IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-244

No. COA20-629

Filed 1 June 2021

Yancey County, No. 19 JB 30

IN THE MATTER OF: A.L.P.

Appeal by juvenile from order entered 11 February 2020 by Judge Larry Leake in Yancey County District Court. Heard in the Court of Appeals 12 May 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General William F. Maddrey, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for juvenile-appellant.

TYSON, Judge.

¶ 1 Juvenile, A.L.P., appeals the trial court's order adjudicating him as delinquent, which resulted in a disposition order placing him on probation for 12 months. We reverse and remand.

I. Factual and Procedural Background

¶ 2 Middle schoolers "Arthur," age 12, and "Gina, " age 13, had known each other since elementary school, had played football together and formerly had been friends. *See* N.C. R. App. P. 42(b) (pseudonyms are used to protect the identity of the

juveniles). The actions leading to the State's juvenile delinquency petition occurred at a roller skating rink on 19 October 2019. A juvenile court counselor filed the petition on 6 November 2019 and alleged Arthur committed simple assault.

¶ 3 Gina testified Arthur had teased her while both were skating by calling her a "man and stuff" at the adjudicatory hearing held in February 2020. Gina asserted Arthur had pushed her into a bench at the rink. Gina stated Arthur had his arms in a way that her "feet were on his stomach." Gina also stated there was no other physical contact or hitting.

¶ 4 Police officers and Gina's father were called to the rink. On cross-examination, Gina denied having ever engaged in name calling or teasing with Arthur that night or at school. Gina was the State's only witness.

¶ 5 Arthur and Gina's middle school principal, Ms. Presnell, testified on Arthur's behalf. Presnell testified she was aware Gina had called Arthur names approximately two weeks prior to the incident at the skating rink.

¶ 6 Ms. Elsie Hudome witnessed the incident at the skating rink from approximately three feet away. Hudome testified she saw Arthur push Gina and Gina draw her hand into a fist and attempt to punch Arthur. She stated Gina had also tried to push Arthur. Hudome watched Arthur remove his skates and leave the area.

¶ 7 Arthur testified on his own behalf without any oral or written warnings being administered. Arthur asserted Gina called him a "n****r" and a "fat ass." He testified Gina's friend had slapped him several times and Gina had pushed him earlier in the evening. Arthur admitted pushing Gina and she had fallen onto the nearby bench.

¶ 8 The trial court found Arthur "responsible" and moved to the disposition portion of the hearing. The court stated it would shorten the community service hours and ordered Arthur have no contact with Gina, submit to random drug screens, possess no weapons, and to comply with rules or regulations set by his mother or court counselor.

¶ 9 The court's adjudication order concludes Arthur was delinquent. The order contains no factual findings. The court's written disposition order entered a Level 1 disposition. Arthur timely noticed his appeal.

II. Jurisdiction

¶ 10 Jurisdiction of any final order in a juvenile matter lies in this Court pursuant to N. C. Gen. Stat. § 7B-2602 (2019). Arthur's notice failed to list its appeal of the delinquency order. He has filed a petition for a writ of certiorari seeking this Court issue a writ to hear his appeal of the disposition order. In our discretion pursuant to North Carolina Rule of Appellate Procedure 21, we grant Arthur's petition and consider his challenges to both the adjudication order and the disposition order. *See*

In re G.C., 230 N.C. App. 511, 516, 750 S.E.2d 548, 552 (2013) ("Rule 21(a)(1) provides this Court with the authority to review the merits of an appeal").

III. Standard of Review

¶ 11 "[A]lleged statutory errors are questions of law. A question of law is reviewed *de novo.* Under the *de novo* standard, the Court considers the matter anew and freely substitutes its own judgment for that of the lower court." *In re A.M.*, 220 N.C. App. 136, 137, 724 S.E.2d 651, 653 (2012) (citation omitted).

