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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-806

No. COA22-605

Filed 6 December 2022

Union County, No. 20JB197

IN THE MATTER OF: J.B.

Appeal by juvenile from order entered 28 January 2022 by Judge Stephen V. Higdon in Union County District Court. Heard in the Court of Appeals 16 November 2022.

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

Thomas, Ferguson & Beskind, LLP, by Kellie Mannette, for Juvenile-Appellant.

COLLINS, Judge.

¶ 1 Juvenile Jacob¹ appeals from orders adjudicating him delinquent for second-degree forcible rape and placing him on probation for twelve months. Jacob argues that the trial court erred by holding a joint probable cause and adjudication hearing, in violation of N.C. Gen. Stat. §§ 7B-2202 and 7B-2203. Because Jacob requested a joint probable cause and adjudication hearing, any error in doing so was invited and Jacob has waived his right to appellate review of the issue.

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

I. Factual Background and Procedural History

¶ 2 The State filed a juvenile petition in November 2020 against Jacob alleging he had committed second-degree forcible rape, in violation of N.C. Gen. Stat. § 14-27.22(a)(1). At Jacob’s first appearance on 3 December 2020, attorney Anna Goodwin, whom Jacob’s parents had hired to consult regarding the case, asked to be substituted as Jacob’s counsel. The trial court appointed Goodwin to represent Jacob and scheduled a probable cause hearing for 4 February 2021.

¶ 3 A status conference was held on 11 February 2021, wherein the State indicated that the probable cause hearing had been rescheduled for 18 March. Due to travel and scheduling complications caused by COVID-19, and the fact that the alleged victim lived in New York, the State asked the trial court whether it was possible “to do a hearing like this over WebEx or, you know, some kind of virtual platform[,]” or whether this was a “situation where we’re going to have to put the case out for a little bit, you know, in hopes of being able to get [everyone] here.”

¶ 4 When asked about conducting a probable cause hearing virtually, Goodwin stated:

I anticipate that we would just – and I don’t believe the State intends to transfer this matter [to superior court]. And, that would be the only question as to whether or not probable cause would not initially be waived, but be joined with adjudication. If they were planning to transfer then that would – that would definitely weigh on my answer

The State indicated that it did not intend to transfer the case to superior court. After further discussion between the parties and the trial court about trying to conduct a virtual probable cause hearing, the trial court stated:

I would certainly sustain any objection to virtual hearing in adjudication. As to probable cause, you know maybe ordinarily in a case where it wasn't a mandatory transfer and it wasn't for transfer eligible or gonna be taken to transfer, you know, I might be willing to conduct a probable cause hearing, you know, just as a matter of course. But, again with this case being eligible for transfer I wouldn't conduct a probable cause hearing if the juvenile's attorney objected virtually. I wouldn't conduct it virtually if she objected just because the stakes are so high. But, if – if y'all are able to come to an agreement as to the way we conduct the hearing, so long as we can secure all the juvenile's constitutional rights which would include being able to see every one participating, be able to be in communication with his attorney. And, if the victim's rights are secured by being able to be present in the form that she is wanting to be present then I'm fine with what y'all work out.

¶ 5

In response, Goodwin stated:

I don't believe there's any issue on our behalf of just combining probable cause and adjudication whenever that date ends up being. So, – cause I don't think my client or his family has any intentions of wanting to keep having to come back to court to prolong the facts.

Goodwin also clarified that her client intended to go to trial and stated, “I doubt we would agree to an adjudication conducted virtually.” In response, the trial court stated:

Okay. All right. I misunderstood what you were saying. Usually when we put a probable cause and adjudication together that's usually because we're just gonna go right through and admit. Okay. So, yes if we're gonna need to do this in person for a trial then I think if Ms. Goodwin objects to that based on the fact that it's a Class C, you know, I'd have to pretty seriously consider those objections. And, I'd be glad for y'all – if you wanna, you know, brief that for me that's fine. But, I understand the difficulties with the witnesses location and the pandemic and I'll take that into consideration as far as good cause for scheduling purposes. But, it sounds like we will need to move it out a little bit.

¶ 6 Both parties continued to engage with the trial court to schedule the hearings and agreed upon a tentative date of 15 April. Ultimately, the trial court found that, “based on the pandemic, based on the different situation that exists in the city area of New York and the safety of all concerned, there is good cause to put this case into April for probable cause and adjudication pending further orders of the Court.”

¶ 7 The combined probable cause and adjudication hearing was held 27 May, 28 May, and 16 July 2021. After hearing the evidence, the trial court found the State had proven its case and adjudicated Jacob delinquent for second-degree forcible rape. Disposition was continued to a later date. After a hearing on 26 January 2022, the trial court entered disposition placing Jacob on probation for twelve months and ordering him to comply with certain other requirements. Jacob gave notice of appeal in open court.

