NO. COA09-1398

NORTH CAROLINA COURT OF APPEALS

Filed: 17 August 2010

IN THE MATTER OF J.T.S. Buncombe County
No. 08 J 439

Appeal by juvenile from order entered 13 July 2009 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 Kimberley A. D'Arruda, for the State.

Hartsell & Williams, P.A., by Christy E. Wilhelm, for juvenile-appellant.

ERVIN, Judge.

Juvenile J.T.S. appeals from an order adjudicating him as a delinquent juvenile on the grounds that the trial court erred by concluding that the evidence was sufficient to support a finding of responsibility (1) that 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 later in this opinion, Juvenile's challenge to the sufficiency of the evidence to support the trial court's findings of responsibility is couched both as a direct challenge to the trial court's orders and as an ineffective assistance of counsel claim.

motion to suppress certain inculpatory statements on the grounds that he had not freely and voluntarily waived his rights against self-incrimination at the time that the statements in question were made. 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 adjudication order should be affirmed.

I. Factual Background

A. Substantive Facts

At approximately 1:30 p.m. on 20 November 2008, Matt Carpenter, a teacher at Erwin High School in Asheville, North Carolina, smelled smoke. Mr. Carpenter quickly discovered that the smoke was emanating from the men's bathroom that was located immediately outside his classroom on the third floor of the building. After Mr. Carpenter opened a panel on the bathroom wall, he observed white smoke escaping from the resulting hole, 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 identifying 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 for the purpose of assessing the situation. Assistant Principal Jim Brown and the school resource officer, Vicki Hutchinson, responded to the alarm as well. After discovering burning paper towels and possibly other burning materials at the bottom of a pipe chase accessed by means of the bathroom wall, Mr. Gossett suppressed the fire with a

fire extinguisher. Approximately 1300 people were evacuated from the school for safety reasons and remained outside the building for nearly thirty minutes because of this incident.

Buncombe County Arson Task Force Investigator Jeffrey Tracz came to Erwin for the purpose of investigating the incident. Upon his arrival, Officer Tracz went directly to the bathroom. As a result of the examination that he conducted there, Officer Tracz determined that the fire did not have an electrical origin and eliminated other possible causes. Ultimately, Officer Tracz concluded that someone had started the fire, as opposed to it having begun spontaneously. After establishing the cause of the fire, Officer Tracz headed to the first floor administrative offices to confer with the alleged culprits.

In the meantime, Dr. Brown returned to his office on the first floor and began attempting to identify the individuals who had been in the vicinity of the bathroom prior to the start of the fire. A motion-sensitive video camera showed that Juvenile and a second student were near the bathroom near the time the fire began. At the time that he was observed in the vicinity of the bathroom, Juvenile was supposed to be eating lunch on the first floor. According to the images collected by the video camera, there had not been any other students near the bathroom at the approximate time of the incident.

After identifying the two students, Dr. Brown had them taken to separate first floor offices and questioned. Dr. Brown questioned Juvenile while Mr. Burchfiel questioned the other

student. At the time that he questioned Juvenile, Dr. Brown was acting as a school official and not as a law enforcement officer. Dr. Brown questioned Juvenile for the purpose of ascertaining whether any school policies were violated. However, Dr. Brown was obligated to report any violations of law to the appropriate authorities. Initially, Juvenile denied having had any involvement in setting the fire. However, after viewing the surveillance video, Juvenile admitted having been in the bathroom and dropping lighted paper towels down the pipe chase in order to illuminate its interior.

After Dr. Brown finished his conversation with Juvenile, Officer Tracz questioned Juvenile as well. Officer Tracz had been in the room during part of Dr. Brown's conversation with Juvenile. At the time that he began questioning Juvenile, he read Juvenile his *Miranda* rights and the additional rights afforded to juveniles subjected to custodial interrogation under North Carolina law. In addition, he presented Juvenile with a rights waiver form, which Juvenile subsequently initialed. At the conclusion of his questioning by Officer Tracz, Juvenile drafted and signed a statement explaining his involvement in the events leading up to and at the time of the fire. Juvenile's statement was written on a standard "Juvenile Voluntary Statement" form, which began:

> I, [J.T.S.], know and understand my rights as they have been read to me. Having decided to answer questions I now make this voluntary statement, of my own free will, knowing that such a statement may be used against me in a court of law, and I declare that this statement is made without any threat, coercion, offer or benefit, favor, leniency or

> offer of leniency by any person or person whomsoever.

