IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1197

Filed: 3 September 2019

Scotland County, No. 18-JB-22

IN THE MATTER OF:

M.C.M.

Appeal by Respondent from delinquency and disposition orders entered 18 May 2018 and 22 May 2018 by Judge John H. Horne, Jr., in Scotland County District Court. Heard in the Court of Appeals 8 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Hugh A. Harris, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt B. Orsbon, for Respondent-Appellant.

INMAN, Judge.

Respondent M.C.M. ("Respondent") appeals from orders adjudicating him delinquent for misdemeanor credit card fraud and imposing a Level 1 disposition of six months supervised probation. Respondent contends that the juvenile delinquency petition alleging misdemeanor credit card fraud is facially deficient and failed to confer subject matter jurisdiction on the trial court. After careful review, we hold that the juvenile delinquency petition is not invalid and affirm the trial court's order.

I. FACTUAL AND PROCEDURAL HISTORY

On 25 July 2017, Respondent asked his grandmother and custodial guardian, Cathy J. Caulder, whether he could use her credit card to make an online purchase related to a video game, a request that Caulder denied. Respondent then proceeded to use Caulder's Wells Fargo credit card to make the purchase at a total cost of $21.98. When Caulder received her credit card statement and asked Respondent whether he knew anything about the charge, he initially stated that he did not. Respondent later admitted to making the purchase when he found that Caulder was planning to file papers with the bank alleging that the charge was fraudulent. Following Respondent's admission, Caulder filed a juvenile petition on 14 August 2017 for misdemeanor financial card fraud.

On 15 August 2017, Caulder, Respondent, and Mitchell McIver, a juvenile court counselor, entered into a diversion plan. The diversion plan required Respondent to remain on good behavior, not violate any laws, abide by the rules of his parent/guardian, attend school regularly, abide by school policies, and cooperate with and accept recommendations made by the Teen Court program.

McIver met with Caulder and Respondent once per month for the next six months. Following a 7 February 2018 meeting, McIver determined that the terms of the diversion plan had been violated. McIver then filed a post-diversion petition on 13 February 2018 ("the Petition"). The Petition reads, in pertinent part, as follows:

> The juvenile is a delinquent juvenile as defined by G.S. 7B-1501(7) in that . . . the juvenile did unlawfully, willfully, with the intent to defraud Cathy J. Caulder, commit the offense of financial transaction card fraud. For the purposes of purchasing video games online, [Respondent] used a Wells Fargo credit card belonging to Cathy J. Caulder to obtain such goods having the value of $21.98.

At a hearing before the Juvenile Court in Scotland County District Court on 27 April 2018, Respondent moved to dismiss the Petition as facially invalid. The trial court denied his motion to dismiss, adjudicated him to be a delinquent juvenile for the offense of misdemeanor financial card fraud, and continued the case for disposition on 18 May 2018. Respondent subsequently filed a Motion to Reconsider Motion to Dismiss on 1 May 2018. The trial court denied that motion and, following a hearing on 18 May 2018, placed Respondent on probation for a period of six months. Respondent appeals.

II. ANALYSIS

A. Standard of Review

"The sufficiency of a juvenile petition is a jurisdictional issue that this Court reviews *de novo*. The petition in a juvenile action serves the same purpose as an indictment or other charging instrument in a criminal case." *In re J.F.,* 237 N.C. App. 218, 221, 766 S.E.2d 341, 344 (2014) (citation omitted). As a result, we employ the same facial validity analysis applicable to indictments to juvenile petitions. *In re M.S.*, 199 N.C. App. 260, 263, 681 S.E.2d 441, 443 (2009). A juvenile petition will

pass jurisdictional muster if it "contain[s] a plain and concise statement . . . asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation." N.C. Gen. Stat. § 7B-1802 (2019); *see also In re R.P.M.*, 172 N.C. App. 782, 787, 616 S.E.2d 627, 631 (2005) (noting a juvenile petition is fatally defective "if it fails to charge some offense . . . or fails to state some essential and necessary element of the offense of which the defendant is found guilty" (internal citation and quotation marks omitted)). When this Court determines a juvenile petition to be facially invalid, we will arrest judgment and vacate the sentence entered below. *R.P.M.*, 172 N.C. App. at 787, 616 S.E.2d at 631.

B. Facial Validity

Respondent was charged with financial transaction card fraud; under Section 14-113.13 of our General Statutes, a person is guilty of the offense:

> [W]hen, with intent to defraud the issuer, a person or organization providing money, foods, services, or anything else of value, or any other person, he
>
> . . . .
>
> (2) Obtains money, goods, services, or anything else of value by:
>
> a. Representing without the consent of the cardholder that he is the holder of a specified card; or
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> b. Presented the financial transaction card without the authorization or permission of the card holder . . . .

