NO. COA09-1340

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

IN THE MATTER OF J.D.R. Buncombe County
No. 08 JB 441

Appeal by juvenile from orders entered by Judge J. Calvin Hill in Buncombe County District Court. Heard in the Court of Appeals 9 March 2010.

Attorney General Roy Cooper, by Assistant Attorney General William P. Hart, Jr., for the State.

Richard Croutharmel, for juvenile-appellant.

ERVIN, Judge.

Juvenile J.D.R. appeals from an order finding him to be a delinquent juvenile on the grounds that the trial court erred by concluding that the evidence was sufficient to support a finding of responsibility that (1) he wantonly and willfully burned a schoolhouse in violation of N.C. Gen. Stat. § 14-60 and (2) that he created a public disturbance that interfered with the education of others in violation of N.C. Gen. Stat. § 14-288.4(a)(6).[1] In addition, Juvenile argues that the trial court erred by denying his

[1] As will be discussed in more detail below, Juvenile's challenge to the sufficiency of the evidence to support the trial court's decision to find him responsible for creating a public disturbance in violation of N.C. Gen. Stat. § 14-288.4(a)(6) is couched as both a direct challenge to the trial court's orders and as an ineffective assistance of counsel claim.

motion to suppress an inculpatory statement on the grounds that he had not freely and voluntarily waived his rights against self-incrimination. After careful consideration of the arguments that Juvenile has advanced on appeal in light of the record and the applicable law, we conclude that the trial court's orders should be affirmed.

I. Factual Background

A. Substantive Facts

1. State's Evidence

At approximately 1:30 p.m. on 20 November 2008, Matthew Carpenter, a teacher at Erwin High School in Asheville, North Carolina, smelled smoke. Upon briefly investigating the situation, Mr. Carpenter discovered that the smoke was emanating from a bathroom located immediately outside his classroom on the third floor. After Mr. Carpenter opened a panel on the bathroom's wall, a considerable amount of smoke escaped, prompting him to direct a fellow teacher to pull the nearby fire alarm.

Edward Burchfiel, Erwin's principal, was in his office when the fire alarm sounded. After locating the source of the alarm on the fire alarm panel in his office, Mr. Burchfiel and Assistant Principal Terry Gossett immediately went to the third floor in order to assess the situation. After discovering burning paper towels at the bottom of a pipe chase that was accessed through the bathroom wall, Mr. Gossett put out the fire using a fire extinguisher. Approximately 1300 people were evacuated from the school for safety-related reasons as a result of the fire.

Buncombe County Arson Task Force Investigator Jeffrey Tracz came to Erwin for the purpose of investigating the incident. Upon arriving at the school, Officer Tracz went to the third floor bathroom. After examining the situation there, Officer Tracz determined that the fire did not have an electrical origin and ruled out other causes as well. Ultimately, Officer Tracz concluded that someone had started the fire, as opposed to it having begun spontaneously. At that point, Officer Tracz headed to the first floor administrative offices in order to speak with the alleged culprits.

In the meantime, Assistant Principal Jim Brown examined surveillance videos for the purpose of identifying the individuals who had been in the vicinity of the bathroom prior to the start of the fire. The video evidence showed that Juvenile and a second student had entered the bathroom around the time that the fire began. After identifying the two juveniles, Dr. Brown had them taken to separate first floor offices and questioned. Mr. Burchfiel questioned Juvenile while Dr. Brown questioned the other student.

At the beginning of his conversation with Mr. Burchfiel, Juvenile denied any involvement in setting the fire. Subsequently, however, Juvenile admitted that he and the other student had entered the bathroom together, that he had handed a cigarette lighter to the other student, and that the other student lit and quickly dropped a paper towel down the pipe chase. The other student independently confirmed Juvenile's account while talking

with Dr. Brown. In a written statement which he prepared at Mr. Burchfiel's request, Juvenile stated that "[w]e walked into the bathroom and my friend . . . was in the back stall looking down into the hole and it caught a paper towel on fire to start it so we got up and got out of there."

After Juvenile drafted this statement, Officer Tracz joined the investigation. Officer Tracz read a Constitutional Rights Warning/Waiver certificate to Juvenile and explained this document to Juvenile's father upon his arrival at the school. Juvenile's father instructed his son to cooperate with the investigation.

2. Juvenile's Evidence

On 20 November 2008, Juvenile, a freshman at Erwin, ate lunch in the school cafeteria with his mother, who was at the school in order to discuss concerns that Juvenile was being bullied. After finishing lunch, Juvenile announced that he needed to go to the bathroom. Juvenile's mother directed him to use the third floor bathroom in order to avoid encountering the alleged bully. In addition, Juvenile's mother asked the other student to accompany Juvenile in case he encountered the bully. After the two students reached the bathroom, Juvenile mentioned that he had a cigarette lighter and said that he had previously thrown a cigar down a pipe chase which was accessed through a panel in the bathroom wall. The other student ignited a paper towel with Juvenile's lighter and dropped the burning towel down the pipe chase. After looking into the pipe chase and seeing a spark, Juvenile attempted to extinguish the fire by putting water into a plastic bag and pouring it down

the pipe chase. As a result of his belief that any fire that might have been set in the pipe chase had been extinguished, Juvenile closed the panel leading to the pipe chase, after which the two students left the bathroom. In light of his concern that another individual in the bathroom had observed him in possession of the cigarette lighter, Juvenile hid it outside the school after departing from the bathroom.

