NO. COA06-810

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

IN THE MATTER OF:

P.L.

Robeson County
No. 05 J 141

Appeal by juvenile from adjudication and disposition orders entered 3 March 2006 by Judge John B. Carter, Jr., in Robeson County District Court. Heard in the Court of Appeals 9 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Scott T. Slusser, for the State.

Mary McCullers Reece for the respondent-appellant.

ELMORE, Judge.

On 9 January 2006, a juvenile petition was filed alleging that respondent was a delinquent juvenile and charging him with misdemeanor larceny for having stolen a phone. The matter was heard on 28 February 2006.

The State presented evidence at the hearing which tended to show the following: Sharon Williams testified that she was a teacher at Red Springs Middle School. On 6 December 2005, just prior to taking a bathroom break, Williams placed her camera phone in her desk drawer. When she returned, she saw P.L. at her desk.

Williams noticed that her desk drawer was partially cracked open, but she had remembered closing the drawer completely when she put the phone in it. The phone was missing, and Williams began searching for the phone. Another teacher called the phone, and Williams could barely hear it ring. However, before she could search further, the school's bell rang and the principal told her that she had to release the students. Williams described the phone as being a Sprint camera phone with silver and black on it. Williams further testified that she had programmed the phone with a distinctive "Belltone ring" and that when it was turned off it would go "ding, ding, ding . . . like a bell."

Later that day while in the lunchroom, S.P., another student at the school, saw respondent trying to "cut off" a phone as it rang. S.P. testified that he believed the phone was the one that belonged to Williams. S.P. had used the phone previously, and recognized the color of the phone. S.P. described the phone as being silver with "Sprint" on it, matching a description provided by Williams. S.P. further testified that the phone made a noise when it was turned off, and he never heard any other phone with the same ring as Williams's phone. N.C., another student, testified that she saw respondent showing a friend a phone, and she believed it was Williams's phone because "it looked just like it."

On 3 March 2006, respondent was adjudicated a delinquent juvenile for committing the offense of misdemeanor larceny. Respondent was placed on probation and ordered to pay restitution. Respondent appeals.

Respondent argues that there was insufficient evidence to sustain the adjudication. However, respondent did not renew his motion to dismiss at the close of all the evidence. "Appellate Rule 10(b)(3) states when defendant presents evidence at trial, he waives his right on appeal to assert the trial court's error in denying the motion to dismiss at the close of the State's evidence." *State v. Barfield*, 127 N.C. App. 399, 401, 489 S.E.2d 905, 907 (1997)(citing *State v. Davis*, 101 N.C. App. 409, 411, 399 S.E.2d 371, 372 (1991)). Furthermore, "a defendant who fails to make a motion to dismiss at the close of all of the evidence may not attack on appeal the sufficiency of the evidence at trial." *State v. Spaugh*, 321 N.C. 550, 552, 364 S.E.2d 368, 370 (1988); *see also In re Rikard*, 161 N.C. App. 150, 155, 587 S.E.2d 467, 470 (2003)(because the juvenile did not renew his motion to dismiss at the close of the evidence, his assignment of error was overruled). Accordingly, the appeal is dismissed.

Appeal dismissed.

Judges WYNN and GEER concur.

Report per Rule 30(e).