IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-349

Filed: 5 November 2019

Alleghany County, No. 18JB19

IN THE MATTER OF: K.E.B.

Appeal by Juvenile from Judgments entered on 14 November 2018 by Judge William F. Brooks in Alleghany County District Court. Heard in the Court of Appeals 16 October 2019.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for Defendant-Appellant.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Vanessa Noel Totten, for the State.

INMAN, Judge.

Juvenile K.E.B. ("Kelsey")[1] appeals from the trial court's adjudication order concluding that she was a delinquent juvenile and disposition order imposing a Level 1 disposition. Because the trial court failed to make sufficient findings of fact as required by N.C. Gen. Stat. § 7B-2411, we vacate both orders and remand for further factual findings.

[1] A pseudonym is used to protect the identity of the juvenile.

I. FACTUAL AND PROCEDURAL HISTORY

On 8 October 2018, Kelsey's mother ("Mother") filed a juvenile petition accusing then-fifteen-year-old Kelsey of misdemeanor larceny and possession of stolen personal property. An adjudication hearing proceeded in Alleghany County District Court on 13 November 2018. Mother, the only witness to testify in the hearing, revealed the following:

Mother, Kelsey, and Mother's fiancé had just moved in to a new house in which Kelsey's room and Mother's room shared an interconnected bathroom. On 13 or 14 August 2018, Mother withdrew $60 in cash from her bank and put it in her purse, which she left on her bedroom dresser. A day or two later, Mother noticed that only $5 of the cash remained. Mother suspected that Kelsey stole the money. Mother had previously caught Kelsey entering Mother's room through the bathroom and "stealing things out of [her] room," including money, jewelry, and "earplugs." Mother frequently found it hard to discipline Kelsey, as she often resorted to violence or ran away when confronted. Mother ruled out her fiancé as a suspect because he worked 14-15 hour days, had never taken anything of hers without permission, and they actively communicate with one another if either needs money.

Kelsey presented no evidence in the hearing. The trial court then stated from the bench that he found beyond a reasonable doubt that Kelsey committed misdemeanor larceny and adjudicated her a delinquent juvenile.

The next day, the trial court entered a disposition order requiring Kelsey to serve twelve months' probation, participate in a community-based program, complete 65 hours of community service, pay $55 in restitution, and not associate with three people identified as harmful influences.

Kelsey appeals.

II. ANALYSIS

A. Insufficiency of the Evidence

Kelsey argues that the trial court erred by failing to dismiss the misdemeanor larceny charge because the State did not present sufficient evidence of each element of the charge. Preliminarily, the State asserts that she did not preserve this issue for appeal because her counsel did not motion to dismiss the charge for insufficient evidence.

In *In re S.M.*, 190 N.C. App. 579, 580, 660 S.E.2d 653, 654 (2008), an adjudication hearing was held following allegations that the juvenile committed disorderly conduct in school pursuant to N.C. Gen. Stat. § 14-288.4(a)(6). Although the juvenile's counsel motioned to dismiss at the close of the State's evidence, additional evidence was presented by the juvenile thereafter. *Id.* at 581, 660 S.E.2d at 655. At the close of all the evidence, the trial court asked the juvenile's counsel "Would you like to be heard?" *Id.* Counsel responded by "argu[ing] vigorously that the evidence was insufficient to support the charged offense." *Id.* On appeal, we held

that this was sufficient to preserve the juvenile's right to appeal the denial of the motion to dismiss. *Id*

Similarly here, at the close of all the evidence, Kelsey's counsel argued that Mother's testimony insufficiently established that Kelsey stole the money or had the intent to do so. Consistent with *In re S.M.*, Kelsey properly preserved this issue for appeal when her counsel argued that the State's evidence insufficiently supported the misdemeanor larceny charge.

We review a trial court's denial of a motion to dismiss *de novo*. *State v. Hart*, 179 N.C. App. 30, 39, 633 S.E.2d 102, 108 (2006). Juvenile respondents "are entitled to have the evidence presented in their adjudicatory hearing evaluated by the same standards as apply in criminal proceedings against adults." *In re Meaut*, 51 N.C. App. 153, 155, 275 S.E.2d 200, 201-02 (1981). Thus, our standard of review is the following:

> 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. Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion. When reviewing a motion to dismiss a juvenile petition, courts must consider the evidence in the light most favorable to the State, which is entitled to every reasonable inference of fact that may be drawn from the evidence.

In re S.M.S., 196 N.C. App. 170, 171-72, 675 S.E.2d 44, 45 (2009) (quotations and citations omitted) (alterations in original).