In his statement, Juvenile informed Officer Tracz that:

> I got the lighter from [the other student] and I set the paper towel on fire and it started to burn me, so I dropped it in the pipe chase and I didn't realize that there was so many paper towels in the floor of the pipe chase so when we looked down there we tried to put it out by everything we could pouring water on it. So I got the trash bag and filled it with water and poured it on the fire and thought it was out. So we walked out thinking the fire was put out.

Juvenile's mother arrived at the school shortly after 3:00 p.m. By the time of her arrival, Juvenile had been provided with and initialed the rights waiver form and had drafted his written statement.

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 was delinquent for having violated N.C. Gen. Stat. § 14-60 (felonious burning of a school building) and the other of which alleged that Juvenile was delinquent for having violated N.C. Gen. Stat. § 14-288.4(a)(6) (causing a public disturbance at an educational institution). Both petitions were approved for filing on 30 December 2008. On 1 June 2009, juvenile filed a motion to suppress "any and all evidence emanating from the [juvenile's] seizure and interrogation at school."

On 29 June 2009, the petitions filed against Juvenile came on for adjudication and disposition before the trial court. During the course of the proceedings, the trial court denied Juvenile's

suppression motion. 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 the 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 found that Juvenile's delinquency history was low. For that reason, 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

First, Juvenile contends that the trial court erred by denying his motion to suppress certain inculpatory statements that he made at a time when he had not been properly advised of his rights as required by *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966), and N.C. Gen. Stat. § 2101(a). In essence, Juvenile contends that he was in custody and had not been properly advised of his rights at the time that he admitted his involvement in setting the fire that resulted in the evacuation of Erwin High School to Dr. Brown, so that the trial court should have suppressed all of his statements admitting involvement in that incident. We disagree.

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 there may be evidence in the record 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 both 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 arguments on appeal using this standard of review.

The custodial interrogation of criminal suspects by law enforcement officers is subject to procedural safeguards "effective to secure the privilege against self-incrimination." *Miranda*, 384 U.S. at 444-45, 16 L. Ed. 2d at 706. The protections afforded by *Miranda* and codified and enhanced in the juvenile setting 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* or N.C. Gen. Stat. § 7B-2101(a) unless he or she was "in custody" at the time an 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." *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 our 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 a school setting to be deemed "in custody" for purposes of *Miranda* and N.C. Gen. Stat. § 7B-2101(a), law 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.* at 670, 363 S.E.2d at 138 (citing *Buchanan*, 353 N.C. at 338, 543 S.E.2d at 827).

In the present case, the trial court orally recited the following findings and conclusions at the end of the suppression hearing:

> I am not going to find that he was in custody. The principal or Assistant Principal Brown indicated that his primary purpose for taking [juvenile] into the office was twofold: to do an in-school investigation or a school-related investigation and to protect the safety of the other students, the other 1,250 students, which he says he was responsible for.

> [Juvenile] indicated from his own testimony that at some points he was not even aware of the people who were in the room with him, so I don't think he can say that because this officer or this officer was in the room he felt like he was in custody and couldn't leave. Because under some of [Juvenile's trial counsel's] questions his response was Dr. Brown was there, Dr. Hill was there, and then he was uncertain about who else was in the room. He indicated that he knew Dr. Brown didn't have any authority to arrest him. Dr. Brown testified that he didn't have any association with any law enforcement agency, that he was not acting as a law enforcement agency but as a school official. And I think his acting the way he did under the circumstances that were presented was appropriate. This officer indicated that he didn't come in with a weapon, that [juvenile] had, in fact, already indicated his involvement by the time this officer showed up. So any additional information that would have come to this [officer] wouldn't make much difference in this case because he had already implicated himself by the time this officer showed up. So the Court does not find that he was in custody either under the supervision of Dr. Brown or when this officer showed up. And your motion to suppress these statements is denied.

