NO. COA08-222

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

IN THE MATTER OF:

A.C.,
Juvenile.

Martin County
No. 05-JB-63

Appeal by Juvenile from orders entered 2 November 2007 by Judge Christopher B. McLendon in District Court, Martin County. Heard in the Court of Appeals 9 September 2008.

Attorney General Roy Cooper, by Assistant Attorney General Lisa C. Glover, for the State.

Anne Bleyman for Respondent-Appellant.

McGEE, Judge.

Jeff Whitley (Whitley) went to his vehicle parked outside his place of business on the afternoon of 27 October 2006. Whitley's vehicle had been ransacked and several items had been stolen, including his cell phone. Whitley called police at approximately 3:30 p.m., and Officer Tony Bowen (Officer Bowen) responded to Whitley's call.

The Juvenile (A.C.) did not go to school on 27 October 2006, but instead spent the day with his aunt. Between 4:00 and 5:00 p.m. that afternoon, A.C.'s mother picked him up at his aunt's

house. A.C. showed his mother a cell phone, which she took away from him. Later that evening, Whitley received a telephone call from A.C.'s mother, telling him she had found Whitley's cell phone in A.C.'s possession. Whitley called Officer Bowen and told him about the conversation with A.C.'s mother. Officer Bowen contacted A.C.'s mother and asked that she and A.C. come to the police department, which they did.

At the police department, A.C.'s mother turned over the cell phone to Officer Bowen. Officer Bowen identified the cell phone as belonging to Whitley. During A.C.'s interview with Officer Bowen, A.C. told Officer Bowen that he had given one of his video games to a young man at his school in exchange for the cell phone at approximately 9:30 a.m. on 27 October 2006. Officer Bowen investigated A.C.'s claim and discovered that Whitley made his last phone call on his cell phone between 2:30 and 3:00 p.m. on 27 October 2006. Officer Bowen concluded that A.C. could not have received the cell phone at 9:30 a.m. on 27 October 2006, as he claimed.

Officer Bowen spoke with A.C. again, and A.C. gave him the name of the young man from whom he allegedly received the cell phone. Officer Bowen located the young man and asked him about the alleged exchange. The young man denied ever trading A.C. a cell phone for a video game. Officer Bowen spoke with A.C.'s mother and told her that A.C.'s story was not adding up. A.C.'s mother then told Officer Bowen that A.C. told her he received the cell phone from another young man. After speaking with A.C.'s mother and A.C.

about A.C.'s explanation having changed, Officer Bowen decided to seek petitions from the juvenile intake counselor.

Juvenile petitions were issued for A.C. on 3 May 2007 alleging one count of larceny and one count of possession of stolen goods. Following a hearing on 30 October 2007, A.C. was adjudicated delinquent, and the trial court ordered that A.C. be placed on Level 2 probation with certain conditions. Juvenile appeals.

I.

A.C. first argues that the trial court erred in denying his motion to dismiss in that there was insufficient evidence to prove beyond a reasonable doubt that he had possession of the cell phone. We disagree.

> In reviewing a challenge to the sufficiency of evidence, it is not our duty to weigh the evidence, but to determine whether there was substantial evidence to support the adjudication, viewing the evidence in the light most favorable to the State, and giving it the benefit of all reasonable inferences.

In re Heil, 145 N.C. App. 24, 29, 550 S.E.2d 815, 819 (2001) (citations omitted).

The petitions in the present case alleged that A.C. was delinquent for committing larceny pursuant to N.C. Gen. Stat. § 14-72(a) and for possessing stolen goods pursuant to N.C. Gen. Stat. § 14-71.1. The State produced no direct evidence of A.C.'s guilt. Instead, the State relied upon the doctrine of possession of recently stolen property. "The doctrine is a rule of law which allows the jury to presume that the possessor of stolen property is

guilty of larceny." *State v. Callahan*, 83 N.C. App. 323, 325, 350 S.E.2d 128, 130 (1986) (citation omitted), *disc. review denied*, 319 N.C. 225, 353 S.E.2d 409 (1987). "The State's evidence must establish the following facts in order to invoke the doctrine of recent possession: (1) the goods were stolen; (2) the goods were in [the] defendant's custody and control to the exclusion of others; and (3) [the] defendant possessed the property recently after the larceny." *State v. Washington*, 86 N.C. App. 235, 249, 357 S.E.2d 419, 429 (1987) (citation omitted), *cert. denied*, 322 N.C. 485, 370 S.E.2d 235 (1988). Defendant disputes the second element, claiming that the State did not introduce any evidence showing that A.C. ever had custody or control over the cell phone to the exclusion of others. We disagree.