The elements of larceny are: "(1) [taking] the property of another; (2) carr[ying] it away; (3) without the owner's consent; and (4) with the intent to permanently deprive the owner of the property." *State v. Justice*, 219 N.C. App. 642, 644, 723 S.E.2d 798, 801 (2012) (quotations and citation omitted). Intent may be proved by either direct evidence or "by circumstances from which it may be inferred." *State v. Campbell*, 368 N.C. 83, 87, 772 S.E.2d 440, 444 (2015) (citation omitted).

When viewing the evidence and the inferences in the light most favorable to the State, a reasonable mind could conclude that Kelsey stole $55 from Mother's purse without her consent and with the intent to permanently deprive her of it. Of the $60 she had in her wallet in her bedroom, Mother found that only $5 remained a day or two later. Mother testified Kelsey had previously stolen items from her room, including money. Mother's fiancé has no history of taking any of her belongings without her knowledge and was not likely to have been in the bedroom without Mother because he works 14-15-hour days. Mother further testified that no other person had access to her bedroom. Accordingly, we hold that the trial court did not err in denying Kelsey's motion to dismiss the misdemeanor larceny charge.

B. Failure to Make Sufficient Findings

Kelsey next argues that the trial court did not make sufficient findings of fact in its written adjudication order because it failed to state that the allegations had been proven. We agree.

Allegations in a juvenile petition alleging delinquency must be "prove[n] beyond a reasonable doubt." N.C. Gen. Stat. § 7B-2409 (2017). If the trial court finds that a petition's allegation has been proven pursuant to Section 7B-2409, it must "so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication." N.C. Gen. Stat. § 7B-2411 (2017).

The trial court made the following findings in support of its adjudication order:

> The following facts have been proven beyond a reasonable doubt: . . .
>
> > THE COURT HEARD TESTIMONY FROM THE PETITIONER AND CROSS EXAMINATION FROM THE DEFENSE. THE COURT FINDS THAT THE JUVENILE IS A DELINQUENT JUVENILE.

Kelsey relies on *In re J.V.J.*, 209 N.C. App. 737, 707 S.E.2d 636 (2011), in support of her argument that the trial court did not make the necessary findings as required by Section 7B-2411. In *In re J.V.J.*, the trial court was adjudicating a juvenile for simple assault on a government officer. *Id.* at 739, 707 S.E.2d at 637. In adjudicating the juvenile delinquent, the trial court's findings of fact stated:

> Based on the evidence presented[,] [t]he following facts have been proven beyond a reasonable doubt:
>
> > The court finds that [the juvenile] is responsible.
> >
> > 1391–ASSAULT GOVT OFFICAL/–14–33 (C)(4) CLASS 1A MISD OCCURRED 11–23–09[.]

Id. at 740, 707 S.E.2d at 638 (alterations removed and inputted). We held that, "at a minimum, [S]ection 7B-2411 requires a court to state in a written order that the allegations in the petition have been prove[n] beyond a reasonable doubt." *Id.* (quotations and citation omitted). There, however, "the adjudication order [did] not even summarily aver that 'the allegations in the petition [had] been proved,' " and therefore "insufficiently address[ed] the allegations in the petition." *Id.* We thus remanded the case back to the trial court to make the required statutory findings. *Id.*

The State relies on *In re K.C.*, 226 N.C. App. 452, 742 S.E.2d 239 (2013), in its effort to distinguish *In re J.V.J.* from this case. In *In re K.C.*, the adjudication order provided:

> The following facts have been proven beyond a reasonable doubt: . . .
>
> After hearing all testimony in this matter the court finds beyond a reasonable doubt that the juvenile committed the offense of Sexual Battery and Simple Assault and he is ADJUDICATED DELINQUENT.

Id. at 460, 742 S.E.2d at 245. We held that the adjudication order satisfied Section 7B-2411 because it "clearly state[d] that the court considered the evidence and adjudicated [the juvenile] delinquent as to the petition's allegation of simple assault beyond a reasonable doubt." *Id.* at 461, 742 S.E.2d at 245.

Here, unlike in *In re K.C.*, the trial court's findings in its adjudication order

are more akin to those held insufficient in *In re J.V.J.* The trial court wrote only that it heard testimony from Mother and cross-examination from Kelsey's counsel, and summarily concluded that Kelsey was a delinquent juvenile. Mother's juvenile petition alleged that Kelsey committed misdemeanor larceny by stealing $55 from her on either 13 or 14 August 2018. Much like *In re J.V.J.*, the trial court's order did not find that the allegation in the petition was proven beyond a reasonable doubt. We therefore vacate the adjudication and disposition orders and remand to the trial court to make the findings required by Section 7B-2411.

Because we vacate both orders, we need not address Kelsey's remaining arguments regarding the disposition order.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

Judges DIETZ and YOUNG concur.

Report per Rule 30(e).