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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-985

Filed: 5 June 2018

Durham County, No. 06 JB 353

IN THE MATTER OF: T.T.

Appeal by Respondent from adjudication and disposition order entered 19 October 2016 by Judge Marcia Morey in Durham County District Court. Heard in the Court of Appeals 20 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Vanessa N. Totten, for the State.

Geeta N. Kapur for the Respondent-Appellant.

DILLON, Judge.

T.T. ("Tommy" or "Respondent"),[1] a juvenile, appeals from the trial court's order adjudicating him delinquent and a dispositional order placing him on probation.

I. Background

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading.

In 2016, the State filed a juvenile petition alleging that Tommy had committed a criminal offense by carrying a concealed weapon. At the time of the alleged offense, Tommy was fifteen (15) years old. Respondent filed a motion to suppress.

At a hearing on the motion to suppress, the trial court heard testimony from a police officer and from one of Tommy's friends, "Mark."[2] The police officer, Officer Muze, testified that on 20 July 2016, he received a call to respond to a vehicle break-in which was in progress. While he was en route to the scene, he received information that the suspects had fled on foot. A second officer saw Tommy and two other people matching the description of the individuals who had fled from the scene of the break-in and indicated that he "made contact" with them at a nearby location.

When Officer Muze arrived, he observed the three juveniles talking to another officer. Officer Muze stated that after his arrival on the scene, his canine started to bark inside his patrol vehicle. He further testified that based on his observations of Tommy's body language, Tommy would have fled if the canine had not been present; Tommy was trying to avoid interacting with the officers; he was sidestepping and moving behind the other two juveniles; and he made several gestures towards his waistband. Based on these observations, and his law enforcement training and expertise, Officer Muze frisked Tommy for the stated purpose of officer safety and discovered a handgun concealed in Tommy's waistband.

[2] A pseudonym.

Mark testified that he, Tommy, and another juvenile were walking toward a restaurant when an officer pulled his car in front of them. They turned to walk in a different direction, but several other police cars had arrived at their location. The juvenile was approached by one officer and did not remember what the officer told him when he was stopped, but admitted that he consented to a pat-down. The three juveniles were detained for approximately one hour and thirty minutes. After the officers determined that they had not been involved in the break-in, they were transported home.

After hearing this testimony, the trial court denied the motion to suppress from the bench, stating as follows:

> Okay. Thank you. In light of – I agree with the State's presentation of facts, as [sic] the testimony from Officer Muze. I do find he did have reasonable suspicion, based on training and experience in officer safety, on the specific body language of [Tommy] and the others in totality. Motion to suppress will be denied.

Tommy subsequently pleaded guilty to carrying a concealed weapon and was adjudicated delinquent. The trial court entered a written dispositional order placing him on probation for twelve (12) months and several supplemental orders establishing the conditions of his probation and the responsibility of his guardian to ensure his compliance. Respondent timely appealed.

II. Analysis

On appeal, Respondent makes two arguments: first, that the trial court erred in denying his motion to suppress, and second, that the trial court failed to make proper findings in its disposition order regarding his prior delinquency history. We address each argument in turn.

A. Motion to Suppress

Respondent first argues that the trial court erred in denying his motion to suppress. Specifically, Respondent contends that the trial court failed to consider whether the initial stop of Tommy and his friends was supported by reasonable suspicion. Respondent also contends that the trial court failed to make the appropriate findings of fact to support its ruling on the motion to suppress.

We review a trial court's denial of a motion to suppress only to determine "whether its findings are supported by competent evidence, and if so, whether the findings support the trial court's conclusions of law." *In re I.R.T.*, 184 N.C. App. 579, 584, 647 S.E.2d 129, 134 (2007) (internal citation omitted). The trial court is required to make explicit findings of fact "only when there is a material conflict in the evidence[.]" *State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674 (2015). A written determination setting forth the findings and conclusions is not necessary, but it is the better practice. *See id.* However, "[w]hen there is no conflict in the evidence, the trial court's findings can be inferred from its decision." *Id.*

Here, there was no material conflict in the evidence presented by the two witnesses who testified at the suppression hearing. Therefore, the trial court was not required to make explicit findings of fact or enter a written order. *See id.*

Additionally, we conclude that there was sufficient evidence presented, in the form of testimony from Officer Muze and Mark, to show that the second officer had reasonable suspicion to stop the juveniles. *See State v. Hemphill*, 219 N.C. App. 50, 56, 723 S.E.2d 142, 145 (2012).

