

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-805

Filed: 7 March 2017

Forsyth County, No. 15 JB 249

IN THE MATTER OF: R.A.S.

Appeal by juvenile from order entered 27 April 2016 by Judge Laurie L. Hutchins in Forsyth County District Court. Heard in the Court of Appeals 20 February 2017.

*Attorney General Roy Cooper*¹, by *Special Deputy Attorney General Stephanie A. Brennan*, for the State.

Richard Croutharmel, for juvenile-appellant.

CALABRIA, Judge.

R.A.S. (“Ray”)² appeals from the trial court’s order adjudicating him delinquent for committing sexual battery. On appeal, Ray contends the trial court lacked subject matter jurisdiction because the juvenile petition was fatally defective in that it failed to name the alleged victim of the charged offense. We agree and vacate the trial court’s order.

¹ When the briefs and records in this case were filed, Roy Cooper was Attorney General. Joshua H. Stein was sworn in as Attorney General on 1 January 2017.

² “Ray” and “Opel” are the pseudonyms used by the parties to protect the identity of the juvenile-appellant and the minor victim.

Opinion of the Court

On 1 December 2015, Ray was charged in a juvenile petition with sexual battery in violation of N.C. Gen. Stat. § 14-27.5A(a)(1) (2015). The petition came on for hearing on 26 April 2016.

The State's evidence at the hearing tended to show the following: In 2015, Ray and O.C. ("Opel") attended the same high school in Forsyth County, North Carolina, and both students played in the school band. On the evening of 27 October 2015, Ray and Opel were participating in a band concert being held at the school. Before the concert, the students were getting ready in the band locker room, "socializing and getting to know each other," when Opel first met Ray. Opel started following Ray on Instagram and they exchanged phone numbers.

Ray told Opel that she "looked hot" and asked her "if [she] would ever date a black guy[.]" Opel responded that she had "never really thought about it before." Ray then told Opel that "he didn't want to waste his time, if [she] had -- wouldn't want to date him" so she "should tell him soon, if [she] ever wanted to date him."

Opel played with her section in the band concert and then went to her assigned seat in the back of the auditorium to watch the rest of the concert. A short while later, Ray approached where Opel was sitting and told the girl sitting next to her to move over so he could sit next to Opel. Ray sat very close to Opel "making [her] feel very uncomfortable" and again asked her if she "would ever date a black guy." Ray put his hand on her thigh and rubbed up and down her leg. Opel quietly told him to

Opinion of the Court

stop, but Ray continued to tell her that she “look[ed] good,” and started touching her chest and neck area and trying to hold her hand. Opel again told him to stop. Ray stopped for about two minutes but then began playing with her hair and tried grabbing her face to turn it toward him. Opel pulled away and told him to stop.

At that time, the concert ended and all of the students got up to go back to the band room to pack up their instruments. While Opel was putting her things away in the band locker room, Ray came up behind her and grabbed her buttocks, telling her “it was big” and that she “looked hot and good.” Opel finished packing up her things and left the room to find her mother. Opel told her mother that someone had touched her, and Opel’s mother told the band director. Opel’s mother testified that Opel was trembling and crying when she first saw her. Opel waited in the car with her father and little sister while her mother spoke with the band director, but was called back into the school to give a written statement. Opel’s mother called the police when they got home and Opel gave another written statement to the officer.

The school’s resource officer testified for the State that during the school’s investigation of the incident, Ray denied touching Opel and said he only sat down next to her because they were friends. The resource officer also testified that he overheard Ray tell the school’s assistant principal that “he never intended to put his hands on her[,]” but that “he did touch her hand trying to flirt with her.” He further

Opinion of the Court

testified that Ray denied ever touching Opel's buttocks or "any other part of her body" to the assistant principal, and that Opel only told him to stop in a playful manner.

The State rested and Ray moved to dismiss the charge, which the trial court denied.

