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NO. COA11-550
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

IN THE MATTER OF:

S.C.U.

Buncombe County
No. 09 JB 338

Appeal by respondent-juvenile from order entered 22 November 2010 by Judge J. Calvin Hill and order entered 2 February 2011 by Judge Dennis J. Redwing in Buncombe County District Court. Heard in the Court of Appeals 23 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Kathryn J. Thomas, for the State.

Charlotte Gail Blake for respondent-appellant.

ERVIN, Judge.

Respondent-Juvenile S.C.U. appeals from the trial court's adjudication that he was a delinquent juvenile based upon a finding that Juvenile was responsible for committing two counts of sexual battery in violation of N.C. Gen. Stat. § 14-27.5A(a). On appeal, Juvenile contends that the State failed to present sufficient evidence to support a determination that his actions were committed for the purpose of sexual gratification or sexual

arousal. After careful consideration of Juvenile's challenge to the trial court's adjudication order in light of the record and the applicable law, we conclude that the trial court's orders should be affirmed.

I. Factual Background

On 27 October 2009 and 26 April 2010, juvenile petitions were filed alleging that Juvenile should be adjudicated delinquent because he had committed a sexual battery against a schoolmate named T.H.¹ on two separate occasions. On 11 September 2009, Juvenile allegedly placed his hands on Tamara's breasts. On 12 March 2010, Juvenile allegedly touched Tamara's buttocks. Juvenile was twelve years old at the time of the first incident and thirteen years old at the time of the second incident.

At the adjudication hearing held on 15 November 2010, Juvenile denied the allegations set out in the juvenile petitions. After the presentation of the State's evidence, Juvenile unsuccessfully sought dismissal of the allegations that had been lodged against him and elected not to present any evidence. At the conclusion of the adjudication hearing, the trial court found that Juvenile was responsible for committing sexual battery on both occasions and adjudicated him a

¹T.H. will be referred to as "Tamara" for the remainder of this opinion for ease of reading and to protect her privacy.

delinquent juvenile. On 24 January 2011, the court entered a Level 2 disposition. Juvenile noted an appeal to this Court from the court's adjudication and disposition orders.

II. Legal Analysis

On appeal, Juvenile contends that the trial court erred by denying his motion to dismiss for insufficiency of the evidence. In seeking to persuade us of the validity of this position, Juvenile argues that the State failed to prove that he acted for the purpose of sexual gratification or arousal. We disagree.

"We review a trial court's denial of a [juvenile's] motion to dismiss *de novo*." *In re S.M.S.*, 196 N.C. App. 170, 171, 675 S.E.2d 44, 45 (2009) (citation omitted). "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.'" *In re Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001) (citation omitted) (alterations in original). "The evidence must be such that, when it is viewed in the light most favorable to the State, it is sufficient to raise more than a suspicion or possibility of the respondent's guilt." *In re Walker*, 83 N.C. App. 46, 48, 348 S.E.2d 823, 824 (1986) (citation omitted).

A person is guilty of committing a sexual battery if that person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person by force and against the will of that other person. N.C. Gen. Stat. § 14-27.5A(a). In cases involving juveniles, "without some evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting, sexual ambitions must not be assigned to a child's actions." *In re T.S.*, 133 N.C. App. 272, 277, 515 S.E.2d 230, 233, *disc. review denied*, 351 N.C. 105, 540 S.E.2d 751 (1999).

The evidence presented at the adjudication hearing tends to show that Juvenile approached Tamara from behind on 11 September 2009 and, after grabbing her breasts with both hands and squeezing, told Tamara not to tell on him. Although the teacher had her back to the class, she was alerted to the contact by one of Tamara's friends. According to the teacher, Juvenile claimed that the incident was an accident and stated that he had merely "brushed up" against Tamara. The principal stated that Juvenile had told him that he had touched Tamara's shoulders and shaken her. As a result of this incident, the principal suspended Juvenile for three days. In addition, the school resource officer filed an incident report with the Department of Juvenile

Justice, an action which resulted in the filing of a juvenile petition alleging that Juvenile had committed a sexual battery.

In spite of the repercussions that followed the 11 September 2009 incident, Juvenile committed another act against Tamara on 11 March 2010. On that occasion, Tamara was standing up and working on a poster when Juvenile approached her from behind, put his hands on her buttocks, and squeezed. After Tamara gasped, Juvenile quickly removed his hand from her buttocks. Although the teacher had her back to the class again, she heard a collective gasp from the class and learned what had happened from Tamara's friend. While the teacher was trying to question Tamara, Juvenile shouted out, "Man, I didn't touch her." The teacher considered this statement to be odd given that she had not yet talked to Juvenile about the incident. Juvenile told the principal that he had "bumped" Tamara on this occasion. The principal suspended Juvenile from school for five days. Moreover, another police report was filed, resulting in the filing of a second juvenile petition alleging that Juvenile had committed a sexual battery.

After viewing the evidence in the light most favorable to the State, we conclude that the record is sufficient to support an inference that Juvenile acted for the purpose of sexual arousal or gratification. We reach this conclusion for a number

of reasons. First, the manner in which Juvenile approached Tamara indicates a level of maturity and the existence of the intent necessary for a finding of responsibility given that Juvenile acted at a time when the teacher could not observe his actions directly and in such a manner as to prevent Tamara from being aware that he was approaching her. See *In re T.C.S.*, 148 N.C. App. 297, 303, 558 S.E.2d 251, 254 (2002) (stating that the "secretive nature" of a juvenile's actions was relevant to a determination of the extent to which that juvenile had the requisite maturity to act for the purpose of sexual gratification or arousal). Secondly, the record contains evidence tending to show that Juvenile told Tamara not to tell on him at the time of the first incident, a fact which suggests that he knew that his actions were wrongful and should be hidden from others. Moreover, Juvenile touched Tamara in a sexually suggestive manner on a second occasion despite having every reason to believe, given the repercussions associated with the first incident, that his conduct was improper. The fact that Juvenile hastily proclaimed his innocence even before being questioned by the teacher provides further support for a conclusion that Juvenile appreciated the wrongfulness of his actions and acted with the requisite intent. See *In re A.W.*, ___ N.C. App. ___, ___, 706 S.E.2d 305, 308-09 (2011) (holding that

evidence of prior sexual activity permits an inference of sexual awareness and the existence of an intent to perform sexual acts in subsequent incident). As a result, in light of Juvenile's age, the circumstances surrounding his treatment of Tamara, and his unsolicited protestations of innocence prior to any accusation having been lodged against him, we conclude that the trial court did not err by denying Juvenile's dismissal motion.

AFFIRMED.

Judges ROBERT C. HUNTER and STEPHENS concur.

Report per Rule 30(e).