N.C. Gen. Stat. §§ 14-113.13(a)(2)a.-b. (2019). Section 14-113.8 defines a "cardholder" as "the person or organization named on the face of a financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer." N.C. Gen. Stat. § 14-113.8(2) (2019). The Petition is valid if it alleges facts in support of each element of financial transaction card fraud as set forth in Sections 14-113.13(a)(2)a. and b. consistent with the definitional statute. N.C. Gen. Stat. § 7B-1802; *see also In re S.R.S.*, 180 N.C. App. 151, 153, 636 S.E.2d 277, 280 (2006) ("An indictment need not even state every element of a charge so long as it states facts supporting every element of the crime charged." (citations omitted)).

Respondent contends that the Petition filed against him is facially invalid for failing to: (1) identify Caulder as the cardholder; and (2) allege lack of Caulder's consent.

We hold that the indictment's language alleging Respondent "used a Wells Fargo credit card belonging to Cathy J. Caulder" is a factual allegation sufficient to identify her as the cardholder and supports the elements of the crime charged. "It is not the function of an indictment to bind the hands of the State with technical rules of pleading," *State v. Sturdivant*, 304 N.C. 293, 311, 283 S.E.2d 719, 731 (1981), and "[t]his notice pleading has replaced the use of 'magic words' and allows for a less exacting standard, so long as the defendant is properly advised of the charge against him or her." *State v. Dale*, 245 N.C. App. 497, 504, 783 S.E.2d 222, 227 (2016).

Although certainly less technical than the statutory definition of a cardholder, the colloquial language of the indictment nonetheless notices and conveys that Caulder was the cardholder within the meaning of the statute; indeed, this Court has used this vernacular to express that exact concept. *See, e.g., State v. Perkins*, 181 N.C. App. 209, 216, 638 S.E.2d 591, 595-96 (2007) (describing an indictment for obtaining property by false pretenses that alleged "the property was obtained by means of using the credit card and ckeck [sic] card of Mirielle Clough" as "alleging that defendant used a card that was *issued in the name of another person*" such that it "adequately described the actions taken by defendant—i.e., her use of a card *belonging to another person*" (emphasis added)); *State v. Jones*, 223 N.C. App. 487, 492-93, 734 S.E.2d 617, 622 (2012) (reviewing an identity theft conviction to determine if "the State failed to present substantial evidence that he represented himself to be any of the persons to whom the credit cards *belonged*" when "the [perpetrator] . . . paid with a credit card number *belonging* to Mary Wright" (emphasis added)), *aff'd*, 367 N.C. 299, 758 S.E.2d 345 (2014); *cf. State v. Perry*, 142 N.C. App. 177, 182, 541 S.E.2d 746, 749 (2001) (describing credit cards stolen in robberies as "credit cards . . . belonging to the victims").[1]

[1] We acknowledge that the cited cases involved different offenses and arguments on appeal than those presented here. We cite them not for their disparate propositions of law but to demonstrate that the word "belong" and its permutations are commonly used in the context of credit cards to identify cardholders.

Respondent, in arguing that "belonging" is an insufficient factual allegation, cites several decades-old appellate decisions from Texas that held indictments describing the credit cards used to commit financial transaction card fraud as "owned by" or in the "possession custody and control of" the victims were facially invalid. *See Jones v. State*, 611 S.W.2d 87, 89 (Tex. Crim. App. 1981) (en banc); *Ex parte Seaton*, 580 S.W.2d 593, 594 (Tex. Crim. App. 1979). Those decisions are not binding on this Court and we do not find them as persuasive in determining this question as our own decisions discussing credit cards as "belonging" to cardholders. *Perkins*, 181 N.C. App. at 216, 638 S.E.2d at 595-96; *State v. Jones*, 223 N.C. App. at 492-93, 734 S.E.2d at 622.[2] Further, Texas has "historically given 'cardholder' a strict interpretation and application[,]" *Harrell v. State*, 852 S.W.2d 521, 524 (Tex. Crim. App. 1993), whereas our Courts have moved away from "technical rules of pleading," *Sturdivant*, 304 N.C. at 312, 283 S.E.2d at 731, and " 'magic words[,]' " in favor of "a less exacting standard." *Dale*, 245 N.C. App. at 504, 783 S.E.2d at 227. Given the common understanding