IV. Statutory Privilege Against Self-Incrimination

¶ 12 Arthur alleges violations of four statutory mandates. Arthur argues the trial court violated N.C. Gen. Stat. § 7B-2405 when it permitted him to testify without first advising him of his privilege against self-incrimination. To assure due process of law, N.C. Gen. Stat. § 7B-2405(4) mandates that at the adjudicatory hearing, "the court *shall* protect the . . . right[] of the juvenile" to assure "the privilege against self-incrimination." N.C. Gen. Stat. § 7B-2405(4) (2019).

¶ 13 "The use of the word 'shall' by our Legislature has been held by this Court to be a mandate, and the failure to comply with this mandate constitutes reversible error." *In re J.R.V.*, 212 N.C. App. 205, 208, 710 S.E.2d 411, 413 (2011) (citation omitted).

¶ 14 "The statute, by stating that the trial court 'shall' protect a juvenile's delineated rights, places an affirmative duty on the trial court to protect, *inter alia,*

a juvenile's right against self-incrimination." *Id.* at 208, 710 S.E.2d at 413. A trial court's failure to follow N.C. Gen. Stat. § 7B-2405(4)'s mandate to engage in a colloquy with the juvenile to ensure the juvenile understands his constitutional right against self-incrimination is error. *Id.* at 209, 710 S.E.2d at 413.

¶ 15 In the case of *In re J.B.*, 261 N.C. App. 371, 374, 820 S.E.2d 369, 371 (2018), the trial court failed to advise the juvenile of his right against self-incrimination prior to his testimony. In that case, the State's sole witness was the victim, who had been hit in the face with a milk carton. The juvenile took the witness stand and admitted he "got mad and just threw the milk carton." *Id.* at 373, 820 S.E.2d at 371. Before the juvenile took the witness stand, the trial court had not inquired whether the juvenile understood his right against self-incrimination and to not testify. *Id.* After the juvenile testified, the trial court acknowledged it had forgotten to advise the juvenile regarding his right to remain silent and that any statements he said in his testimony could be used against him. *Id.* at 374, 820 S.E.2d at 371.

¶ 16 This Court held the testimony admitting the assault was clearly incriminating and prejudicial. *Id.* This Court found error and prejudice in the trial court's failure to follow the statutory mandate and to warn the juvenile of his right against self-incrimination. *Id.* The State failed to show the error was harmless beyond reasonable doubt. *Id.* at 374, 820 S.E.2d at 372. This Court reversed the order and remanded for a new trial. *Id.* at 375, 820 S.E.2d at 372.

¶ 17 "Our courts have consistently recognized that the State has a *greater* duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution." *In re T.E.F.,* 359 N.C. 570, 575, 614 S.E.2d 296, 299 (2005) (internal quotations, citations, and brackets omitted). Here, the trial court failed to act at all.

¶ 18 The trial court provided no warning to Arthur of his rights against self-incrimination. The State does not contest the trial court committed error by failing to advise Arthur of his rights against self-incrimination. The State acknowledges that a court's failure to advise the juvenile of their right against self-incrimination is presumed to be prejudicial unless it is shown to be harmless beyond a reasonable doubt. *See State v. Quick*, 337 N.C. 359, 363, 446 S.E.2d 535, 538 (1994) (recognizing a "violation of defendant's federal constitutional rights is prejudicial unless the State can demonstrate on appeal that it was harmless beyond a reasonable doubt").

¶ 19 The State argues Arthur was not prejudiced by the trial court's error and it is harmless beyond a reasonable doubt. The State analogizes the present case to the case of *In re J.R.V.* In that case, no colloquy occurred between the juvenile and the trial court prior to the juvenile's testimony. *In re J.R.V.*, 212 N.C. App. at 209, 710 S.E.2d at 413. However, in *J.R.V.*, no evidence had been presented asserting the juvenile had participated in the alleged theft. The State's trial theory was based upon an exception to the mere presence rule and alleged the juvenile was friends of and complicit with the men who had stolen the items. *Id.* at 209, 710 S.E.2d at 414. The

State offered the testimony of the owner of the stolen items, and a police officer, who testified to the juvenile's prior statements that he was friends with the individuals who had taken the items. *Id.* at 206, 710 S.E.2d at 412.

