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NO. COA08-495

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2008

IN THE MATTER OF:  
T.P.

Mecklenburg County  
No. 07 J 820

Appeal by juvenile from orders entered 27 November 2007 and 11 December 2007 by Judge Regan Miller in Mecklenburg County District Court. Heard in the Court of Appeals 17 November 2008.

*Attorney General Roy Cooper, by Assistant Attorney General Ebony J. Pittman, for the State.*

*Carol Ann Bader, for juvenile-appellant.*

TYSON, Judge.

T.P. ("defendant"), a thirteen-year-old juvenile, appeals from orders entered adjudicating him to be delinquent and sentencing him to six months' probation. We affirm.

#### I. Background

On 14 July 2007, Renee Ann Bell ("Bell") returned to her apartment at approximately 12:30 p.m. and encountered an individual inside her kitchen. Bell yelled at the person, whom she "believed" was defendant, a person she had known for approximately two years. Defendant jumped through the kitchen window and fled from the scene. Bell found a cell phone and keys on her patio. Bell determined that the cell phone belonged to defendant because his name was on it. Bell returned inside her residence and found coins

strewn over her kitchen counter. Bell also discovered her daughter's X-Box<sup>®</sup> and iPod<sup>®</sup> were missing.

Bell walked to defendant's residence. Defendant answered the door and told Bell that he had not entered her residence. Defendant stated that another boy in the neighborhood was the culprit and he had loaned his cell phone to the individual. Defendant walked with Bell to the boy's residence, but no one answered the door. Bell turned over the cell phone and key chain to the police.

On 13 September 2007, a juvenile petition was filed alleging defendant was delinquent by committing the criminal offenses of felonious breaking and entering and felonious larceny pursuant to breaking and entering. The trial court found that defendant had committed the offenses and adjudicated defendant as delinquent and imposed a Level 1 disposition. Defendant appeals.

## II. Issue

Defendant argues the trial court erred when it denied his motion to dismiss for insufficient evidence.

### III. Motion to Dismiss

#### A. Standard of Review

A motion to dismiss in a juvenile delinquency proceeding action is governed by the same standards as an adult criminal prosecution. *In re Bass*, 77 N.C. App. 110, 115, 334 S.E.2d 779, 782 (1985). "In considering a juvenile's motion to dismiss, the trial court must determine whether there is substantial evidence of each essential element of the charged offense and whether the

juvenile was the perpetrator of the offense." *In re Rhyne*, 154 N.C. App. 477, 481, 571 S.E.2d 879, 881 (2002), *disc. rev. denied*, 356 N.C. 672, 577 S.E.2d 637 (2003).

In deciding a motion to dismiss, the trial court must consider the evidence in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). Contradictions and discrepancies in the evidence are to be disregarded and left for resolution by a jury. *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980).

#### B. Analysis

Generally, the credibility of identification testimony is a jury's determination, but "[t]his rule does not apply [when] the only evidence identifying the defendant as the perpetrator of the offense is inherently incredible because of undisputed facts, clearly established by the State's evidence, as to the physical conditions under which the alleged observation occurred." *State v. Miller*, 270 N.C. 726, 731, 154 S.E.2d 902, 905 (1967). If, however, "there is a reasonable possibility of observation sufficient to permit subsequent identification, the credibility of the witness' identification of the defendant is for the jury, and the court's doubt upon the matter will not justify granting a motion for judgment of nonsuit . . . ." *Id.* at 732, 154 S.E.2d at 906.

Here, Bell viewed the perpetrator in the midday light. Bell testified she could see clearly into her residence and had known

defendant for approximately two years, which gave her a basis to recognize defendant. Bell's identification of defendant is corroborated by her discovery of defendant's cell phone and key chain on the patio, the path through which the perpetrator had run just moments before being encountered. A fact-finder could reasonably conclude that defendant was the perpetrator of the offenses charged. The trial court properly denied defendant's motion to dismiss. This assignment of error is overruled.

V. Conclusion

The trial court properly denied defendant's motion to dismiss where the State presented sufficient evidence of each essential element of the crimes committed and that defendant was the perpetrator of said offenses. The trial court's disposition order is affirmed.

Affirmed.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).