B. Procedural History

On 22 December 2008, Officer Tracz filed two juvenile petitions with the Buncombe County District Court, one of which alleged that Juvenile should be adjudicated delinquent for having violated N.C. Gen. Stat. § 14-60 (felonious burning of a school building) and the other of which alleged that Juvenile should be adjudicated delinquent for having violated N.C. Gen. Stat. § 14-288.4(a)(6) (causing a disturbance at an educational institution). Both petitions were approved for filing on 30 December 2008. On 13 July 2009, Juvenile filed a motion seeking the suppression of "the statements made by the Juvenile on or about the 20th day of November, 2008, which the Juvenile is informed, believes and, therefore, alleges[] the State intends to use at the adjudicatory hearing of this case."

On 13 July 2009, adjudication and disposition hearings were conducted before the trial court. The trial court denied Juvenile's suppression motion on the grounds that Juvenile "was not in custody when [the] statement was given" and that his statement "was given freely and voluntarily." At the conclusion of the

proceedings, the trial court adjudicated Juvenile as delinquent on the basis of findings that he was responsible for committing both of the offenses alleged in the petitions and found that Juvenile was within the trial court's dispositional authority as a result of the fact that he had committed serious offenses as defined in N.C. Gen. Stat. § 7B-2508(a). At the dispositional phase of the proceeding, the trial court determined that it was required to order a Level 1 disposition and placed Juvenile on probation for a period of twelve months subject to the supervision of a court counselor. Juvenile noted an appeal to this Court from the trial court's orders.

II. Analysis

A. Motion to Suppress

In his first argument on appeal, Juvenile contends that the trial court erred by denying his motion to suppress the statement that he gave to Mr. Burchfiel. In essence, Juvenile contends that he was in custody at the time that he gave this statement, that Mr. Burchfiel was acting on behalf of law enforcement at the time that he questioned Juvenile, that he was not properly advised of his constitutional and statutory rights before making his statement to Mr. Burchfiel, and that Juvenile's statement to Mr. Burchfiel was not freely and voluntarily made. We disagree.[2]

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[2] In its brief, the State contends, in reliance on decisions such as *Price v. Whisnant*, 232 N.C. 653, 656, 62 S.E.2d 56, 59 (1950) (stating that "[t]he admission of this evidence without objection, rendered harmless the previously admitted evidence of similar import over objection"), that Juvenile waived his right to object to the denial of his suppression motion by testifying to essentially the same facts as those contained in his statement to

In the event of an appellate challenge to the denial of a motion to suppress, the trial court's findings of fact are binding if supported by competent evidence, even though the record may also contain evidence that would support a contrary finding as well. On the other hand, the trial court's conclusions of law are subject to *de novo* review and must be legally correct and supported by the findings of fact. *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001). We now proceed to evaluate Juvenile's appellate challenge to the trial court's decision to deny his suppression motion in light of the applicable standard of review.

The custodial interrogation of criminal suspects conducted by law enforcement officials is subject to procedural safeguards "effective to secure the privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. 436, 444-45, 16 L. Ed.2d 694, 706 (1966). The protections afforded by *Miranda* and codified and enhanced in the juvenile context by N.C. Gen. Stat. § 7B-2101(a) "apply only to custodial interrogations by law enforcement." *In re J.D.B.*, 363 N.C. 664, 669, 686 S.E.2d 135, 138 (2009). In other words, a juvenile is not entitled to the exclusion of evidence obtained in the absence of effective warnings under *Miranda* and

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Mr. Burchfiel when he took the stand at the adjudication hearing. However, since "[a]n objecting party does not waive its objection to evidence the party contends is inadmissible when that party seeks to explain, impeach or destroy its value on cross-examination," *State v. Anthony*, 354 N.C. 372, 408, 555 S.E.2d 557, 582 (2001), *cert. denied*, 536 U.S. 930, 153 L. Ed. 2d 791 (2002) (citing *State v. Adams*, 331 N.C. 317, 328, 416 S.E.2d 380, 386 (1992), and since we conclude that Juvenile's testimony represented an attempt to explain the State's case by putting his conduct in a more favorable light, we conclude that Juvenile has not waived his right to challenge the denial of his suppression motion on appeal.

N.C. Gen. Stat. § 7B-2101(a) unless he or she was "in custody" at the time the incriminating statement was made. *Id.*; *see also Buchanan*, 353 N.C. at 337, 543 S.E.2d at 826 (citing *Oregon v. Elstad*, 470 U.S. 298, 306-07, 84 L. Ed. 2d 222, 230-31 (1985)).