¶ 20 The juvenile in *J.R.V.* denied any involvement in the theft, but admitted he had "hung out" in the past with the other individuals charged with the theft. *Id.* at 207, 710 S.E.2d at 412. He testified he was not present at the time of the theft, did not know who had taken the equipment, and that the items he had helped the individuals move were from his mother's home, not the victim's. *Id.* at 210, 710 S.E.2d at 414.

¶ 21 This Court held since "the juvenile's testimony was either consistent with the prior evidence presented by the State or was otherwise favorable to the juvenile, it cannot be considered prejudicial." *Id.* The Court concluded "the trial court's failure to advise the juvenile of his privilege against self-incrimination was harmless beyond a reasonable doubt." *Id.*

¶ 22 This Court's analysis in *J.R.V.* further underscores the prejudice suffered by Arthur in the present case. The State's case was based and relied upon the testimony of a single witness, the purported victim, who testified Arthur had pushed her. Arthur admitted to pushing Gina and asserted no defense, such as self-defense. His testimony formed the basis of and corroborated the assault charge, was incriminating and clearly prejudicial to his case.

¶ 23 Here, the trial court engaged in no colloquy with Arthur regarding his privilege against self-incrimination as is required by N.C. Gen. Stat. § 7B-2405(4). The State has failed to show the trial court's failure to warn him is not harmless error beyond a reasonable doubt. The trial court's order of adjudication is reversed.

V. Written Order of Adjudication

¶ 24 Where the trial court finds that the allegations in the petition have been proved beyond a reasonable doubt, the court must state them in the written adjudication order. N.C. Gen. Stat. § 7B-2411 (2019); *see also* N.C. Gen. Stat. § 7B-2409 (2019). Both the State and Arthur agree the trial court failed to state the statutorily mandated findings of fact in its adjudication order.

¶ 25 The court utilized the AOC-J-460 form Juvenile Adjudication Order. The trial court made no markings whatsoever in the box labeled, "the following facts have been proven beyond a reasonable doubt." There were no additional sheets or documents incorporated or attached.

¶ 26 At the conclusion of the adjudication hearing, the court's only statement relevant to the assault adjudication, was "We've got intent to harm or hurt here[.]" Because we reverse the adjudication order for the court's failure to provide the statutory warnings against self-incrimination, it is unnecessary to address the State's argument that this matter need only be remanded for findings to be inserted into the blank order.

VI. Dispositional Order

¶ 27 Arthur maintains the trial court also committed multiple reversible errors in its dispositional order. Arthur asserts the trial court failed to make any findings demonstrating the factors it considered in its dispositional order as is required by N.C. Gen. Stat. § 7B-2501(c) (2019). Arthur also shows the trial court failed to orally announce in open court the precise terms and level of disposition it was imposing as is required by N.C. Gen. Stat. § 7B-2512(a) (2019). The State concedes both of the trial court's errors.

¶ 28 We have reversed the order adjudicating Arthur as delinquent. The trial court's disposition order based on the reversed adjudication is a nullity. *See In re Kenyon N.*, 110 N.C. App. 294, 298, 429 S.E.2d 447, 449 (1993); *see also In re Eades*, 143 N.C. App. 712, 714, 547 S.E.2d 146, 148 (2001). It is unnecessary to address the juvenile's arguments regarding the disposition order. *Id.*

VII. Conclusion

¶ 29 The trial court has an affirmative duty to inform juveniles appearing before it of their rights against self-incrimination. His admission without warnings was error. The State has failed to show this error is harmless beyond a reasonable doubt. The trial court's adjudication of delinquency is reversed and remanded for new trial. The trial court also failed to follow the statutory mandates in entering and reciting its disposition. Because we reverse the adjudication order, the court's disposition order

and supplemental orders are vacated. We reverse and remand to the trial court. *It is so ordered.*

REVERSED AND REMANDED.

Judges HAMPSON and WOOD concur.

Report per Rule 30(e).