An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-935

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF: F.M.A., Juvenile

Surry County
No. 06 J 08-B

Appeal by juvenile from order entered 14 February 2006 by Judge Charles M. Neaves in Surry County District Court. Heard in the Court of Appeals 22 January 2007.

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

Allen W. Boyer, for respondent-appellant.

MARTIN, Chief Judge.

Juvenile F.M.A. was adjudicated delinquent for making a false bomb report, a serious offense under N.C. Gen. Stat. § 7B-2508 (2005). *See* N.C. Gen. Stat. § 14-69.1 (2005). Based on juvenile's low delinquency history, the court entered a "Juvenile Level 1 and 2 Disposition Order" placing him on probation for twelve months and ordering him, *inter alia*, to perform twenty-five hours of community service, to participate for twelve months in the Surry Friends of Youth Counseling Program, and to cooperate with placement in a wilderness program.

In his single assignment of error on appeal, juvenile contends "[t]he evidence provided the Court as shown in this record on

appeal was insufficient to allow a reasonable mind to conclude that [he] was guilty of the offense with which he was charged." In support of this assignment of error, juvenile shows that the court reporter was unable to transcribe the testimony at the delinquency hearing due to a problem with the recording device. When informed that the tapes of the hearing were inaudible, juvenile's appellate counsel wrote a letter to the assistant district attorney and to juvenile's trial attorney, seeking information about the testimony offered at the hearing. In her reply, the assistant district attorney provided appellate counsel with a list of the three State's witnesses: (1) Mount Airy Middle School Principal David Welch; (2) S.O., a classmate of juvenile; and (3) Mount Airy Police Officer W.D. Freed. According to appellate counsel, juvenile's trial attorney did not respond. Absent either a transcript or attorneys' notes reflecting the testimony adduced at the hearing, juvenile avers that the limited documentary evidence found in the record on appeal is insufficient to support an adjudication of delinquency.

As the appellant in this cause, juvenile bears the burden of providing this Court with a record that affirmatively shows error by the trial court. *See State v. Adams*, 335 N.C. 401, 409, 439 S.E.2d 760, 764 (1994); *Hicks v. Alford*, 156 N.C. App. 384, 389-90, 576 S.E.2d 410, 414 (2003). "'An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record.'" *Adams*, 335 N.C. at 410, 439 S.E.2d at 764

(quoting *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968)).

The Juvenile Code provides that delinquency hearings "shall be recorded by stenographic notes or by electronic or mechanical means." N.C. Gen. Stat. § 7B-806 (2005). We have held, however, that mere noncompliance with this provision does not constitute reversible error. *See, e.g.*, *In re Clark*, 159 N.C. App. 75, 80, 582 S.E.2d 657, 660 (2003). "A party, in order to prevail on an assignment of error under [N.C. Gen. Stat. §] 7B-806, must also demonstrate that the failure to record the evidence resulted in prejudice to that party." *Id.* Moreover, "[w]here a verbatim transcript of the proceedings is unavailable, there are 'means . . . available for [a party] to compile a narration of the evidence, i.e., reconstructing the testimony with the assistance of those persons present at the hearing.'" *Id.* (quoting *Miller v. Miller*, 92 N.C. App. 351, 354, 374 S.E.2d 467, 469 (1988) (alteration in original)). Specifically, N.C.R. App. P. 9(c)(1) provides that "testimonial evidence required to be included in the record on appeal . . . shall be set out in narrative form except where such form might not fairly reflect the true sense of the evidence received." Only "where the appellant has done all that []he can" to obtain a transcript or narrative summary of the hearing testimony will noncompliance with Rule 9 be excused. *Coppley v. Coppley*, 128 N.C. App. 658, 663, 496 S.E.2d 611, 616, *disc. review denied*, 348 N.C. 281, 502 S.E.2d 846 (1998).

We find no merit to juvenile's claim that the lack of a complete record on appeal precludes this Court from upholding the adjudication of delinquency. Juvenile does not assert that the lack of a transcript prevents him from demonstrating the insufficiency of the State's evidence of delinquency at the hearing. Instead, he argues that the limited evidence found in the record on appeal is insufficient to prove the allegations in the delinquency petition. As previously noted, however, it is juvenile's burden to assemble a complete record and to rebut the presumption of validity accorded to trial court proceedings. As we explained in a similar context: "Defendant argues in his brief, '[t]he incompleteness of the record precludes the State from satisfying its burden of pro[of] . . . beyond a reasonable doubt.' To the contrary, however, whatever incompleteness may exist in the record precludes defendant from showing that error occurred . . . ." *State v. Adams*, 335 N.C. 401, 410, 439 S.E.2d 760, 764 (1994).

While juvenile's appellate counsel presents documentation that no audible recording of the hearing testimony exists, he does not show any attempt to follow up with the assistant district attorney, or to contact the State's three witnesses to obtain a summary of their hearing testimony. Similarly, counsel does not purport to have sought assistance from juvenile, juvenile's parents, or any other persons present at the hearing to assemble a narrative of the evidence adduced at the delinquency hearing. Counsel's act of mailing a letter to each of the attorneys at the delinquency

hearing is insufficient to demonstrate his inability to meet his obligation of assembling an adequate record on appeal under N.C.R. App. P. 9(a)(1)(e), (c). Accordingly, we overrule his assignment of error.

To the extent juvenile's assignment of error can be construed as challenging the sufficiency of the State's evidence at the delinquency hearing, he has failed to assert or show that he made a timely motion to dismiss the petition at the conclusion of the State's evidence, as required to preserve this issue for appeal under N.C.R. App. P. 10(b)(3). He thus failed to preserve this issue for appellate review. *See In re Clapp*, 137 N.C. App. 14, 19, 526 S.E.2d 689, 693 (2000); *In re Davis*, 126 N.C. App. 64, 65-66, 483 S.E.2d 440, 441-42 (1997). We note that the record includes the following signed confession from juvenile, witnessed by Officer Freed at the Mount Airy Police Department on Monday, 12 December 2005, ten days after the false bomb report was made on Friday, 2 December 2005:

> Friday I was not doing what I was sopost to do so I got sent out into the hall but I wasen't mad about that though I was trying to be cool in front of everybody so I did the bomb threat. Then Wednesday everybody told me that denese wanted to kill me because she got in truble beccause I said she help me do the bomb threat. but I diden't know denese untill Wednesday when we talked about it. and then I got called into the office about the bomb threat.

(emphasis added). In light of this written confession, it appears the State's evidence was sufficient to withstand a motion to dismiss and to support the adjudication of delinquency.

Affirmed.

Judges McGEE and HUNTER concur.

Report per Rule 30(e).