A suspect has been subjected to custodial interrogation if, under the totality of the circumstances, there was a "formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest." *Buchanan*, 353 N.C. at 339, 543 S.E.2d at 828 (citations and internal quotation marks omitted); *see also In re J.D.B.*, 363 N.C. at 669, 686 S.E.2d at 138. The standard for determining whether an individual is in custody is an objective one that examines whether "a reasonable person in [Juvenile's] position would have believed that he was under arrest or was restrained in his movement to that significant degree."[3] *State v. Garcia*, 358 N.C. 382, 396-97, 597 S.E.2d 724, 737 (2004) (citing *Buchanan*, 353 N.C. at 339-40, 543 S.E.2d at 828). As the Supreme Court has noted, however, "[t]he uniquely structured nature of the school environment inherently deprives students of some freedom of action." *In re J.D.B.*, 363 N.C. at 669, 686 S.E.2d at 138. In order for a student in the school setting to be deemed "in custody" for purposes of *Miranda* and N.C. Gen. Stat. § 7B-2101(a), law

[3] Juvenile contends that the "in custody" issue should be evaluated based on what a reasonable person of Juvenile's age would have believed. However, the Supreme Court stated in *In re J.D.B.*, 363 N.C. at 672, 686 S.E.2d at 140, that "we decline to extend the test for custody to include consideration of the age and academic standing of an individual subjected to questioning by police." Thus, the relevant question is what a reasonable person in general, rather than a reasonable person of Juvenile's age, would have believed.

enforcement officers must subject the student to a "'restraint on freedom of movement' that goes well beyond the limitations that are characteristic of the school environment in general." *Id.*, (citing *Buchanan*, 353 N.C. at 338, 543 S.E.2d at 827).

In this case, the trial court orally recited the following findings and conclusions at the end of the hearing held concerning Juvenile's suppression motion:

> The testimony was that this young man, [Juvenile], was taken to the principal's office, Principal Burchfiel, not by law enforcement, but by another assistant principal and once he got to Principal Burchfiel's office, at least for some amount of time, that Principal Burchfiel talked to him alone, asked him what happened. He heard that statement orally and then asked him to write it out. This officer was pretty certain that he had not asked him to write a statement. Principal Burchfiel was certain that he asked him to write it. So I'm satisfied that the statement was written in the presence of Principal Burchfiel as a result of his investigation. There had been a fire in the bathroom. That fire was hidden from sight, pretty much. They actually had to look for it and find it. The principal had an ongoing duty to try and find out, No. 1, if there were anymore fires or danger for the students that remained there. He did that by way of questioning this young man. There was another officer who was around, she says probably in the next office. But by everybody's testimony, she did not participate in that questioning. So he was not in custody when that statement was given. It was given freely and voluntarily, and your motion to suppress is denied.

After carefully reviewing the record, we conclude that the trial court's findings of fact are supported by competent evidence.[4] For

[4] Although the trial court never entered a written order denying Juvenile's suppression motion that contained formal

example, during the hearing held in connection with Juvenile's suppression motion, Mr. Burchfiel testified that Juvenile had been escorted to the administrative office by an assistant principal. After admitting his involvement in the series of events that led to the fire during his conversation with Mr. Burchfiel, Juvenile drafted a written statement admitting his involvement before Officer Tracz entered the room in which Mr. Burchfiel's questioning had occurred. When asked whether anyone else was present at that time, Mr. Burchfiel confirmed the presence of an assistant principal. However, Mr. Burchfiel stated that he did not think Officer Vicky Hutchinson, the school resource officer, had been in his office "at that time." Mr. Burchfiel explained that the school's routine policy when investigating incidents was to "speak with the student and then . . . have them to write out a statement." Mr. Burchfiel never told Juvenile he could not leave or prohibited Juvenile from departing the room in which the questioning took place. Officer Hutchinson confirmed that she was not present when Juvenile was questioned, since her friendship with Juvenile's mother caused her to "distance [her]self from involvement." Officer Tracz also denied being present when Mr. Burchfiel questioned Juvenile and testified that Officer Hutchinson "was [not] in there at all."

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findings of fact and conclusions of law, the trial court's oral comments, which delineated what it believed the credible evidence to show and the legal basis upon which it denied Juvenile's suppression motion, constituted sufficient findings and conclusions for purposes of appellate review. *In re M.L.T.H.*, __ N.C. __, __, 685 S.E.2d 117, 122 (2009), *disc. review granted*, __ N.C. __, __ S.E.2d. __ (2010).