II. Discussion

¶ 8 Jacob argues that the trial court erred by holding a joint probable cause and adjudication hearing because N.C. Gen. Stat. §§ 7B-2202 and 7B-2203 mandate that the hearings be separate. The State responds that this issue is not preserved for review because any error was invited and, nonetheless, that the statutes do not prohibit the hearings from being combined.

¶ 9 “[I]t is well established that when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding defendant’s failure to object at trial.” *State v. Chandler*, 376 N.C. 361, 366, 851 S.E.2d 874, 878 (2020) (quotation marks and citations omitted). “A statute contains a statutory mandate when it is clearly mandatory, and its mandate is directed to the trial court.” *Id.* (quotation marks and citation omitted). A defendant is prejudiced when “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” N.C. Gen. Stat. §15A-1443(a) (2021).

¶ 10 However, it is also well established that a defendant who invites error cannot be prejudiced as a matter of law. *State v. Hairston*, 262 N.C. App. 106, 112, 820 S.E.2d 590, 594 (2018); see *State v. Payne*, 280 N.C. 170, 171, 185 S.E.2d 101, 102 (1971) (“Invited error is not ground for a new trial.”); see also N.C. Gen. Stat.

§15A-1443(c) (2021) (“A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.”²). “The doctrine of invited error applies to a legal error that is not a cause for complaint because the error occurred through the fault of the party now complaining.” *In re R.L.G.*, 260 N.C. App. 70, 77-78, 816 S.E.2d 914, 919 (2018) (quotation marks and citation omitted). “Thus, a defendant who invites error has waived his right to all appellate review concerning the invited error” *State v. Crane*, 269 N.C. App. 341, 343, 837 S.E.2d 607, 608 (2020) (citation omitted).³

¶ 11

In this case, even assuming *arguendo* that the trial court acted contrary to a statutory mandate, Jacob sought a combined hearing and thus, Jacob invited any error and cannot show prejudice. At the 11 February hearing, the parties and the trial court discussed in depth when and how to hold probable cause, adjudication, and

² Although Chapter 15A specifically governs adult criminal procedure, this Court has applied the standards for determining prejudice under §15A-1443 in juvenile cases. *See, e.g., In re E.K.H.*, 226 N.C. App. 448, 451-52, 739 S.E.2d 613, 615-16 (2013) (applying §15A-1443 and holding harmless a trial court’s failure to conduct risk and needs assessment as mandated by statute because the juvenile failed “to articulate any specific prejudice from the trial court’s [error]”); *In re T.R.B.*, 157 N.C. App. 609, 614-16, 582 S.E.2d 279, 283-84 (2003) (applying §15A-1443 and holding that the trial court’s failure to determine whether juvenile was in custody when juvenile gave a signed confession was prejudicial error).

³ *See In re N.E.P.*, 268 N.C. App. 324, 834 S.E.2d 188 (2019) (unpublished) (“Assuming *arguendo* that N.C. Gen. Stat. § 122C-268(a) is a mandate[,] . . . appellate review is still inappropriate because N.P. invited the error by consenting to the continuances.”); *see also State v. Dubose*, 253 N.C. App. 840, 800 S.E.2d 135 (2017) (unpublished) (applying invited error doctrine to defendant’s argument that his right to a unanimous verdict, as mandated by our State Constitution and by statute, was violated due to a misstatement in the jury instructions).

disposition hearings with out-of-state witnesses in the midst of the COVID-19 pandemic while protecting Jacob’s rights. During that discussion, Goodwin–Jacob’s chosen attorney–stated:

I don’t believe there’s any issue on our behalf of just combining probable cause and adjudication whenever that date ends up being. So, – cause I don’t think my client or his family has any intentions of wanting to keep having to come back to court to prolong the facts.

The trial court, upon discovering that Jacob was not planning to admit guilt, informed the parties that, “[u]sually when we put a probable cause and adjudication together that’s usually because we’re just gonna go right through and admit.” Nonetheless, both parties continued to discuss scheduling, and the trial court ultimately scheduled the case in April “for probable cause and adjudication.”

¶ 12 There are strategic reasons for Goodwin to have requested a combined probable cause and adjudication hearing, including her stated reason that “I don’t think my client or his family has any intentions of wanting to keep having to come back to court to prolong the facts.” Jacob cannot now complain of this request. Because the probable cause and adjudication hearings were combined at Jacob’s request, any error in combining the hearings was invited, and Jacob cannot show prejudice. Accordingly, Jacob has waived his right to appellate review of the issue. *See Crane*, 269 N.C. App. at 343, 837 S.E.2d at 608 (citation omitted).

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Opinion of the Court

III. Conclusion

¶ 13 Because any error in holding a combined adjudication and disposition hearing was invited, Jacob has waived appellate review of this issue. Accordingly, Jacob's appeal is dismissed.

DISMISSED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).