After carefully reviewing the record, we conclude that the trial court's findings of fact are supported by competent evidence.[2] For

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[2] Juvenile notes in his brief that the trial court never entered a written order denying his suppression motion that contained formal findings of fact and conclusions of law and contends that the trial court did not resolve certain disputed issues of fact, such as whether he was advised of his rights before admitting responsibility for setting the fire, whether he was held after the end of the school day for questioning, and whether he signed the various forms that appear in the record at the indicated times. A trial court's decision to make similar statements on the record was held to constitute the making of findings and conclusions in *In re M.L.T.H.*, __ N.C. App. __, __, 685 S.E.2d 117, 122 (2009), *disc. review granted*, __ N.C. __, __ S.E.2d __ (2010). As a result, the trial court did make findings and conclusions at the time that it denied Juvenile's motion. In addition, it is not clear that the factual disputes pointed out in Juvenile's brief are

example, during the hearing on Juvenile's suppression motion, Dr. Brown testified that Juvenile had been escorted to the administrative office by Assistant Principal Sherry Barnette. At that point, Dr. Brown conducted a "school-based" investigation during which he closed the door to protect the Juvenile's privacy. Dr. Brown stated that Officer Hutchinson, who was wearing a weapon, observed part of the interview and that Officer Tracz did not enter his office until he "had already asked most of the questions [he] needed to ask [Juvenile]." Dr. Brown did inform Officer Tracz of the statements that Juvenile had made during their discussion. In addition, Dr. Brown provided information to Juvenile's mother concerning "the consequences" of the "school offenses" and explained to her that school officials would be "making a report to law enforcement." Before questioning Juvenile himself, Officer Tracz read Juvenile his *Miranda* rights and his rights pursuant to N.C. Gen. Stat. § 7B-2101(a). According to Officer Tracz, Juvenile fully cooperated and never opted to terminate the questioning.

Juvenile's version of the events that resulted in the making of his inculpatory statement is not dramatically different than

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particularly material to the issue of whether he was "in custody." For example, we have difficulty ascertaining how identifying the point in time at which Juvenile initialed or signed various documents affects the determination of whether he was "in custody." Finally, since Juvenile has not, with an exception discussed in more detail below, directly challenged the sufficiency of the trial court's findings and conclusions and confines his argument on appeal to a challenge to the substance of the trial court's decision to deny his suppression motion, we conclude that there is no need for us to engage in a general discussion of the sufficiency of the trial court's findings and conclusions in this opinion.

that provided by Dr. Brown and Officer Tracz.[3] Although Juvenile testified that he felt he lacked ability to terminate the interview, "[t]he subjective belief of [Juvenile] as to his freedom to leave is not in and of itself determinative" as to whether he or she was "in custody." *State v. Jones*, 153 N.C. App. 358, 365, 570 S.E.2d 128, 134 (2002) (citation omitted). For that reason, Juvenile's testimony that he felt that the only way that he could get out of Dr. Brown's office was to answer questions about the origin of the fire does not establish that he was subjected to a custodial interrogation at the time that he made his statement to Dr. Brown. On the contrary, in order for there to be an "objective showing that one is 'in custody,'" the circumstances that the Supreme Court deems 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)).[4]

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[3] The testimony of Juvenile did depart from that of other witnesses to some extent. For example, Juvenile initially testified that "Mr. Burchfiel, Officer Hutchinson, Officer Tracz, and Dr. Hill" were present when Dr. Brown initiated the questioning. However, Juvenile stated shortly thereafter that "[Dr. Brown] started a little bit before, then Officer Tracz came in[.]" In addition, Juvenile testified that, while Dr. Brown was interviewing him, Officer Tracz only "asked [him] what was so interesting about a pipe chase" and refrained from asking additional questions "until the papers." As a general proposition, however, there were no dramatic differences between Juvenile's testimony and the account provided by the other witnesses.