Juvenile's version of the events that occurred during his questioning by Mr. Burchfiel differed from the description of that process provided by Mr. Burchfiel, Officer Tracz, and Officer Hutchinson.[5] Among other things, Juvenile pointed out that he was questioned when his parents were not present and stated that he did not believe that he was free to leave. However, "[t]he subjective belief of [Juvenile] as to his freedom to leave is not in and of itself determinative" of whether an individual is "in custody." *State v. Jones*, 153 N.C. App. 358, 365, 570 S.E.2d 128, 134 (2002) (citation omitted). As a result, Juvenile's assertion that he believed himself to have been involuntarily detained does not establish that he was subjected to custodial interrogation at the time that he made his statement to Mr. Burchfiel. On the contrary, for there to be an "objective showing that one is 'in custody,'" the circumstances that the Supreme Court has deemed most relevant "include a police officer standing guard at the door, locked doors or application of handcuffs." *In re J.D.B.*, 363 N.C. at 669, 686 S.E.2d at 138 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 64 L. Ed. 2d 497, 509 (1980)).

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[5] For example, Juvenile initially testified that "Dr. Brown, Mr. Burchfiel, Officer Hutchinson, Officer Tracz, and" another assistant principal were present when he drafted his inculpatory statement. A few minutes later, however, Juvenile explained that "[n]obody was in there when I wrote it," but that "Officer Tracz told- - asked me to go into his office and write a written statement, and so I did." In view of the fact that the trial court adopted the account proffered by the State's witnesses, instead of that advanced by Juvenile, in its findings of fact and the fact that Juvenile has not challenged the trial court's factual findings on appeal, we are bound by the trial court's findings for purposes of deciding the present appeal despite the presence of conflicting evidence in the record.

The evidence concerning the circumstances surrounding Juvenile's questioning by Mr. Burchfiel does not suffice to establish the required significant restraint on Juvenile's "freedom of movement" over and above that inherent in the school environment needed to undercut the trial court's determination that Juvenile was not in custody at the time that he made his inculpatory statement to Mr. Burchfiel. According to Mr. Burchfiel, Officer Hutchinson and Officer Tracz, "everybody was going in and out of different offices, different rooms," a fact that establishes that the door to the room in which Mr. Burchfiel questioned Juvenile was not locked. The fact that the record contains evidence to the effect that neither Officer Hutchinson nor Officer Tracz were present during the questioning conducted by Mr. Burchfiel provides support for the trial court's conclusion that Juvenile was not in law enforcement custody during his questioning by Mr. Burchfiel. Similarly, the fact that Juvenile was escorted to the room in which he was questioned by Mr. Burchfiel and may have been instructed not to leave by Dr. Brown does not establish that Juvenile was subjected to custodial interrogation given the limitations on student freedom of movement that are inherent in a school environment. *In re J.D.B.*, 363 N.C. at 669-71, 686 S.E.2d at 139. Finally, the record contains no indication that any other sort of physical restraint was imposed upon Juvenile. As a result, after considering the totality of the circumstances, we conclude that the trial court correctly determined that Juvenile was not "in custody" at the time he was questioned by Mr. Burchfiel.

In addition, the fact that Juvenile was questioned by Mr. Burchfiel, rather than a law enforcement officer, provides further justification for a conclusion that Juvenile was not subjected to custodial interrogation for purposes of *Miranda* and N.C. Gen. Stat. § 7B-2101(a). "Custodial interrogation refers to questioning initiated by law enforcement officers after the accused has been deprived of his freedom." *State v. Etheridge*, 319 N.C. 34, 43, 352 S.E.2d 673, 679 (1987). "[S]tatements made to private individuals unconnected with law enforcement are admissible so long as they were made freely and voluntarily." *Etheridge*, 319 N.C. at 43, 352 S.E.2d at 679.

> Our appellate court decisions are replete with examples of individuals who, though occupying some official capacity or ostensible position of authority, have been ruled unconnected to law enforcement for *Miranda* purposes. See *State v. Barnett*, 307 N.C. 608, 300 S.E.2d 340 (1983) (magistrate not government agent where no evidence that police requested that he speak to defendant); *State v. Conard*, 55 N.C. App. 63, 284 S.E.2d 557 (1981), *disc. rev. denied,* 305 N.C. 303, 290 S.E.2d 704 (1982) (magistrate not a representative of the police); *State v. Perry*, 50 N.C. App. 540, 274 S.E.2d 261, *disc. rev. denied*, 302 N.C. 632, 280 S.E.2d 446 (1981) (bail bondsman not a law enforcement officer in spite of ability to make arrests); *In re Weaver*, 43 N.C. App. 222, 258 S.E.2d 492 (1979) (DSS worker not acting on behalf of law enforcement officers); *State v. Johnson*, 29 N.C. App. 141, 223 S.E.2d 400, *disc. rev. denied*, 290 N.C. 310, 225 S.E.2d 831 (1976) (radio dispatcher employed by police department not acting as a law enforcement officer). Particularly illuminating are those cases holding that medical personnel and hospital workers did not function as agents of the police where the accused made incriminating statements on his own initiative, out of the presence of police, and in response to questions not supplied by

> police. See, e.g., *State v. Alston*, 295 N.C. 629, 247 S.E.2d 898 (1978) (statement to hospital desk clerk admissible); *State v. Cooper*, 286 N.C. 549, 213 S.E.2d 305 (1975) (statements to nurse, doctor, and medical attendant admissible).

