

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-436

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

IN THE MATTER OF:

Iredell County
No. 06 JB 36

Z.D.H.

Appeal by juvenile from orders entered 11 and 25 September 2008 by Judge Wayne L. Michael in Iredell County District Court. Heard in the Court of Appeals 30 November 2009.

Attorney General Roy Cooper, by Assistant Attorney General Ward Zimmerman, for the State.

Carol Ann Bauer, for juvenile-appellant.

CALABRIA, Judge.

Z.D.H. ("juvenile") appeals the trial court's orders of adjudication and disposition, entered 11 September 2008 and 25 September 2008, adjudicating juvenile delinquent of delivery of a schedule IV controlled substance and placing juvenile on twelve months of supervised probation. Juvenile contends that the evidence was insufficient to support the delinquency adjudication. We dismiss the appeal.

On 25 June 2008, Iredell County Sheriff's Deputy Marsha Sigmon filed juvenile petitions alleging sale or delivery of a schedule IV controlled substance and obstructing, resisting, or delaying a

public officer. The case came on for an adjudicatory hearing on 11 September 2008.

At the hearing, the evidence showed that on 2 June 2008, juvenile, while riding his bus to school, told another student that he had pills that "put you to sleep, like it was like a pain medicine." Juvenile showed the other student a pill, which was white, round, and marked with the name "Watson." Juvenile had two other pills, and told the other student he could not sell them. Juvenile gave the other student the three pills.

When the other student left the bus and reported to class, his teacher, Lily Brown ("Ms. Brown"), noticed that he was acting strangely. When Ms. Brown confronted the student, he showed her one of the pills. Ms. Brown took the student to the principal's office. The initial officer on the scene called in Detective Tommy Adams ("Det. Adams") to assist in identifying the pill. Det. Adams had eight years of experience and training in narcotics investigations, and testified that he recognized the pill as a controlled substance. In order to confirm his observation, Det. Adams consulted a "drug bible" that officers frequently used as a reference in narcotics cases. In addition, Det. Adams consulted a pharmacy and determined that the pill was Lorazepam. The student told Det. Adams that he got the pill from juvenile, but juvenile denied that the pill was his.

After hearing the evidence, the trial court adjudicated juvenile delinquent of delivery of a schedule IV controlled substance, but dismissed the charge of resisting, obstructing, or

delaying a public officer. The juvenile was placed on twelve months of supervised probation. Juvenile appeals.

Juvenile's sole contention on appeal is that the trial court erred in adjudicating him delinquent for delivery of a schedule IV substance because the State failed to provide sufficient evidence that the pill was Lorazepam.

"[J]uveniles 'may challenge the sufficiency of the evidence by moving to dismiss the juvenile petition.'" *In re Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001) (quoting *In re Davis*, 126 N.C. App. 64, 65-66, 483 S.E.2d 440, 441 (1997)). "However, if a defendant 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." N.C. R. App. 10(b)(3) (2008). The same rule applies to juveniles in delinquency cases. See *In re Hartsock*, 158 N.C. App. 287, 291, 580 S.E.2d 395, 398 (2003); *In re Lineberry*, 154 N.C. App. 246, 249, 572 S.E.2d 229, 232 (2002). In his brief, juvenile concedes that trial counsel failed to make a motion to dismiss. We conclude, therefore, that juvenile failed to preserve this question for appellate review and dismiss juvenile's appeal.

Dismissed.

Judges WYNN and STROUD concur.

Report per Rule 30(e).