[2] We note that the Texas decisions cited by Respondent were all decided in the late 1970s or early 1980s, relatively shortly after credit cards were popularly adopted and financial transaction card fraud was recognized as a statutory crime. *See* V.T.C.A., Penal Code § 32.31 (first enacted in 1973). It is conceivable, then, that the vernacular surrounding the relationship between cardholders, credit card issuers, and credit card payment processors such as Visa (renamed from BankAmericard in 1976) and Mastercard (renamed from Master Charge in 1979) had not yet been established when the decisions in Texas were rendered. *See* Visa, Inc., *History of Visa Credit Cards*, https://usa.visa.com/about-visa/our_business/history-of-visa.html (last visited Aug. 19, 2019), *and* Mastercard, *Who We Are*, https://www.mastercard.us/en-us/about-mastercard/who-we-are.html (last visited Aug. 19, 2019). That is certainly no longer the case, as evidenced by this Court's use of "belonging" to identify a card's cardholder. *See, e.g.*, *Perkins*, 181 N.C. App. at 216, 638 S.E.2d at 595-96.

that a credit card "belongs" to its cardholder, we reject Respondent's first argument. *See also State v. Booker*, ___ N.C. App. ___, ___, 821 S.E.2d 877, 882 (2018) (noting that an indictment provides sufficient notice to the defendant if "the allegations in the indictment permit a 'person of common understanding [to] know what is intended.' " (quoting *State v. Haddock*, 191 N.C. App. 474, 477, 664 S.E.2d 339, 342 (2008))).

We also reject Respondent's position that the Petition fails to allege facts supporting the necessary element of lack of cardholder consent. Although it is certainly best practice for a juvenile petition or criminal indictment to contain express language directly asserting the existence of each element of the crime, a charging document may nonetheless adequately allege an act was committed without the victim's consent when such a conclusion is fairly implied from other factual allegations contained in the document. *See, e.g., Sturdivant*, 304 N.C. at 310, 283 S.E.2d at 731 (holding that an indictment for kidnapping adequately alleged the element of lack of consent when it alleged the victim was "unlawfully restrained[,]" as "common sense dictates that one cannot unlawfully kidnap or unlawfully restrain another with his consent"); *State v. McCormick*, 204 N.C. App. 105, 112, 693 S.E.2d 195, 198-99 (2010) (holding an allegation that the defendant "unlawfully, willfully and feloniously" entered into a home was sufficient to impliedly allege lack of consent in a burglary indictment); *State v. Pennell*, 54 N.C. App. 252, 259-60, 283 S.E.2d 397,

402 (1981) (holding lack of consent was presumed in a burglary indictment alleging the defendant "unlawfully and wil[l]fully did feloniously break and enter a building").[3]

Here, the Petition alleges Respondent acted "unlawfully, willfully[, and] with the intent to defraud . . . Caulder." That language, particularly the allegation that Respondent acted "with the intent to defraud . . . Caulder[,]" necessarily implies that Respondent acted without Caulder's consent, as she could not consent to being defrauded. *Cf. State v. Jones*, 223 N.C. App. at 493, 734 S.E.2d at 622 ("[W]hen one presents a credit card or credit card number as payment, he is representing himself to be the cardholder *or an authorized user thereof*. Accordingly, where one is not the cardholder *or an authorized user*, this representation is fraudulent." (emphasis added)).

We are also not persuaded by Respondent's assertions that the "intent to defraud" required by Section 14-113.13(a) is necessarily the intent to defraud the person or entity accepting the credit card in the transaction and therefore may not be used to imply lack of Caulder's consent.[4] The statute itself provides that the crime is

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[3] Respondent argues that *McCormick* and *Pennell* are inapplicable, contending that lack of consent is not an element of burglary. In *McCormick*, however, we discussed lack of consent as an element and relied on *Pennell* to hold that the indictment was valid. *See McCormick*, 204 N.C. App. at 112, 693 S.E.2d at 199 ("Our case law does not require that this *element* be specifically pled for the crime of burglary." (citing *Pennell*, 54 N.C. App. at 252, 283 S.E.2d at 397) (emphasis added)). In any event, Respondent does not address or distinguish *Sturdivant*, which also held that particular language in an indictment may necessarily imply lack of consent. 304 N.C. at 310, 283 S.E.2d at 731.

[4] Respondent does not argue that intent to defraud the party accepting the card is a necessary element missing from the Petition.

complete if done "with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, *or any other person*," N.C. Gen. Stat. § 14-113.13(a) (emphasis added), and the Petition alleges as fact that Respondent acted with the intent to defraud Caulder—carrying with it the necessary implication that Caulder did not consent to the transaction. Because the element Respondent asserts as absent is the cardholder's lack of consent, his abstract argument that Caulder's lack of consent cannot be inferred from an allegation he intended to defraud her is unconvincing.

III. CONCLUSION

For the foregoing reasons, we hold that the Petition adequately alleges the necessary elements of the crime of financial transaction card fraud and affirm the trial court's order.

AFFIRMED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).