"What amounts to exclusive possession of stolen goods to support an inference of a felonious taking most often turns on the circumstances of the possession." *State v. Maines*, 301 N.C. 669, 675, 273 S.E.2d 289, 294 (1981). The circumstances surrounding the possession in this case, as testified to by A.C.'s mother, are that A.C. had exclusive possession of the cell phone for a period of time prior to A.C. giving the cell phone to his mother. As the State argues, the fact that A.C. relinquished control over the cell phone to his mother is irrelevant in that the evidence tended to show that A.C. had exclusive possession of the cell phone for a time within a few hours after the cell phone was stolen. Because the evidence presented in the light most favorable to the State tended to show that A.C. was in possession of the stolen cell phone

recently after the larceny occurred, we conclude that the trial court did not err in denying A.C.'s motion to dismiss.

II.

A.C. argues that the trial court erred and improperly delegated its authority in proceeding to disposition without the mandated assessments having been performed and in issuing vague and burdensome orders. We agree in part and disagree in part.

A.

Risk and Needs Assessment

A.C. argues that the trial court erred when it failed to require that a risk assessment and needs assessment be conducted on A.C. prior to proceeding to the dispositional hearing. We disagree.

> The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where 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.

N.C. Gen. Stat. § 7B-2413 (2007). A.C. argues that neither a risk assessment nor a needs assessment was conducted in his case. However, the record shows otherwise. As the State points out, the record includes a "Juvenile's Information" form, which indicates that a risk assessment and needs assessment were conducted for A.C.

on 24 September 2007, approximately one month prior to A.C.'s 30 October 2007 hearing. In addition, the trial court stated in its disposition order that the trial court "received and considered" the predisposition report, risk assessment, and needs assessment. According to the record, a risk assessment and a needs assessment were conducted on behalf of A.C. and were considered by the trial court. Therefore, the trial court did not err.

B.

Conditions of probation vague and overburdensome

Conditions of probation must be sufficiently specific to be enforced. *In re Schrimpsher*, 143 N.C. App. 461, 468, 546 S.E.2d 407, 412 (2001). A.C. argues that certain conditions of his probation are vague and overburdensome. We agree in part and disagree in part.

The trial court included in its order a condition of intermittent confinement "if deemed necessary by [A.C.'s] court counselor and approved by the Court." A.C. argues that this condition is not specific as to where A.C. would be committed, what would make the commitment necessary, or what method the trial court would use in determining whether intermittent confinement was necessary. N.C. Gen. Stat. § 7B-2506(20) provides that the trial court may "[o]rder that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods . . . . The timing of this confinement shall be determined by the court in its discretion." We note that A.C. does not point us to any case law that requires a trial court to provide more

information than what is required by said statute, and our research shows no such case law. Since the trial court complied with the statute in that it stated in its order that A.C. be confined in an approved detention facility and serve up to fourteen days, we conclude that this condition is sufficiently specific to be enforced.

Additionally, A.C. argues that this condition of probation was an improper delegation of the trial court's authority. In support of his argument, A.C. primarily relies on *In re Hartsock*, 158 N.C. App. 287, 580 S.E.2d 395 (2003). In *In re Hartsock*, the trial court had ordered the juvenile to "cooperate with placement in a residential treatment facility *[i]f deemed necessary by MAJORS counselor or Juvenile Court Counselor.*" *Id.* at 291, 580 S.E.2d at 398 (alteration in original). This Court held that the trial court improperly delegated its authority "to [o]rder the juvenile to cooperate with placement in a residential treatment facility." *Id.* at 292, 580 S.E.2d at 399.

However, *In re Hartsock* is distinguishable from A.C.'s case. First, the holding from *In re Hartsock* to which A.C. refers in his brief concerns placement in a residential treatment facility pursuant to N.C. Gen. Stat. § 7B-2506(14), not intermittent confinement. Second, and most notably, when ordering intermittent confinement in A.C.'s case, the trial court maintained its authority by requiring that the trial court approve the court counselor's recommendation of intermittent confinement. Therefore, we conclude that the trial court's condition of intermittent

confinement is specific enough to be enforced and is not an improper delegation of its authority.