[4] Aside from emphasizing Juvenile's testimony concerning his perceived inability to leave, the bulk of Juvenile's argument hinges on the presence of law enforcement officers, the fact that Juvenile was not affirmatively informed that he was free to leave,

The evidence concerning the circumstances surrounding Juvenile's questioning does not suffice to establish the required significant restraint on Juvenile's "freedom of movement" needed to undercut the trial court's determination that Juvenile was not in custody at the time that he made his inculpatory statement to Dr. Brown.[5] Dr. Brown and Officer Tracz testified that Mr. Burchfiel, another school official, and Officer Hutchinson entered and exited the room, indicating that the door was not locked. Moreover, the record demonstrates that there were periods during which Officer Hutchinson had left the room and Officer Tracz was not present at all, a set of facts that indicates that Juvenile was not under law enforcement "guard." While Officer Hutchinson appears to have been present during a substantial portion of the interview, her mere presence, without more, is inadequate to transform the questioning

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the length of time that Juvenile was in the principal's office, and the fact that Juvenile was not advised that his mother could be present. To the extent that these arguments are relevant to the "in custody" issue (the fact that Juvenile was not advised that he could have his mother present during the questioning by Dr. Brown does not appear to us to have any significant bearing on the issue of whether Juvenile was "in custody"), we believe that we have adequately addressed them in the text.

[5] As we understand the argument advanced in Juvenile's brief, he contends that he was in custody for *Miranda* purposes as soon as he was escorted to the administrative office in which Dr. Brown questioned him and that all of his subsequent statements should have been excluded because he was not advised of his rights at the time when Dr. Brown began asking him questions. Assuming that Juvenile initially came into "custody" at the time that Officer Tracz began questioning him, it is clear that the necessary warnings were administered to Juvenile in a timely manner, and he does not appear to contend otherwise. Thus, Juvenile's entire argument depends on acceptance of his contention that he was in custody for purposes of *Miranda* and N.C. Gen. Stat. § 7B-2101(a) at the time that he was initially taken to the administrative office and made his statement to Dr. Brown.

conducted by Dr. Brown into a "custodial interrogation" for *Miranda* purposes. *See In re W.R.*, 363 N.C. 244, 248, 675 S.E.2d 342, 344 (2009) (concluding that the presence of a school resource officer during questioning conducted by the assistant principal, standing alone, did not mean that the juvenile had been subjected to custodial interrogation). Similarly, the fact that Juvenile was taken to the administrative office and was never told that he could leave is not, particularly given the inherent limitations on freedom of movement to which students are subject, dispositive of the issue of whether Juvenile was "in custody" from the moment that he was taken to the administrative office by Ms. Barnette. *In re J.D.B.*, 363 N.C. at 669-71, 686 S.E.2d at 139. There is also no indication that Juvenile was physically restrained; in fact, he was left alone in the unlocked office at some point during the investigation. Thus, based upon a consideration of the totality of the circumstances, we conclude that the trial court correctly determined that Juvenile was not "in custody" at the time that he was initially taken to the administrative office and questioned by school officials given the absence of any indication that he had been subjected to a formal arrest or was under some other "significant restraint" at that time.[6]

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[6] Juvenile does argue that "[t]he trial court's failure to make findings of fact as to why it held that [Juvenile's] custodial interrogation did not require constitutional warnings be given requires that [Juvenile's] adjudication be reversed." However, the trial court's findings and conclusions go directly to the issue upon which Juvenile's argument focuses, since the trial court, in essence, concluded that Juvenile was not "in custody" at the time that he was taken to Dr. Brown's office given that the investigation being conducted by Dr. Brown was not undertaken for

In addition, the fact that Juvenile was questioned by Dr. Brown, 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). Furthermore, "statements made to private individuals unconnected with law enforcement are admissible so long as they were made freely and voluntarily." *Id.*

> 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,

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a law enforcement-related purpose, since Dr. Brown was acting as a school official rather than an agent of law enforcement, since the fact that Juvenile was not always aware of the identity of the individuals in the room with him precluded him from saying that he was not free to leave with any degree of credibility, and since Juvenile had already indicated his involvement "by the time this officer showed up." As a result, contrary to Juvenile's argument, the trial court did explain the reason for its conclusion that Juvenile was not entitled to be advised of his rights at the time that the questioning by Dr. Brown began.

