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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1263

Filed: 17 December 2019

Craven County, No. 18 JB 27A

In the Matter of J.B.

Appeal by juvenile from orders entered 16 May 2018 by Judge Thomas G. Foster, Jr., in Craven County District Court. Heard in the Court of Appeals 6 June 2019.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Stephanie A. Brennan, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for juvenile.*

COLLINS, Judge.

Juvenile J.B. (“John”),<sup>1</sup> appeals from orders adjudicating him delinquent for making a false report of mass violence on educational property, in violation of N.C. Gen. Stat. § 14-277.5 (2018), and imposing a Level 2 disposition. As we conclude there was insufficient evidence that John “ma[de] a report” within the meaning of

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<sup>1</sup> We use pseudonyms to protect the identities of the juveniles. N.C. R. App. P. 42.

Section 14-277.5, we reverse John’s delinquency adjudication and subsequent disposition.

### **I. Background**

On 19 February 2018, some students at Grover C. Fields Middle School informed their teacher that they had overheard one of their classmates, Nathan, say that he was “going to shoot up the school.” The teacher, in turn, relayed the comment to the school’s Principal and Assistant Principal. The Principal and Assistant Principal, accompanied by the School Resource Officer, removed Nathan from class and searched his belongings.

While reviewing Nathan’s computer, the school administrators found a Google document entitled “Circle of Neglect” (the “document”). It was comprised of images and memes—some containing innocuous humor, but others containing vulgar language, racist and anti-Semitic jokes, jokes about school shootings, and other off-color humor. A group of eight-to-nine students, including John, had access and could contribute to the document.

The Principal, Assistant Principal, and School Resource Officer interviewed John on 19 February, at which time John made no admissions. On that day, the Principal suspended for eight days all the students who the administrators believed had contributed to the document, including John.

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On 1 March 2018, Detective Justin Rohrman called John into the New Bern Police Department for an interview. The next day, on 2 March, the State filed a juvenile petition alleging that John was delinquent in that he had violated N.C. Gen. Stat. § 14-277.5. The petition listed the Physical Address Of Offense as 200 Dr. Martin Luther King, Jr. Boulevard, New Bern, NC 28560;<sup>2</sup> the Date Of Offense as 02/19/2018; and the Time Of Offense as 09:30 AM; and contained the following allegations:

on or about the date of offense shown above and in the county named above, the juvenile did unlawfully, willfully . . . and feloniously . . . [c]ommunicate to a group of students a report knowing the report was false, that an act of mass violence was going to occur on educational property, Grover C. Field[s] Middle School to wit: The juvenile stated he was going to shoot up the school and blow up the school naming teachers who would be first.

The adjudicatory hearing on this petition was held 16 May 2018. At this hearing, the bulk of the State’s evidence consisted of Rohrman’s testimony. Rohrman testified that in his 1 March interview with John, he “referenced the Google document to [John] and . . . I asked him—you know, that he needed to be truthful with me as far as he said, what he had contributed to it . . . .” Rohrman further testified,

[John] said that he might have joked about it but that it was just a joke, that he wasn’t really going to do it. And I asked [John] . . . what was it that he was referring to. [John] responded, “That I was going to shoot up the school, but that was just a joke.” . . . I had asked him when he had said that, and he said that he didn’t know. I asked him to

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<sup>2</sup> This is the address of Grover C. Fields Middle School.

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give me some type of time frame for that, and he—he said that it was a regular occurrence, that he couldn't give a specific date for it.

Rohrman testified that he then asked John a series of questions about “details if the school was shot up.” John responded to Rohrman's questions. In a written statement made following the interview, John acknowledged discussing school shootings with his friends, and acknowledged that he and his friends had discussed bringing a weapon to a highly populated location and carrying out a shooting. He also wrote, “I remember saying [] ‘is everyone joking about this right? [] We[']re never actually [] doing this.’”

At the close of the State's case, John moved to dismiss the petition for insufficient evidence. The trial court denied the motion, stating:

[I]t appears to the Court that the juvenile did admit to making communications to several persons in a group, and that communication that had been involved the element of mass violence occurring to many folks, many people, teachers, on educational property. And the Court considers that the allegation of falsity is satisfied in that the individual defendant and his friends, other people in the communication group, had been joking about it, knowing it was false.

At the conclusion of the hearing, the trial court announced it was adjudicating John delinquent:

I think I already got on the record how I analyze the 27[7].5, and I think the different elements are met . . . . And so we are—we will enter, after the arguments, responsible and delinquent, whatever we need to get on the

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record. There's a delinquent act we'll find committed under the allegations of the petition, and the petition is proper.

After a disposition hearing, the trial court imposed a Level 2 disposition requiring twelve months of probation, therapy, and community service.