Etheridge, 319 N.C. at 43, 352 S.E.2d at 679. Although Juvenile contends, on the basis of the fact that he gave Juvenile's statement to Officer Tracz and the contention that Officer Hutchinson was in the vicinity during the questioning process, that Mr. Burchfiel was acting in a law enforcement capacity at the time that he questioned Juvenile, we conclude that the record amply supports the trial court's conclusion to the contrary.

As a general proposition, school officials do not function as law enforcement officers. The foremost priority of a school principal is undoubtedly student safety. Accordingly, Mr. Burchfiel "had an ongoing duty to try and find out, No. 1, if there were anymore fires or danger for the students that remained there." As part of the process of determining whether a continued danger existed at Erwin in the aftermath of the fire, Mr. Burchfiel had little choice except to attempt to find out what had happened and to take steps to address any additional problems that might be identified during that process. Thus, instead of acting as an agent of law enforcement at the time that he questioned Juvenile, Mr. Burchfiel was carrying out his duties as a school administrator with responsibility for ensuring that the Erwin facility and its students were no longer in jeopardy. The fact that Mr. Burchfiel gave the statement which he obtained from Juvenile to Officer Tracz does not change the fact that, at the time that he took that

statement, he was acting in his capacity as a school administrator rather than as an agent of law enforcement. Similarly, in the absence of evidence that Officer Hutchinson did more than come in and out of the room in which Mr. Burchfiel was questioning Juvenile, the fact that a school resource officer was in the vicinity does not establish that Juvenile was questioned by agents of law enforcement. *In re W.R.*, 363 N.C. 244, 675 S.E.2d 342 (2009) (stating that, in the absence of evidence that "the school resource officer[] actual[ly] participat[ed] in the questioning of" the student, "the presence and participation of the school resource officer at the request of school administrators conducting the investigation [did not] render[] the questioning of [the student] a 'custodial interrogation,' requiring *Miranda* warnings and the protections of N.C. [Gen. Stat.] § 7B-2101"). Thus, the trial court correctly concluded that Juvenile's statement was not obtained in violation of his rights under *Miranda* and N.C. Gen. Stat. § 7B-2101(a) for this reason as well.

Finally, Juvenile contends, despite the trial court's determination to the contrary, that the statement that he gave to Mr. Burchfiel was not made freely and voluntarily. In support of this contention, Juvenile points to the fact that he was not advised that any statement that he made could be used against him or that he had a right to the presence of a parent during any questioning. Based on these facts, Juvenile contends that he was tricked into making his statement to Mr. Burchfiel. At bottom, however, Juvenile's argument amounts to a reiteration of his

contention that he should have been advised of and freely and voluntarily waived his rights under *Miranda* and N.C. Gen. Stat. § 7B-2101(a) as a prerequisite for the admission of his statement to Mr. Burchfiel into evidence. "However, police coercion is a necessary predicate to a determination that a . . . statement was not given voluntarily . . .." *State v. McKoy*, 323 N.C. 1, 21-22, 372 S.E.2d 12, 23 (1988), *sentence vacated on other grounds*, 494 U.S. 433, 108 L. Ed. 2d 369 (1990) (citing *Colorado v. Connelly*, 479 U.S. 157, 93 L. Ed. 2d 473 (1986)); *see also Etheridge*, 319 N.C. at 44, 352 S.E.2d at 679 (noting that a statement to an individual not acting as a law enforcement officer was not made involuntarily since "[d]efendant was not under any compulsion to answer the questions and the record reveals no evidence of subtle coercion in the exchange"). As a general proposition, establishing the lack of voluntariness usually involves proof of circumstances such as the use of deceit or trickery, holding the subject incommunicado, subjecting the subject to "prolonged uninterrupted interrogation" or "physical threats or shows of violence," the making of "promises to him in return for his confession," or other types of "mental or psychological coercion or pressure." *State v. Jackson*, 308 N.C. 549, 582 (1986), *judgment vacated on other grounds*, 479 U.S. 1077, 94 L. Ed. 2d 133 (1987) (citing *Carter v. Garrison*, 656 F.2d 68 (4th Cir. 1981), *cert. denied*, 455 U.S. 952, 71 L. Ed. 2d 668 (1982); *Davis v. North Carolina*, 384 U.S. 737, 16 L. Ed. 2d 895 (1966); *State v. Morgan*, 299 N.C. 191, 261 S.E.2d 827, *cert. denied*, 446 U.S. 986, 64 L. Ed. 2d 844 (1980); *Brown v.*