> *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).

Id. at 43-44, 352 S.E.2d at 679. After careful consideration, we conclude that the record amply supports the trial court's conclusion that Dr. Brown was acting as a school official rather than a law enforcement officer.

School officials do not generally act in a law enforcement capacity. The main priority of a school administrator such as Dr. Brown is student safety. For that reason, Dr. Brown had a professional obligation "to protect the safety of the other students." According to the record evidence, Dr. Brown was acting in exactly this capacity and not in the capacity of a law enforcement officer when he questioned Juvenile in the immediate aftermath of the fire. As such, since Juvenile was questioned by an individual not affiliated with law enforcement, the trial court correctly concluded that Juvenile was not subjected to custodial interrogation for purposes of *Miranda* and N.C. Gen. Stat. § 7B-2101(a) for this reason as well. *In re Phillips*, 128 N.C. App. 732, 735, 497 S.E.2d 292, 294 (stating that the trial court did not err by admitting a juvenile's inculpatory statement to a school

principal since the principal "did not act as an agent of law enforcement but as an official of the school;" since the principal "was not a sworn law enforcement officer," "had no arrest power," and "was not affiliated with any law enforcement agency;" and since the principal "did not question the juvenile to obtain information to use in criminal proceedings but questioned her simply for school disciplinary purposes"), *disc. review denied*, 348 N.C. 283, 501 S.E.2d 919 (1998). Similarly, given the fact that Officer Tracz advised Juvenile of his rights under *Miranda* and N.C. Gen. Stat. § 7B-2101(a) before initiating his own questioning process, it is clear that Officer Tracz complied with the requirements for conducting a custodial interrogation of Juvenile before asking about Juvenile's involvement in the fire for law enforcement purposes himself. For that reason, as long as Juvenile's inculpatory statement to Dr. Brown did not result from an impermissible custodial interrogation, there was no constitutional or statutory violation associated with the statement that Juvenile made to Officer Tracz. As a result, the trial court properly denied Juvenile's suppression motion.

B. Ineffective Assistance of Counsel

Secondly, Juvenile asserts that he received ineffective assistance from his trial counsel as a result of his attorney's failure to make a dismissal motion challenging the sufficiency of the evidence to support an adjudication of delinquency based on the allegations of disorderly conduct and burning a schoolhouse at the

close of all of the evidence.[7] In support of this contention, Juvenile argues that the failure of his trial counsel to challenge the adequacy of the evidence and subsequent failure to "vigorously argue" the issue at the appropriate time resulted in the trial court's decision to find him responsible for willfully and wantonly burning a schoolhouse in violation of N.C. Gen. Stat. § 14-60 and for disorderly conduct in violation of N.C. Gen. Stat. § 14-288.4(a)(6). We disagree.

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

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[7] As Juvenile candidly acknowledges, the fact that his trial counsel "made no motion . . . to dismiss the petition[s] at the close of the evidence during the adjudicatory hearing" means that "he has waived his right on appeal to challenge the sufficiency of the evidence against him." *In re Lineberry*, 154 N.C. App. 246, 249, 572 S.E.2d 229, 232 (2002), *cert. denied*, 356 N.C. 672, 577 S.E.2d 624 (2003). Although Juvenile also requests us to consider the sufficiency of the evidence to support his adjudications of delinquency on the merits pursuant to the provisions of N.C.R. App. P. 2, which authorizes this Court to overlook appellate rules violations in the interests of justice, and *In re S.M.*, 190 N.C. App. 579, 581-582, 660 S.E.2d 653, 655 (2008), given that his trial counsel argued vigorously that the evidence was insufficient to support an adjudication of delinquency in his closing argument, we need not address this aspect of Juvenile's argument given our disposition of his ineffective assistance of counsel claim.

dismissal of the charges alleged in the petitions, Juvenile will be unable to establish the necessary prejudice in the event that the record contains sufficient evidence to support the trial court's findings of responsibility for committing the acts alleged in the petitions.

