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NO. COA07-1459

NORTH CAROLINA COURT OF APPEALS

Filed: 5 August 2008

IN THE MATTER OF:
D.G.

Mecklenburg County
No. 07-JB-31

Appeal by juvenile from adjudication order entered 6 July 2007 and disposition order entered on or about 11 July 2007 by Judge Rickye McKay-Mitchell in District Court, Mecklenburg County. Heard in the Court of Appeals 21 July 2008.

Court of Appeals

Attorney General Roy A. Cooper III, by Assistant Attorney General Nancy E. Scott, for the State.

Lisa Skinner Seller, for defendant-appellant.

Slip Opinion

STROUD, Judge.

Juvenile D.G. appeals from orders adjudicating him a delinquent juvenile and committing him to a youth development center. We affirm.

On 12 January 2007, the victim, a fifteen year old male, was attending Garinger High School in Charlotte, North Carolina. The victim was walking to class when juvenile walked up beside him and slapped him. The victim testified that he had never seen juvenile before. The victim started punching at juvenile. Juvenile used "something similar to . . . a boxcutter" to cut the victim. Eventually, the victim's sister broke up the fight. Afterward, the victim went to the hospital where he received 90 stitches in his

neck and 30 stitches in his face. The cuts to the victim's neck exposed his trachea and jugular vein, and nicked his thyroid gland. The wounds to the victim cut through four layers including, muscle, soft tissue and skin all the way down to the cheek bone. A physician's assistant testified that it took up to three hours for him to stitch the wound.

Juvenile did not testify at the delinquency hearing. Detective George Hudson of the Charlotte-Mecklenburg Police Department testified that juvenile told him he used "something similar to . . . a boxcutter" hidden in his right jacket sleeve. Detective Hudson further testified that juvenile told him that the day before he had been "bumped" by a girl that he believed to be a member of a gang. Juvenile believed that he saw a group of people gathering, including the girl who had bumped him, and it appeared they were moving toward him. Juvenile backed up against a wall and started "swinging wildly not particularly at any one individual" with the object similar to a boxcutter.

On or about 16 January 2007, a juvenile petition was filed alleging that juvenile had committed the offense of assault with a deadly weapon inflicting serious injury, in violation of N.C. Gen. Stat. § 14-32(b). On 6 July 2007, juvenile was adjudicated a delinquent juvenile. On or about 11 July 2007, the trial court ordered that "juvenile be committed to the Department of Juvenile Justice and Delinquency Prevention for placement in a youth development center for a minimum of six" months, not to exceed his eighteenth birthday. Juvenile appeals.

Juvenile first argues that the trial court erred by denying his motion to dismiss at the close of the evidence. Juvenile contends that he had the right to act in self-defense. We are not persuaded.

This Court has stated:

Self-defense, when asserted in a . . . juvenile delinquency case, cannot serve as a basis for dismissing the case. Evidence in support of the defense is to be considered, along with the other evidence in the case, to determine whether there is substantial evidence of each of the elements of the crime or delinquent act. If there is substantial evidence of each of the elements, the motion to dismiss is properly denied. . . . If the case does not involve a jury, as in a delinquency case, the trial court is to consider the evidence of self-defense and, if it finds the evidence persuasive, enter a finding that the allegations of the petition are "not proved."

In re Wilson, 153 N.C. App. 196, 198, 568 S.E.2d 862, 863 (2002) (internal citations omitted). In the instant case, juvenile does not contest that the State has presented substantial evidence of each of the elements of assault with a deadly weapon inflicting serious injury; therefore, we conclude the trial court did not err in failing to dismiss the petition at the close of all the evidence. See *id.* Furthermore, because "the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate[,]" *In Re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996), we likewise conclude the trial court did not err in rejecting the evidence on self-defense and adjudicating juvenile a delinquent juvenile.

Juvenile next argues that the trial court abused its

discretion by imposing a Level III disposition. Juvenile cites evidence that he has a low I.Q., a chaotic home life, and mental health issues.

After careful review of the record, briefs and contentions of the parties, we affirm. Juvenile notes the trial court was authorized to impose a Level II or III disposition. "[I]n those instances where there is a choice of [disposition] level, there are no specific guidelines solely directed at resolving that issue. Accordingly, choosing between two appropriate dispositional levels is within the trial court's discretion. Absent an abuse of discretion, we will not disturb the trial court's choice." *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002).

Pursuant to N.C. Gen. Stat. § 7B-2501(c):

In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S. 7B-2508, the court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, 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.

N.C. Gen. Stat. § 7B-2501(c) (2007). Here, the trial court found as fact: (1) juvenile functioned at "average intellectual level and had good introspection[;]" (2) juvenile's attendance at mental health treatment had been inconsistent and he did not regularly take his medication or comply with treatment; (3) the injuries to the victim could have resulted in the death of the victim; (4) juvenile showed no remorse for the assault; and (5) "[t]he offense was willful, aggressive, violent and premeditated." Additionally, the trial court found that while under house arrest pending trial and under the custody of his mother and aunt, juvenile was charged with several offenses, including

assault with intent to cause physical injury, criminal mischief, attempted robbery in the second degree causing physical injury, attempted criminal possession of stolen property, assault with intent to cause physical injury with a weapon, fourth degree grand larceny of property from a person, second degree attempted robbery, third degree attempted robbery, third degree menacing, petty larceny and second degree harassment by physical contact.

Based on these findings, the trial court stated that commitment would "ensure that [juvenile] receives the consistent therapeutic intervention that he is in need of while at the same time addressing the community's safety needs." In light of the trial court's findings, we conclude that the trial court did not abuse its discretion by choosing a Level III disposition. Accordingly, we affirm.

AFFIRMED.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).