrangement with respect to the admissions and the terms thereof, and whether any improper pressure was exerted. The court may accept an admission from a juvenile only after determining that the admission is a product of informed choice.

(c) The court may accept an admission only after determining that there is a factual basis for the admission. This determination may be based upon any of the following information: a statement of the facts by the prosecutor; a written statement of the juvenile; sworn testimony which may include reliable hearsay; or a statement of facts by the juvenile's attorney.

N.C. Gen. Stat. § 7B-2407 applies "when *admissions* by juvenile may be accepted." The acceptance of an admission by a juvenile is tantamount to the acceptance of a guilty plea by an adult in a criminal case. *In re Johnson*, 32 N.C. App. 492, 493, 232 S.E.2d 486, 487-88 (1977).

The juvenile did not proffer any admission to the offenses. Instead, the juvenile testified and denied the offenses. Our Supreme Court in *In re T.E.F.* held the safeguards under N.C. Gen. Stat. § 7B-2407 protected a juvenile who admitted the offenses. 359 N.C. at 573, 614 S.E.2d at 296. Neither N.C. Gen. Stat. § 7B-

2407 nor *In re T.E.F.* applies to the facts before us. The juvenile did not admit and specifically denied the offenses. In the absence of an admission, the trial court was not required to specifically address the juvenile pursuant to N.C. Gen. Stat. § 7B-2407. The juvenile failed to show that the trial court did not protect his rights under N.C. Gen. Stat. § 7B-2405. This assignment of error is overruled.

V. Conclusion

The juvenile failed to show the trial court abused its discretion by allowing the State to amend the juvenile petition at the beginning of the adjudicatory hearing or that the amendments "change[d] the nature of the offenses." N.C. Gen. Stat. § 7B-2400. The juvenile's counsel admitted the State had informed him of the changes and did not object.

The trial court was not required to specifically advise the juvenile of his constitutional rights against self-incrimination when the juvenile testified and denied the offenses. The trial court's adjudication and dispositional orders are affirmed.

Affirmed.

Judges STEPHENS and STROUD concur.

Report per Rule 30(e).