The standard form Adjudication Order entered 30 May 2018 included the following findings:

The following facts have been proven beyond a reasonable doubt: (attach additional sheets if necessary).

1. Juvenile is 14 years old and was 14 years old on the date of the alleged offense in Petition A.
2. Juvenile is a Craven County resident.
3. Juvenile denied the said offense of Felony Make a False Report Concerning Mass Violence on Educational Property GS 14-277.5 in Petition a.
4. Juvenile was adjudicated delinquent of Felony Make a False Report Concerning Mass Violence on Educational Property Gs 14-277.5 in Petition A.

No additional sheet relevant to the adjunction was attached.

John timely appealed to this Court.

## **II. Discussion**

John argues that (1) the trial court erred by denying his motion to dismiss for insufficient evidence that he “ma[de] a report” within the meaning of Section 14-277.5; (2) his adjudication violated his rights to free speech under the United States and North Carolina Constitutions; (3) Section 14-277.5 is unconstitutionally vague and overbroad; and (4) the trial court erred by entering its orders without sufficient

findings of fact and without appropriately exercising its discretion in setting John's disposition level.

*1. Motion to Dismiss*

We first address John's argument that the trial court erred by denying his motion to dismiss for insufficient evidence that he "ma[de] a report" within the meaning of Section 14-277.5.

*A. Standard of Review*

This Court reviews de novo the denial of a motion to dismiss for insufficient evidence. *In re T.T.E.*, 372 N.C. 413, 420, 831 S.E.2d 293, 298 (2019). In doing so, we must determine "whether there is substantial evidence of each essential element of the offense charged and of the [juvenile] being the perpetrator of the offense." *Id.* at 420, 831 S.E.2d at 298 (internal quotation marks and citation omitted). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Turnage*, 362 N.C. 491, 493, 666 S.E.2d 753, 755 (2008). "[T]he 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).

*B. Analysis*

Under Section 14-277.5, a

person who, by any means of communication to any person or groups of persons, makes a report, knowing or having

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reason to know the report is false, that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school, is guilty of a Class H felony.

N.C. Gen. Stat. § 14-277.5(b). The term “makes a report” is not statutorily defined and “our research has not revealed any . . . General Assembly official comment indicating what type of conduct constitutes the ‘mak[ing of] a report’ within the meaning of Section 14-277.5.” *In re D.W.L.B.*, 832 S.E.2d 565, 567-68 (N.C. Ct. App. 2019). However, “the essence of a Section 14-277.5 violation is not so much uttering or writing a statement, but rather making a report of the statement to someone else.” *Id.* at 567. “The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report . . . .” N.C. Gen. Stat. § 14-277.5(c). Accordingly, our Court has “construe[d the] statutory language to proscribe *as a Class H felony under this Section* only credible reports, that is, those that a reasonable person would believe could represent a threat.” *In re D.W.L.B.*, 832 S.E.2d at 568.

At the outset, we note that the State did not identify at the hearing what specific instance of John’s conduct constituted making a report. The State elicited a great deal of testimony from its witnesses regarding the document. That testimony demonstrated that the place, date, and time of the offense listed on the juvenile petition corresponded to the place, date, and time the document was discovered.

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However, when the trial court asked the State, “And the document is probative of what?” the State responded, “In this case, Judge, from the State’s perspective, nothing.”

Additionally, the following colloquy took place between juvenile’s counsel and Rohrman regarding whether the alleged false report was contained in the document:

[Counsel]: Okay. Where’s the report in here, in this document?

[Rohrman]: What report?

[Counsel]: Where’s the report, the false report of school violence?

(Pause.)

[Counsel]: You’ve identified some pictures----

[Rohrman]: Yes, ma’am.

[Counsel]: ---- that you say you’ve attributed to my client.

[Rohrman]: Uh-huh (*yes*).

[Counsel]: Contributed to this document. Would you like to look at those pictures, and maybe that—will that refresh your recollection as to where is the false report of a mass school violence? Where is it?

[Rohrman]: I don’t think those were in there, ma’am.

Nonetheless, the State moved to admit seven pages of the document into evidence as exhibits 2-8 “for illustrative purposes . . . [o]f the threat of mass destruction.” However, the trial court stated, “Let me say for the record, as I believe it to be precise and accurate. Number two does not support that, nor does number three or four or five or six or—there’s no seven? Where’s seven? Or eight. Let me say eight. I’ll just enter that.” The trial court did admit the exhibits “for [John’s]



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contributions to the Google doc[ument,]” but did not indicate which specific memes in those exhibits had been contributed by John.<sup>3</sup> Thus, had the State attempted to argue that contributing a meme to a Google document shared solely among friends could constitute a report, the evidence could not support a finding that John made a report with a contribution to the document.

