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NO. COA06-933

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN THE MATTER OF:
V.E.B.,
Juvenile.

Mecklenburg County
No. 05 J 1047

Appeal by respondent from juvenile adjudication and disposition orders entered 14 February 2006 by Judge Hugh B. Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 7 March 2007.

Attorney General Roy Cooper, by Assistant Attorney General Lisa C. Glover, for the petitioner-appellee.

Jon W. Myers, for respondent-appellant V.E.B.

LEVINSON, Judge.

Respondent appeals from an adjudication of delinquency and the associated order of disposition. We affirm.

In October 2005 the State filed petitions alleging that respondent had committed the offenses of communicating a threat, in violation of N.C. Gen. Stat. § 14-277.1, and resisting a law enforcement officer, in violation of N.C. Gen. Stat. § 14-223. At a hearing conducted 14 February 2006 the State presented evidence tending to show the following:

On 10 July 2005 Christina Britland saw a young man with a handgun in the parking lot of an apartment complex. She called

911, and a few minutes later Officers Miller and French of the Pineville Police Department arrived. Britland pointed out the boy with the gun and then left the scene. Officer French got out of the patrol car, approached the young man, and asked to speak with him. The youth refused and ran off through the apartment buildings with his hands concealed near his waist.

A few seconds later, the young man ran into an apartment which was later determined to be his home. Present in the apartment were his mother and the respondent, who is his sister. Officer French followed the young man inside, drew his service weapon and said "Police, get on the ground." Instead of dropping to the ground, the young man remained standing. At the same time, respondent ran over to Officer French, grabbed his upper arm with both hands, and yelled "Get the f[---] out of my apartment." As Officer French pushed respondent away, the young man approached the officer, his hands still concealed in his waistband. Officer French sprayed both young people with pepper spray, just as Officer Miller and a third law enforcement officer, Officer Dalux, arrived at the apartment.

Officers Miller and French subdued and hand-cuffed the male suspect while Officer Dalux took control of respondent. As Officer Dalux was leading respondent out of the apartment, she shouted, "I'm going to kick your f[-]ing a[-]." Officer French testified at the hearing that he believed that "given the opportunity she probably would have attacked me again had there not been other officers there."

Respondent presented evidence tending to show that she had not touched, grabbed, or threatened Officer French.

The trial court adjudicated respondent delinquent and placed her on juvenile court supervision. Respondent appeals from the adjudication and disposition.

Respondent first argues that the trial court committed reversible error by conducting the dispositional hearing without having a predisposition report or a risks and needs assessment, and without making findings of fact that these reports were not necessary.

Respondent asserts that the trial court violated N.C. Gen. Stat. § 7B-2413 (2005), which provides in pertinent part:

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile[] . . . shall be conducted for the juvenile and shall be attached to the predisposition report. . . . [If] no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. . . .

After adjudication, the trial court asked respondent whether she wished to proceed immediately to disposition or continue the case so that an assessment of respondent could be conducted. Counsel for respondent stated, "my client and her family have indicated that they'd like to go ahead and do this today so they don't have to come back to court." Respondent thus agreed to

conduct the dispositional hearing without the statutorily required reports.

"In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make[.]" N.C.R. App. P. 10(b)(1). Accordingly, "[a]s a general rule, defendant's failure to object to alleged errors by the trial court operates to preclude raising the error on appeal." *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (citations omitted). "However, statutory violations, regardless of objections at the trial court, are reviewable. 'When a trial court acts contrary to a statutory mandate, the right to appeal the court's action is preserved, notwithstanding the failure of the appealing party to object at trial.'" *State v. Golphin*, 352 N.C. 364, 411, 533 S.E.2d 168, 202 (2000) (quoting *State v. Jones*, 336 N.C. 490, 497, 445 S.E.2d 23, 26 (1994)).

Not every statutory violation is grounds for reversal. Under N.C. Gen. Stat. § 15A-1443 (2005), respondent is prejudiced by non-Constitutional errors "when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises. The burden of showing such prejudice under this subsection is upon the [respondent]." In the instant case, respondent fails to articulate any specific prejudice from the trial court's conducting the disposition hearing without the benefit of a predisposition report or a risk and needs assessment.