Mississippi, 297 U.S. 278, 80 L. Ed. 682 (1936); and *Schneckloth v. Bustamonte*, 412 U.S. 218, 36 L. Ed. 2d 854 (1973)). The mere fact that Juvenile was not informed that his statement might be used against him or that he had the right to have a parent present during questioning does not establish that Juvenile was tricked into making a statement or that his statement was otherwise made involuntarily. In view of the total absence of any evidence tending to show that Juvenile's statement was not freely or voluntarily made, we conclude that the trial court did not err in rejecting this aspect of Juvenile's objection to the admission of his statement to Mr. Burchfiel into evidence. As a result, for all of the reasons set forth above, the trial court did not err in denying Juvenile's suppression motion.[6]

B. Sufficiency of the Evidence

Secondly, Juvenile contends that he is entitled to appellate relief on the grounds that the evidence was insufficient to support the trial court's determination that he had the intent necessary to support a finding of responsibility for wantonly and willfully burning a schoolhouse. After carefully examining Juvenile's

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[6] In addition to the arguments discussed in the text, Juvenile challenges the fairness of the manner in which the trial court conducted the suppression hearing on the grounds that it "allowed the prosecutor to question [Juvenile] about what happened in the bathroom" despite the fact that such testimony was irrelevant to the admissibility of Juvenile's statement. However, since Juvenile concedes that he "can point to no record evidence that the trial judge relied on this information in ruling that his statements to [Mr.] Burchfiel were admissible," any error that the trial court may have committed in allowing the challenged inquiry did not prejudice Juvenile's chances for a more favorable ruling at the suppression hearing.

argument, we conclude that it provides no basis for an award of appellate relief.

Before addressing Juvenile's argument on the merits, we must first consider whether Juvenile adequately preserved this issue for appellate review. At the conclusion of the State's evidence, Juvenile unsuccessfully sought dismissal of the burning a schoolhouse charge for insufficiency of the evidence. However, Juvenile failed to renew his dismissal motion at the close of all evidence. According to N.C.R. App. P. 10(a)(3), "a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dimiss the action or for judgment as in case of nonsuit, is made at trial." As a result, "if a [juvenile] fails to move to dismiss the action . . . at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged." *In re K.T.L.*, 177 N.C. App. 365, 369, 629 S.E.2d 152, 155 (2006) (citation omitted). Thus, Juvenile did not properly preserve the right to challenge the sufficiency of the evidence to support the trial court's decision to find him responsible for wantonly and willfully burning a schoolhouse in violation of N.C. Gen. Stat. § 14-60.

Juvenile argues, however, that he has adequately preserved his sufficiency of the evidence challenge for purposes of appellate review on the basis of our decision in *In re S.M.*, 190 N.C. App. 579, 660 S.E.2d 653 (2008). In *In re S.M.*, we held that the juvenile's failure to renew her dismissal motion at the close of

all of the evidence did not preclude consideration of her sufficiency of the evidence claim given the fact that she made vigorous challenge to the insufficiency of the evidence to support a finding of responsibility in closing argument. In reaching this conclusion, we noted that:

> At the close of the State's evidence, Respondent moved for dismissal for insufficient evidence, and her motion was denied. Respondent did not offer any witness testimony; her evidence consisted of . . . written statements by several teachers. After Respondent introduced these statements, she rested her case and the trial court immediately asked "Would you like to be heard." Respondent's counsel argued vigorously that the evidence was insufficient to support the charged offense. We conclude this is sufficient to preserve [R]espondent's right to review.

In re S.M., 190 N.C. App. at 581-82, 660 S.E.2d at 655. In this case, however, Juvenile offered the testimony of three live witnesses and did not clearly challenge the sufficiency of the evidence, as compared to its weight, in his closing argument. As a result, given the fact that Juvenile did not renew his dismissal motion at the conclusion of all of the evidence and the sharp differences between the facts present in *In re S.M.* and those at issue here, we conclude that Juvenile has not properly preserved this issue for appellate review. Even if we were to reach the merits of Juvenile's claim, however, he would not be entitled to appellate relief under the well-established standard which we utilize in reviewing sufficiency of the evidence claims.

"Where the juvenile moves to dismiss, the trial court must determine 'whether there is substantial evidence (1) of each

essential element of the offense charged . . . and (2) of [the juvenile's] being the perpetrator of such offense." *In re S.M.*, 190 N.C. App. at 581, 660 S.E.2d at 654. "'Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion." *In re S.M.S.*, __ N.C. App. __, __, 675 S.E.2d 44, 45 (2009) (quoting *In re S.R.S.*, 180 N.C. App. 151, 156, 636 S.E.2d 277, 281 (2006)); see also *State v. Frogge*, 351 N.C. 576, 584, 528 S.E.2d 893, 899, *cert. denied*, 531 U.S. 994, 148 L. Ed. 2d 459 (2000). "In reviewing [the denial of] a motion to dismiss a juvenile petition, the evidence must be considered in the light most favorable to the State, which is entitled to every reasonable inference that may be drawn from the evidence." *In re B.D.N.*, 186 N.C. App. 108, 111-12, 649 S.E.2d 913, 915 (2007) (citation omitted). "'Whether evidence presented constitutes substantial evidence is a question of law for the court.'" *State v. Stager*, 329 N.C. 278, 322, 406 S.E.2d 876, 901 (1991) (quoting *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991)).