Ray testified in his defense that he only sat next to Opel at the concert to tell her his friend had a crush on her. Ray denied touching Opel or trying to hold her hand. He further testified that he did not see Opel in the band room after the concert. A friend of Ray testified that Ray and Opel were friendly together before the concert and took a picture together, but he did not see either of them after the concert. Another friend testified that he was with Ray in the band room after the concert, and that Opel was not in the band room at that time.

The trial court adjudicated Ray delinquent for the offense of sexual battery on 27 April 2016 and continued disposition until 26 July 2016 in order to obtain further dispositional evidence. Ray gave timely notice of appeal.

Ray contends the trial court lacked subject matter jurisdiction to adjudicate him delinquent because the juvenile petition was fatally defective in that it failed to name the alleged victim of the charged offense. We agree.

"[I]t is well established that fatal defects in an indictment or a juvenile petition are jurisdictional, and thus may be raised at any time[,]" including for the first time on appeal. *In re S.R.S.*, 180 N.C. App. 151, 153, 636 S.E.2d 277, 279 (2006). We

Opinion of the Court

review a question of subject matter jurisdiction *de novo*. *In re K.A.D.*, 187 N.C. App. 502, 503, 653 S.E.2d 427, 428 (2007).

A juvenile delinquency petition “shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile’s commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation.” N.C. Gen. Stat. § 7B-1802 (2015). “A juvenile petition serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged.” *In re J.C.*, 205 N.C. App. 301, 303, 695 S.E.2d 168, 169-70 (2010) (citation and quotation marks omitted). “When a petition is fatally deficient, it is inoperative and fails to evoke the jurisdiction of the court.” *In re J.F.M.*, 168 N.C. App. 143, 150, 607 S.E.2d 304, 309 (2005).

The petition in this case charged Ray with sexual battery. “A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person . . . [b]y force and against the will of the other person[.]” N.C. Gen. Stat. § 14-27A(a)(1) (2015).³ Pursuant to N.C. Gen. Stat. § 15-144.2,

³ The statute was recodified as N.C. Gen. Stat. § 14-27.33 by 2015 N.C. Sess. Laws 181 §15, effective 1 December 2015.

Opinion of the Court

[i]n indictments for sex offense it is not necessary to allege every matter required to be proved on the trial; but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the sex offense was allegedly committed, and the averment “with force and arms,” as is now usual, it is sufficient in describing a sex offense to allege that the accused person unlawfully, willfully, and feloniously did engage in a sex offense with the victim, *naming the victim*, by force and against the will of such victim and concluding as is now required by law.

N.C. Gen. Stat. § 15-144.2(a) (2015) (emphasis added). Thus, in order for an indictment or petition for a sexual offense to be legally valid, it must contain the victim’s name. *In re M.S.*, 199 N.C. App. 260, 265, 681 S.E.2d 441, 444 (2009).

In *M.S.*, this Court held the petitions alleging the juvenile engaged in a sexual act “with *a child* under the age of 13 years” violated N.C. Gen. Stat. § 15-144.2 by failing to name the victim and were fatally defective. *Id.* at 264-66, 681 S.E.2d at 444-45 (emphasis added). In this case, the juvenile petition alleged:

[t]he juvenile is a delinquent juvenile as defined by G.S. 7B-1501(7) in that on or about the date of offense shown above and in the county named above, the juvenile did unlawfully, willfully . . . [t]ouch *the victim’s* breast, over her clothing, with his hand. He also grabbed her buttocks with his hand. All done without her permission.

(Emphasis added). The petition did not include the victim’s name, initials, or any other means of identifying the victim. By only referring to “the victim[,]” the petition violates N.C. Gen. Stat. §15-144.2(a) and is fatally defective. *M.S.*, 199 N.C. App. at 266, 681 S.E.2d at 445. Therefore, the trial court lacked subject matter

IN RE: R.A.S.

Opinion of the Court

jurisdiction to adjudicate the juvenile delinquent. Accordingly, we must vacate the trial court's order. *See id.* at 267, 681 S.E.2d at 446.

VACATED.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).