

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-121

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

IN THE MATTER OF:

J.D.C.

Alamance County
No. 06 JB 219

Appeal by juvenile from order entered 10 August 2007 by Judge Bradley Reed Allen Sr. in District Court, Alamance County. Heard in the Court of Appeals 06 October 2008.

Attorney General Roy Cooper, by Assistant Attorney General Katherine Murphy, for the State.
Janna D. Allison, for juvenile-appellant.

WYNN, Judge.

In ruling on a motion to dismiss, the trial court must determine “whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense.”¹ Here, J.D.C., a juvenile, argues the trial court erred in denying his motion to dismiss because there was insufficient evidence that he was the perpetrator of the offense.

¹ *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002).

Because there was sufficient evidence that the juvenile was the person who committed the offense, we affirm.

A juvenile petition was filed alleging the juvenile feloniously possessed cocaine. The State's evidence presented at the adjudication hearing on 14 June 2007 tended to show that on 11 September 2006, Officer Enis Henderson was working for the Burlington Police Department when he was dispatched to an apartment complex around 10:23 P.M. to investigate a complaint about a group of juveniles. Officer Henderson spoke to the complainant when he reached the apartment complex, and he was directed behind the building. When he walked around the corner of the building, he saw a small group of individuals huddled together. Officer Henderson testified that one of the subjects looked at him, quickly turned and walked behind an electrical box, bent down and placed something behind the box, then walked back toward Officer Henderson. Officer Henderson approached the person and continued past him to the electrical box. With the aid of his flashlight, Officer Henderson found a small bag containing a white substance. He immediately went to the person he had seen walk behind the electrical box and arrested him for possession of cocaine.

While testifying, Officer Henderson initially identified the juvenile in the courtroom as the person he observed placing an item behind the electrical box on 11 September 2006 and who he subsequently arrested for possession of cocaine. However, on redirect examination, when Officer Henderson was asked if he was sure that the person he arrested was the juvenile, he replied, "I'm

more sure of his mother. I recognize her. But the person that I saw drop the bag was the person that I arrested or picked up." Officer Henderson then stated that he recognized the mother who picked up the juvenile on the night in question as the person sitting next to the juvenile in the courtroom. To clarify, the trial judge asked Officer Henderson if the juvenile was the person he saw go behind the electrical box, and Officer Henderson answered in the affirmative. However, on re-cross examination, when asked whether he was positive that this is the juvenile he picked up that evening, Officer Henderson replied, "No, I couldn't say that for certain." Upon further inquiry by the court, Officer Henderson stated that after the arrest he filled out paperwork with the juvenile's name on it, based on what the juvenile and the mother told him that night.

Testing of the substance by the State Bureau of Investigation determined that the bag retrieved from behind the electrical box contained less than 0.1 gram of cocaine. The juvenile did not present any evidence on his behalf.

The juvenile moved to dismiss the charge at the end of the State's evidence and again at the close of all the evidence. The trial court denied both motions. The juvenile was adjudicated delinquent for possession of cocaine and placed on probation for twelve months, subject to several conditions.

The juvenile contends the trial court erred in denying his motion to dismiss since Officer Henderson could not positively

identify the juvenile as the person he observed and arrested on the night of the incident. We disagree.

In an appeal from a juvenile case, a denial of a motion to dismiss is reviewed under the same standard as for adult offenders. *In re J.A.*, 103 N.C. App. 720, 724, 407 S.E.2d 873, 875 (1991). Upon a motion to dismiss, the trial court must determine "whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002). In reviewing a trial court's ruling on a motion to dismiss, "[t]he evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference of fact which may be drawn from the evidence." *In re J.A.*, 103 N.C. App. at 724, 407 S.E.2d at 875. Evidence may be direct, circumstantial, or both, as long as it substantially supports "a finding that the offense charged has been committed and that the defendant committed it." *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005) (quotation and citation omitted).

Here, Officer Henderson testified twice that the juvenile was the person he observed placing an item behind the electrical box and that he subsequently arrested for possession of cocaine. Although he then stated he was not certain of the juvenile's identity as the perpetrator of the crime, circumstantial evidence existed showing that the juvenile was the person who committed the crime. The person arrested gave the juvenile's name, as did the

juvenile's mother who showed up at the police station. The juvenile appeared for the hearing, and the same mother who picked up the juvenile on the night of the incident accompanied the juvenile to the hearing and identified herself as his mother. Officer Henderson remembered the mother from the night in question and recognized her in court. Taking the evidence in the light most favorable to the State, we find sufficient evidence was presented that the juvenile was the person who committed the offense of possession of cocaine on 11 September 2006. The trial court therefore did not err in denying the juvenile's motions to dismiss.

Affirmed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).