In addition to testimony regarding the document, the State elicited testimony from Rohrman about what John said in the 1 March interview and entered John’s post-interview written statement into evidence. Yet, in response to John’s motion to dismiss, the State declared only that, “Your Honor, you heard the evidence. The State has nothing further to add.” Likewise, the State’s closing argument consisted solely of the statement, “Your Honor, you’ve heard the evidence. The State has nothing further to add.”

On appeal, the State similarly does not identify the conduct that it alleged constituted John’s making a report. While the State describes the testimony and evidence entered at the hearing, and lays out the law regarding Section 14-277.5, the State’s analysis omits any application of the law to the facts to articulate how John

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<sup>3</sup> John’s appellate counsel unsuccessfully sought to clarify which memes were attributed to John. Via email, John’s appellate counsel contacted the prosecutor seeking to “clarify Detective Rohrman’s testimony” and “make clear for the Court of Appeals which images or memes [John] added” to the document. The prosecutor responded only that “[t]he State does not wish to add to the record.” Similarly, John’s appellate counsel contacted the trial judge to ask “which specific images the detective attributed to [John,]” but the trial judge responded, “I do not recall. Sorry. Wish I could be more help.” Likewise, John’s defense counsel was unable to clarify which images had been attributed to John at the hearing.

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made a report. Indeed, the State's brief does not contain any citation to the record or transcript to guide this Court to the evidence that John made a report.

Despite the hole in the State's argument, it is apparent to this Court that the trial court based its denial of John's motion to dismiss, and the subsequent adjudication, on John's statements to his friends later-described in his responses to Rohrman's interview questions. For the reasons discussed below, we conclude that these statements do not provide sufficient evidence that John made a report within the meaning of Section 14-277.5. As such, the trial court erred by denying John's motion to dismiss.

In *In re D.W.L.B.*, this Court concluded that a delinquency petition alleging an elementary school student wrote "BOMB INCOMING" in magic marker on a bathroom wall in his public school failed to sufficiently allege that the juvenile had made a report. *In re D.W.L.B.*, 832 S.E.2d at 567-68. The petition was defective for two reasons: first, it failed to allege that the juvenile directed the graffiti message "to anyone in particular or that anyone in particular actually saw it." *Id.* at 567. Second, it failed to allege a communication that was credible in context, in that "no one would reasonably believe that the words 'BOMB INCOMING,' written in a bathroom at some unknown time in the past and obviously by an elementary-school-aged student, represented a report of an actual threat that a bomb was incoming to the school." *Id.* at 568.

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Following *In re D.W.L.B.*, we conclude that the State failed to present sufficient evidence that John “ma[de] a report” within the meaning of Section 14-277.5. The evidence indicated that John’s statements were made to his group of middle-school friends, and that no one outside that group heard the statements. John repeatedly emphasized to his friends that the statements were jokes, and indicated that his friends expressly stated that they understood them as such. None of John’s friends reported the statements to police, school officials, parents, or anyone else, or acted in any manner which indicated that they considered the statements to represent a report of a credible threat. As such, no disruption of normal activity occurred. *See* N.C. Gen. Stat. § 14-277.5(c).

Moreover, there is no evidence of where or when John made these statements; the evidence only shows that John made them “at some unknown time in the past.” *In re D.W.L.B.*, 832 S.E.2d at 568. Indeed, John’s statements came to light only as a result of Rohrman’s 1 March interview with John regarding the document, which school officials discovered only after Nathan’s 19 February comment sparked an investigation. Consequently at least ten days had passed before anyone outside the group of friends even learned of John’s statements.

As John’s private remarks were made solely to his group of friends and no one who heard John’s statements believed they represented an actual threat of mass violence, the State failed to present sufficient evidence that John made a report

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within the meaning of Section 14-277.5. *In re D.W.L.B.*, 832 S.E.2d at 567-68.

Accordingly, the trial court erred by failing to dismiss the petition.

**III. Conclusion**

In light of the above conclusion, we need not reach the remainder of John's arguments.<sup>4</sup> The juvenile adjudication and disposition are reversed.

REVERSED.

Judges INMAN and ARROWOOD concur.

Report per Rule 30(e).

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<sup>4</sup> We note that, as the juvenile argues, the adjudication order fails to state that the allegations in the petition have been proven beyond a reasonable doubt as required by N.C. Gen. Stat. §§ 7B-2411 and -2409 (2018). *See In re J.V.J.*, 209 N.C. App. 737, 740, 707 S.E.2d 636, 638 (2011) (“At a minimum, section 7B-2411 requires a court to state in a written order that ‘the allegations in the petition have been proved [beyond a reasonable doubt].’”) Moreover, at the delinquency hearing the trial court failed to find the allegations in the petition had been proven beyond a reasonable doubt, announcing only, “I think the different elements are met . . . .”