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NO. COA06-924

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

IN THE MATTER OF:

New Hanover County
No. 06 J 6

V.S.H.

Appeal by juvenile from adjudication and disposition orders entered 17 March 2006 by Judge J. H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 2 April 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Gary A. Scarzafava, for the State.

Sofie W. Hosford for juvenile-appellant.

HUNTER, Judge.

On 10 November 2005, M. D. Coleman, III, was assistant principal at Wilson Middle School. Mr. Coleman testified that in the morning before school, the students are divided up into three areas. Mr. Coleman explained that "any time someone steps over to an unauthorized area, there's potential problems." On this date, there was an altercation on the sixth grade side. According to Mr. Coleman, an eighth grade student had walked over to the sixth grade side and was "starting something with a seventh grade student." Mr. Coleman interceded and asked the eighth grade student to back up. However, she became louder and went after the other student, so Mr. Coleman had to physically restrain her. Mr. Coleman

testified that they ended up on the ground, at which time he heard a student say "get off of her" and he received "two blows to the back." Mr. Coleman got up to see who had hit him, but a large group of students had gathered and he had to turn his attention back to the first student. Once he regained control of the situation, he heard from some students that they knew who had hit him. One of the students, Lashea Evans, testified that she saw juvenile punch Mr. Coleman in the back twice.

On 3 January 2006, a juvenile petition was filed alleging that juvenile had committed the offense of assault on a government officer or employee. A hearing was held on the matter on 28 February 2006. On the same date, juvenile was adjudicated a delinquent juvenile for committing the charged offense. A Level 1 disposition order was entered placing juvenile on probation for six months. Juvenile appeals.

Juvenile first argues that there was insufficient evidence to support her adjudication. However, juvenile concedes that she failed to preserve this assignment of error by moving for a dismissal, either at the end of the State's case or at the close of the evidence. Thus, she is precluded from raising this issue on appeal. *In re Clapp*, 137 N.C. App. 14, 19, 526 S.E.2d 689, 693 (2000); *In re Davis*, 126 N.C. App. 64, 66, 483 S.E.2d 440, 441-42 (1997); N.C.R. App. P. 10(b)(3); see also *State v. Spaugh*, 321 N.C. 550, 552-53, 364 S.E.2d 368, 370 (1988). Accordingly, we decline to review juvenile's argument.

Juvenile next argues that the trial court erroneously admitted hearsay testimony. Mr. Coleman testified regarding how students came to him with information regarding who hit him:

[Mr. Coleman:] No, kids were talking about it. As a matter of fact, two of the classroom teachers even said that she was in the classroom talking about the incident in the classroom. And as one of the statements said, that was going on as well.

[Defense Counsel:] *Talking about the incident but not saying that she hit you, is that correct?*

[Mr. Coleman:] *Yeah, said that, too.*

[Defense Counsel:] What teacher?

[Mr. Coleman:] Ms. -- it was Ms. Davis and Ms. Whist's classroom.

[Defense Counsel:] And the teachers told you that?

[Mr. Coleman]: Uh-uh. The teachers said she was talking about the incident. They didn't go into detail. I didn't get into detail and question them, but they said she was talking about the incident in class.

Shortly thereafter, on re-direct, the State asked Mr. Coleman the question that led to the instant assignment of error:

[State:] But the teachers who reported that [juvenile] was talking about the incident specifically told you that she had been bragging about hitting you, is that correct?

[Mr. Coleman:] Well, the teachers, they said --

[Defense Counsel:] Objection. Hearsay. They're not here to --

[The Court]: Overruled.

[Mr. Coleman]: They said that she had been talking about it in class, and then, I

didn't further question them about it. That's when I started questioning students.

Juvenile argues that Mr. Coleman's testimony constituted hearsay because he testified about what the teachers told him concerning statements purportedly made by juvenile. Juvenile claims that absent this evidence, there would have been a different result at trial. However, even assuming *arguendo* that admission of the evidence was in error, we find no prejudicial error. "In a bench trial, it is presumed that the judge disregarded any incompetent evidence." *In re Huff*, 140 N.C. App. 288, 298, 536 S.E.2d. 838, 845 (2000). Thus, in light of Evans's testimony that she saw juvenile hit Mr. Coleman, and in light of the above presumption, we find no prejudice. Accordingly, we affirm.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).