"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 [juvenile's] being the perpetrator of such offense." *In re S.M.*, 190 N.C. App. 579, 581, 660 S.E.2d 653, 654 (2008). "'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)). Assuming, without deciding, that Juvenile's trial counsel erred by failing to renew his dismissal motions at the

close of all evidence, we conclude that Juvenile did not suffer any prejudice as a result of his trial counsel's performance since the evidence was sufficient to support a finding of responsibility relating to both of the charges which led to his adjudication as a delinquent juvenile.

1. Disorderly Conduct

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

> a. Disorderly conduct is a public disturbance intentionally caused by any person who[:]
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> . . . .
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> (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 of disorderly conduct as 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. On appeal, Juvenile contends that the evidence was insufficient to show that he acted intentionally, arguing that the evidence, when taken in the light most favorable to the State, merely showed that he "accidentally set a fire,

attempted to extinguish it, and believed it was out before leaving the bathroom area." We disagree.

Juvenile admitted in his statement to Officer Tracz that he intended to light the paper towel that eventually fell down the pipe chase and ignited the paper towels and other flammable materials that were present in that location. Put another way, there is no doubt but that Juvenile acted intentionally when he set fire to the paper towel that eventually fell down the pipe chase and ignited other materials that were present there. In addition, Juvenile's conduct clearly disturbed the order of a public educational institution, given the undisputed evidence that the school was evacuated and the student body displaced for at least thirty minutes as a result of the fire and resulting investigation. We believe that this evidence is more than sufficient to support an adjudication of delinquency based upon a violation of N.C. Gen. Stat. § 14-288.4(a)(6).

"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) (citations omitted). The intent required for guilt of disorderly conduct pursuant to 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 statutory

definition. 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)). By admitting that he intentionally ignited the paper towel that eventually fell down the pipe chase, Juvenile's statement provided sufficient support for a finding of responsibility under the second prong of the offense defined in N.C. Gen. Stat. § 14-288.4(a)(6). In addition, given that 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), and given that Juvenile's intentional act resulted in a significant disruption of educational activities at Erwin, the record contains sufficient evidence to support a finding of Juvenile's delinquency under the first prong of the statutory definition as well. As a result, the failure of Juvenile's trial counsel to move for dismissal of the disorderly conduct petition did not prejudice Juvenile's chance for a more favorable outcome in

the case in which he was alleged to have violated N.C. Gen. Stat. § 14-288.4(a)(6).

2. Burning a School

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." Juvenile argues that the evidence did not support the trial court's finding that he "wantonly and willfully" set fire to Erwin High School. In essence, Juvenile contends that "[t]here is no evidence that [he] intended to set a fire in the pipe chase in the bathroom;" that "[t]here is no evidence that [he] knew that the pipe covering material was flammable or that there were other flammable materials in the pipe chase;" that he attempted to extinguish the fire after the burning paper towel fell down the pipe chase and ignited other flammable materials; and that the evidence shows, "[a]t most, . . . an exercise of poor judgment" rather than "wanton and willful" conduct. Once again, we do not find Juvenile's argument persuasive.

"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)). According to the record evidence, Juvenile could have easily deduced that engaging in the conduct like that which underlay the burning a schoolhouse charge would endanger the safety of the other students present in the school building. One of the earliest lessons most of us learn is that "fire burns" and that one should not play with matches. Juvenile should have clearly recognized that igniting paper towels in a school building, even if his actions were motivated by curiosity, created a substantial risk that the safety of others would be endangered in the event that the resulting fire got out of control. In addition, Juvenile left the bathroom without having notified the proper authorities even though smoke was apparently still coming from the pipe chase. *See 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 a juvenile acted wantonly and willfully in violation of N.C. Gen. Stat. § 14-59). As a result, we conclude that the record contained ample evidence to support the trial court's decision to adjudicate Juvenile delinquent on the grounds that he wantonly and willfully burned a schoolhouse in violation of N.C. Gen. Stat. § 14-60.

III. Conclusion

Thus, for the reasons set forth above, we conclude that Juvenile's challenges to the trial court's finding of responsibility are without merit. Since Juvenile has not challenged the trial court's dispositional order on appeal and since the trial court's adjudication order is free from prejudicial error, 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).