According to Juvenile, the trial court erred by denying his motion to dismiss the wanton and willful burning of a schoolhouse charge because the crime in question requires proof of a specific intent and because the evidence presented at trial did not establish the existence of the requisite intent. In essence, Juvenile argues that the undisputed evidence demonstrates that he gave the lighter to the other student, who ignited a paper towel that eventually fell down the pipe chase and set fire to other flammable materials. Juvenile contends that, at the time that he

gave the lighter to the other student, he had no reason to believe that the other student would use the lighter for any purpose other than illuminating the pipe chase. After realizing the other student might have started a fire, Juvenile attempted to extinguish the fire by pouring water down the pipe chase and believed that his efforts had been successful. As a result, Juvenile contends that the evidence, even when taken in the light most favorable to the State, failed to show that he possessed the intent necessary for guilt of wantonly and willfully burning a schoolhouse in violation of N.C. Gen. Stat. § 14-60.

N.C. Gen. Stat. § 14-60 provides that, "[i]f any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any schoolhouse or building . . . he shall be punished as a Class F felon." "Wanton and willful" conduct is behavior engaged in "without legal excuse or justification, and with the knowledge that the act will endanger the rights or safety of others or with reasonable grounds to believe that the rights or safety of others may be endangered." *State v. Brackett*, 306 N.C. 138, 142, 291 S.E.2d 660, 662-63 (1982); *see also In re J.L.B.M.*, 176 N.C. App. 613, 626, 627 S.E.2d 239, 247 (2006) (stating that, "[t]o be wanton and willful, 'it must be shown that [an] act was done intentionally, without legal excuse or justification, and with knowledge of or reasonable grounds to believe that the act would endanger the rights or safety of others'") (quoting *State v. Payne*, 149 N.C. App. 421, 424, 561 S.E.2d 507, 509 (2002)). "Under the doctrine of acting in concert,

it is not necessary that the defendant do any particular act constituting a part of the crime charged, if he is present at the scene and acting together with another or others pursuant to a common plan or purpose to commit the crime." *State v. Taylor*, 337 N.C. 597, 608, 447 S.E.2d 360, 367 (1994) (citations omitted).

Juvenile does not appear to claim that he had any legal justification or excuse for possessing a lighter on the Erwin campus. In addition, Juvenile admits that he knew that the other student intended to use the lighter to get a better view of the pipe chase, which was accessed through the rear stall in the third floor restroom. The resulting fire occurred when the other student's efforts to examine that part of the building went awry. After realizing that a fire had started in the pipe chase, Juvenile attempted to extinguish the fire himself rather than sounding an alarm. Juvenile was of an adequate age to understand the potential consequences of his actions, which helped endanger nearly 1300 other people. This evidence is clearly sufficient to support a determination that Juvenile either aided the other student in wantonly and willfully burning a schoolhouse or, acting in concert with the other student, wantonly and willfully burned Erwin High School. *In re J.L.B.M.*, 176 N.C. App. at 626, 627 S.E.2d at 247-48 (holding that igniting fireworks and then laughing when an officer attempted to put them out was sufficient to support a finding that the juvenile acted wantonly and willfully in violation of N.C. Gen. Stat. § 14-59). As a result, had we reached the merits of Juvenile's challenge to the sufficiency of the evidence to support

the trial court's decision to find him responsible for wantonly and willfully burning a schoolhouse in violation of N.C. Gen. Stat. § 14-60, we would have found that the evidence was sufficient to support a finding of responsibility.

C. Ineffective Assistance of Counsel

Finally, Juvenile asserts that he received ineffective assistance of counsel because of his trial counsel's failure to seek the dismissal of the disorderly conduct charge at the conclusion of all of the evidence. Juvenile has couched his challenge to the sufficiency of the evidence to support the trial court's decision to find him responsible for intentionally creating a disturbance that interfered with the education of others in violation of N.C. Gen. Stat. § 14-288.4(a)(6) as an ineffective assistance of counsel claim based on a candid concession that his trial counsel failed to move for dismissal of this charge at the conclusion of all of the evidence.[7] Based on a careful review of the record, we conclude that Juvenile's contention lacks merit.

In order to prevail on an ineffective assistance of counsel claim, Juvenile must show: (1) that "counsel's performance was deficient," meaning it "fell below an objective standard of reasonableness," and (2) that "the deficient performance prejudiced

[7] Although Juvenile also requests us to consider the sufficiency of the evidence to support the trial court's decision to find him responsible for violating N.C. Gen. Stat. § 14-288.4(a)(6) pursuant to N.C.R. App. P. 2, which authorizes this Court to overlook appellate rule violations in the interests of justice, we need not address this aspect of Juvenile's argument given our disposition of his ineffective assistance of counsel claim.

the defense," meaning that "counsel's errors were so serious as to deprive the [juvenile] of a fair trial, a trial whose result is reliable." *Strickland v. Washington*, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674, 693 (1984). As a result, even if Juvenile's trial counsel provided deficient representation by failing to seek dismissal of the disorderly conduct charge, Juvenile will be unable to establish the necessary prejudice in the event that the record contains sufficient evidence to support the trial court's finding of responsibility.