A.C. also argues that the trial court's order requiring A.C. to perform community service is not sufficiently specific. We agree. Pursuant to N.C. Gen. Stat. § 7B-2506(23), the trial court ordered A.C. to perform one hundred hours of community service "as directed by [A.C's] Court Counselor." N.C. Gen. Stat. § 7B-2506(23) provides that the trial court may "[o]rder the juvenile to perform up to 200 hours supervised community service consistent with the juvenile's age, skill, and ability, *specifying the nature of work* and the number of hours required. The work shall be related to the seriousness of the juvenile's offense." N.C. Gen. Stat. § 7B-2506(23) (2007) (emphasis added).

A.C. cites *In re T.K., III*, an unpublished opinion of this Court, in support of his argument. In *In re T.K., III*, the juvenile argued that the trial court erred when it ordered the juvenile to perform community service pursuant to N.C. Gen. Stat. § 7B-2506(6) because the trial court failed to specify the nature of the community service. *In re T.K., III*, No. COA06-638, 2007 WL 329394 (N.C. Ct. App. Feb. 6, 2007). However, our Court held that "[t]he trial court specified the nature of the juvenile's community service when it ordered him to perform seventy-five hours 'through the Project Challenge Program.'" *Id.* at *6. Using *In re T.K., III* as guidance, we conclude that although the trial court ordered that A.C.'s court counselor would direct the community service, the trial court's order did not sufficiently specify the nature of the

work to be performed. The trial court should have been more specific as to the actual nature of the community service and not have stated only by whom the community service would be directed. Thus, we remand for a specific order as to the nature of the community service A.C. is to perform.

A.C. next argues that the trial court's order that he not associate with "persons deemed to be a negative influence by parent or court counselor" was not sufficiently specific to be enforced. More specifically, A.C. argues that because the trial court did not find that A.C. had been associating with persons deemed to be a negative influence that this portion of the order is too vague to be enforceable. However, as the State points out, A.C.'s mother testified that she did not want A.C. to associate with a particular person who had been known to steal and whom A.C. implicated in the theft of Whitley's cell phone.

Also, A.C. argues that there was no guidance offered as to what would support a determination that a person was a "negative influence." However, the trial court ordered that A.C. not associate with "persons deemed to be a negative influence *by parent or court counselor*" (emphasis added). Thus, the condition is not too vague given that the order provides a way of determining that a person is a negative influence.

The State cites *In re Berry*, 33 N.C. App. 356, 235 S.E.2d 278 (1977), and *State v. Boggs*, 16 N.C. App. 403, 192 S.E.2d 29 (1972), in support of its position that the order is specific enough to be enforced. In *In re Berry*, this Court held that a condition that a

juvenile not associate with "anyone of questionable character or who is on probation" was sufficiently specific to be enforced. *In re Berry*, 33 N.C. App. at 360, 235 S.E.2d at 280. In *Boggs*, our Supreme Court held that the condition of probation requiring the defendant to "'[a]void persons or places of disreputable or harmful character' was within the power of the court to impose." *Boggs*, 16 N.C. App. at 406, 192 S.E.2d at 31.

Similar to *In re Berry* and *Boggs*, the record and transcript in this case demonstrate that this condition is fair and reasonable and relates to the needs of A.C. As well, after comparing the language of the conditions in the above cases to the language of the condition in this case, it is clear that the condition prohibiting A.C. from associating with persons deemed to be a negative influence is sufficiently specific to be enforced. We, therefore, overrule this assignment of error.

III.

A.C. finally argues that the trial court erred in ordering restitution without considering the best interests of the juvenile or his ability to pay. The State concedes that the record does not contain sufficient evidence to support the trial court's order.

The trial court may "require restitution, full or partial, up to five hundred dollars ($500.00), payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile." N.C. Gen. Stat. § 7B-2506(4) (2007). "However, . . . before ordering a juvenile to pay restitution, the trial court must make findings of fact, supported

by the record, which demonstrate that the best interest of the juvenile will be promoted by enforcement of the condition." *In re Schrimpsher*, 143 N.C. App. at 465, 546 S.E.2d at 411 (citation omitted). As both A.C. and the State point out, the trial court failed to make findings of fact demonstrating that A.C.'s best interest would be promoted by requiring him to pay restitution. Therefore, we vacate the portion of the trial court's order requiring A.C. to pay restitution.

In conclusion, we affirm the trial court's adjudication order of delinquency, we remand the disposition order for clarification of the nature of the community service ordered, and we vacate the order of restitution.

Affirmed in part; vacated in part; and remanded.

Judges McCULLOUGH and STROUD concur.

Report per Rule 30(e).