Consequently, we conclude the error was harmless. This assignment of error is overruled.

Respondent next argues that the trial court committed reversible error by failing to consider her history, welfare, or needs in determining an appropriate dispositional alternative.

"On appeal, we will not disturb a trial court's ruling regarding a juvenile's disposition absent an abuse of discretion, which occurs 'when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision.'" *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387 (quoting *In re Robinson*, 151 N.C. App. 733, 737-38, 567 S.E.2d 227, 229 (2002)), *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2005).

Respondent concedes that the trial court's order requiring her placement in a wilderness camp was within the permissible statutory range of dispositional alternatives. She contends, however, that the trial court violated the dictates of N.C. Gen. Stat. § 7B-2501(c) (2005), which provides in pertinent part:

- (c) In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition . . . based upon:
 - (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.

Respondent argues that the trial court failed to consider the enumerated factors, and that the trial court's determination that

participation in a wilderness camp was an inappropriate disposition that "was not fashioned to her situation." However, respondent fails to set forth any aspects of a wilderness camp that are inappropriate to her "situation." Nor does she articulate which of her traits, needs, or other personal circumstances might be incompatible with attendance at a wilderness camp.

Respondent further contends that the court's dispositional order does not "contain appropriate findings of fact and conclusions of law" as required by N.C. Gen. Stat. § 7B-2512 (2005). Again, respondent does not suggest any findings of fact that should have been made, or what prejudice was caused by the trial court's failure to make them.

Respondent essentially argues that, because the trial court did not have a predisposition report or a risk and needs assessment, it was unable to properly consider the statutory factors or to draft an order with appropriate findings and conclusions. As discussed above, it was at respondent's request that the dispositional hearing was conducted immediately after the adjudication, and respondent fails to demonstrate prejudice. This assignment of error is overruled.

Finally, respondent argues that the trial court erred by denying her motion to dismiss the petition alleging that she had communicated a threat, in violation of N.C. Gen. Stat. § 14-277.1 (2005).

In ruling on a motion to dismiss for insufficient evidence, "the trial court must determine 'whether there is substantial evidence (1) of each essential element of the offense charged, . . . and (2) of defendant's being the perpetrator of such offense.' Substantial evidence is such relevant evidence as is necessary to persuade a rational [fact-finder] to accept a conclusion. The trial court must review the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Squires*, 357 N.C. 529, 535, 591 S.E.2d 837, 841 (2003) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)) (citations omitted).

"The elements of communicating a threat are that the defendant threatened a person, that the defendant communicated the threat to that person, that the defendant made the threat in such a manner and under such circumstances that a reasonable person would believe the threat was likely to be carried out, and that the person threatened believed that the threat was likely to be carried out. N.C.G.S. § 14-277.1 [(2005)]." *State v. Cunningham*, 344 N.C. 341, 360-61, 474 S.E.2d 772, 781 (1996) (citations omitted).

Officer French testified that respondent told him, "I'm going to kick your f[-]ing a[-]." Respondent concedes that this language constitutes a threat to Officer French. However, she challenges the sufficiency of the evidence that the threat was made under circumstances in which a reasonable person would believe it would be carried out, or that Officer French believed it was likely to be carried out.

There was evidence from which the trial court could find that respondent: (1) heard Officer French identify himself as a law enforcement officer, and order her brother to get down on the ground; (2) saw that Officer French was armed; (3) physically attacked him by using both her hands to grab the arm in which Officer French held a firearm; (4) had to be physically restrained by her mother to prevent her from attempting further interaction with Officer French; (5) was pepper-sprayed by Officer French; and (6) notwithstanding the pepper-spray and the presence of other officers, threatened to assault Officer French. Officer French testified that he believed respondent would have attempted to carry out her threat immediately but for the presence of other law enforcement officers. We conclude that this is sufficient evidence to withstand respondent's motion to dismiss.

For the reasons discussed above, we conclude that the trial court's orders of adjudication and disposition should be

Affirmed.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).