Pursuant to N.C. Gen. Stat. § 14-288.4:

> a. Disorderly conduct is a public disturbance intentionally caused by any person who[:]
>
> . . . .
>
> (6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.

An examination of the relevant statutory language indicates that the elements of the offense defined in N.C. Gen. Stat. § 14-288.4(a)(6) are that Juvenile either (1) intentionally (2) disrupted, disturbed, or interfered with (3) the teaching of students (4) at a public or private educational institution or (1) intentionally (2) engaged in conduct which (3) disturbed the peace, order, or discipline (4) at a public or private educational institution. In challenging the sufficiency of the evidence to support the trial court's finding of responsibility in the

disorderly conduct case, Juvenile argues that the crime defined in N.C. Gen. Stat. § 14-288.4(a)(6) is a specific intent offense; that the trial court could not have found Juvenile responsible for violating N.C. Gen. Stat. § 14-288.4(a)(6) in the absence of a finding that Juvenile could have foreseen "the consequences of giving his lighter to" the other student; that Juvenile believed that the other student "would [simply] use [the lighter] to illuminate the pipe chase so that he could see what lay at the bottom of it;" and that, despite the fact that the other student's actions "ultimately disturbed the peace of the school, that result was not a foreseeable consequence for" Juvenile.

"Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." *State v. Bell*, 285 N.C. 746, 750, 208 S.E.2d 506, 508 (1974). An actor "'must be held to intend the natural consequences of his deliberate act.'" *State v. Grigsby*, 351 N.C. 454, 457, 526 S.E.2d 460, 462 (2000) (quoting *State v. Jones*, 18 N.C. App. 531, 534, 197 S.E.2d 268, 270, *cert. denied*, 283 N.C. 756, 198 S.E.2d 726 (1973)). The intent necessary for guilt of disorderly conduct in violation of N.C. Gen. Stat. § 14-288.4(a)(6) can consist of either an intent to cause a disorder of the type made criminal by the relevant statutory language, as is evidenced by the first prong of the statutory definition of the offense in question, or an intent to perform an action that causes such a disturbance, as is evidenced by the second prong of the relevant statutory language. The offense created by the first prong of the

relevant statutory language is a specific intent crime, while the offense created by the second prong of the relevant statutory language is a general intent crime. *State v. Pierce*, 346 N.C. 471, 494, 488 S.E.2d 576, 589 (1997) (stating that "[s]pecific-intent crimes are 'crimes which have as an essential element a specific intent that a result be reached'" while "[g]eneral-intent crimes are crimes which only require the doing of some act'") (quoting *State v. Jones*, 339 N.C. 114, 148, 451 S.E.2d 826, 844 (1994), *cert. denied*, 515 U.S. 1169, 132 L. Ed. 2d 873 (1995)).

A careful examination of the record demonstrates that the evidence sufficiently supported the trial court's decision to find Juvenile responsible for disorderly conduct under the second prong of the offense defined in N.C. Gen. Stat. § 14-288.4(a)(6). According to the record evidence, Juvenile intentionally gave the lighter to the other student for the purpose of enabling him to get a better view of the pipe chase. The only way that the other student could have utilized the lighter for the purpose of better examining the pipe chase was to employ the lighter to generate a flame of some sort. The resulting fire was the natural consequence of Juvenile's decision to give the lighter to the other student. In addition, anyone of Juvenile's age and experience could have readily foreseen that the use of the lighter to generate a flame for the purpose of illuminating a darkened area created a significant risk that some sort of a fire would occur. Any fire in a school facility is likely to result in a disruption of the educational process given the necessity for school administrators

to ensure student safety. Thus, Juvenile's intentional conduct led directly to a disruption of the educational process for Erwin's students. As a result, the failure of Juvenile's trial counsel to seek dismissal of the disorderly conduct petition at the close of all of the evidence did not prejudice Juvenile's chances for a more favorable outcome at trial or on appeal.

III. Conclusion

Thus, for the reasons set forth above, we conclude that Juvenile's challenges to the trial court's decision to find him responsible for wantonly and willfully burning a schoolhouse in violation of N.C. Gen. Stat. § 14-60 and disorderly conduct in violation of N.C. Gen. Stat. § 14-288.4(a)(6) do not justify an award of appellate relief. Since Juvenile has not challenged the trial court's dispositional order on appeal and since Juvenile is not entitled to relief from the trial court's adjudication order, the trial court's adjudication and disposition orders should be, and hereby are, affirmed.

AFFIRMED.

Judges MCGEE and GEER concur.

Report per Rule 30(e).