Specifically, there was evidence that the second officer had a description of the three individuals who were involved in the vehicle break-in and then located three individuals matching the description in close proximity to the scene and time of the break-in. *See State v. Buie*, 297 N.C. 159, 162, 254 S.E.2d 26, 28-29 (1979) (finding reasonable suspicion to stop where an officer saw the defendant near the crime scene shortly after receiving a report of a burglary and the defendant roughly matched the description of the suspect); *State v. Williams*, 195 N.C. App. 554, 557-60, 673 S.E.2d 394, 397-98 (2009), *abrogated in part on other grounds by State v. Bartlett*, 368 N.C. 309, 776 S.E.2d 672 (2015) (finding reasonable suspicion where the defendant, who generally matched a report following a robbery, was located approximately two blocks from the crime scene minutes after the crime occurred). Tommy's friend Mark stated that he, Tommy, and the other juvenile "[saw] an officer pull up . . . in front of us. So then we just . . . kept walking. Like, we *turned around* and we walked that way."

(Emphasis added). *See State v. Butler*, 331 N.C. 227, 234, 415 S.E.2d 719, 723 (1992) (noting that where a defendant makes eye contact with an officer and then immediately walks away, the trial court may consider this fact in determining whether an officer had reasonable suspicion to make a stop).

In light of the totality of the circumstances, we conclude that the investigatory seizure of the three juveniles was supported by reasonable suspicion. Mark's and Officer Muze's testimony[3] provided sufficient context and facts to support the trial court's denial of Respondent's motion to suppress.

B. Findings of Fact

Finally, Respondent argues that the trial court's failure to make a finding of fact regarding his prior delinquency history in its dispositional order violates N.C. Gen. Stat. § 7B-2508 and N.C. Gen. Stat. § 7B-2512.

These statutes require the trial court to determine a delinquency history level for each juvenile prior to entering a disposition order, N.C. Gen. Stat. § 7B-2508 (2015), and that any dispositional order "be in writing and contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat. § 7B-2512 (2015).

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[3] We note that to the extent Officer Muze's testimony may have qualified as hearsay, it was still admissible at the suppression hearing. *See* N.C. R. Evid. 401(a) ("Preliminary questions concerning the . . . admissibility of evidence shall be determined by the court[.] . . . In making its determination *it is not bound by the rules of evidence* except those with respect to privileges.") (emphasis added); *see also* N.C. R. Evid. 1101(b)(1); *State v. Ingram*, 242 N.C. App. 173, 182, 774 S.E.2d 433, 440 (2015) ("[In] deciding preliminary matters, the trial court will consider any relevant and reliable information that comes to its attention, whether or not that information is technically admissible under the rules of evidence.").

Here, the trial court did determine that Tommy's delinquency history level was "medium" when the court completed the delinquency history level worksheet. The trial court, however, failed to check the box on *the disposition order* indicating a "medium" delinquency history level. The trial court did properly indicate on the disposition order that it was required to order a "Level 2" disposition based on Tommy's delinquency history.

We conclude that the trial court's failure to check the box on the disposition order was clerical in nature. Despite the clerical error of failing to check the box for "medium," the order and worksheet clearly indicated Tommy's delinquency history level, and the trial court properly imposed a disposition in accordance with this determination. Accordingly, we remand for the purpose of allowing the trial court to correct its clerical error. *See State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (citing the definition of "[c]lerical error" as "[a]n error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination").

AFFIRMED, REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).