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NO. COA12-1570  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

IN THE MATTER OF:

C.L.Y.

Mecklenburg County  
No. 11 J 664

Appeal by respondent-juvenile from adjudication and disposition orders entered 2 August 2012 by Judge Regan A. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 19 August 2013.

*Attorney General Roy Cooper, by Special Deputy Attorney General Mabel Y. Bullock, for the State.*

*Marie H. Mobley for respondent-juvenile, C.L.Y.*

DILLON, Judge.

Juvenile C.L.Y.<sup>1</sup> appeals from orders adjudicating him delinquent based upon findings that he was responsible for resisting, delaying, or obstructing a public officer and placing him on probation. We affirm.

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<sup>1</sup> Initials are used throughout this opinion to protect the identity of the minor.

The State presented evidence tending to show that on 6 January 2012, Officer Alan Timothy Savelle of the Charlotte-Mecklenburg Police Department was on foot patrol near Hendercrest and Beal Streets due to recent breakings and enterings in the area. Based on the descriptions of the suspects in the breakings and enterings, Officer Savelle initiated a voluntary contact with C.L.Y. and his companion when he saw the two walking in a parking lot. C.L.Y. "broke off" from his companion and walked toward the Hampton Creste Apartments, in a direction away from Officer Savelle. Officer Savelle, who was familiar with C.L.Y., confirmed that C.L.Y. had an outstanding secure custody order, "which is basically a warrant[,] " and radioed for assistance. A uniformed officer parked his patrol vehicle on Beal Street as C.L.Y. crossed Beal Street and fled into the apartment complex. When Officer Savelle saw C.L.Y. run from an apartment building stairwell, he yelled, "stop, police." C.L.Y. continued to run until other officers took him into custody.

The trial court adjudicated C.L.Y. delinquent for resisting, delaying or obstructing an officer. After a dispositional hearing, the trial court sentenced C.L.Y. as a

Level 1 offender and placed him on supervised probation for six months. C.L.Y. appeals.

C.L.Y. contends the juvenile petition failed to sufficiently allege the charge of resisting, delaying or obstructing a public officer on grounds that it did not properly allege the duty the officer was discharging at the time of the juvenile's alleged misconduct. He asserts the trial court lacked jurisdiction over the matter due to this allegedly fatal defect in the juvenile petition. We disagree.

"In a juvenile delinquency action, the juvenile petition 'serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged.'" *In re S.R.S.*, 180 N.C. App. 151, 153, 636 S.E.2d 277, 280 (2006) (quoting *In re Griffin*, 162 N.C. App. 487, 493, 592 S.E.2d 12, 16 (2004)). "When a petition is fatally deficient, it is inoperative and fails to evoke the jurisdiction of the court." *In re J.F.M. & T.J.B.*, 168 N.C. App. 143, 150, 607 S.E.2d 304, 309, *appeal dismissed and disc. review denied*, 359 N.C. 411, 612 S.E.2d 320 (2005). "Because juvenile petitions are generally held to the standards of a

criminal indictment, we consider the requirements of the indictments of the offenses at issue." *Id.* As a result of the fact that fatal defects in a juvenile petition are jurisdictional, challenges to the sufficiency of such petitions may be raised at any time despite the juvenile's failure to raise this issue before the trial court. *S.R.S.*, 180 N.C. App. at 153, 636 S.E.2d at 279.

N.C. Gen. Stat. § 15A-924(a) provides, in pertinent part, that:

A criminal pleading must contain . . . [a] plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation.

N.C. Gen. Stat. § 15A-924(a) (2011). Thus, a valid indictment or other charging instrument must allege "all the facts necessary to meet the elements of the offense." *State v. Ellis*, 168 N.C. App. 651, 655, 608 S.E.2d 803, 806 (2005).

According to N.C. Gen. Stat. § 14-223, a person is guilty of resisting, delaying, or obstructing a public officer when he or she "willfully and unlawfully resist[s], delay[s] or obstruct[s] a public officer in discharging or attempting to

discharge a duty of his office[.]” An indictment for the charge of resisting a public officer must “1) identify the officer by name, 2) indicate the official duty being discharged, and 3) indicate generally how defendant resisted the officer.” *J.F.M.*, 168 N.C. App. at 150-51, 607 S.E.2d at 309 (quoting *State v. Swift*, 105 N.C. App. 550, 553, 414 S.E.2d 65, 67 (1992)). “In the offense of resisting an officer, the *resisting* of the public officer in the *performance* of some duty is the primary conduct proscribed by that statute and the particular duty that the officer is performing while being resisted is of paramount importance and is very material to the preparation of the defendant’s defense[.]” *State v. Waller*, 37 N.C. App. 133, 135, 245 S.E.2d 808, 810 (1978) (quotation omitted).

The juvenile petition charging C.L.Y. with resisting, delaying, or obstructing a public officer alleged that:

[T]he juvenile did unlawfully and willfully resist, delay and obstruct (name officer) AT Savelle, a public officer holding the office of (name office) Charlotte-Mecklenburg Police Officer, by (describe conduct) [] fleeing from the officer & ignoring commands to stop. At the time, the officer was discharging and attempting to discharge a duty of his/her office (name duty) arrest.

A careful reading of the juvenile petition filed against C.L.Y. reveals that the petition describes “arrest” as the duty

that Officer Savelle was discharging or attempting to discharge at the time of C.L.Y.'s flight. Because the petition here describes a duty that Officer Savelle was discharging or attempting to discharge at the time of C.L.Y.'s flight, the juvenile petition alleges all the essential elements of the offense of resisting, delaying, or obstructing a public officer. Accordingly, the court had jurisdiction over C.L.Y. The trial court's adjudication and disposition orders finding C.L.Y. responsible for resisting, delaying or obstructing a public officer are affirmed.

AFFIRMED.

Judges GEER and ERVIN concur.

Report per Rule 30(e).