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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1154

Filed: 4 June 2019

Craven County, No. 18 JB 23 A

IN THE MATTER OF: N.J.M.

Appeal by juvenile from order entered 30 May 2018 by Judge Thomas G. Foster, Jr., in Craven County District Court. Heard in the Court of Appeals 24 April 2019.

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

Yoder Law PLLC, by Jason Christopher Yoder, for juvenile-appellant.

BRYANT, Judge.

Where a juvenile court accepted a juvenile's admission before personally informing the juvenile of his rights, in violation of General Statutes, section 7B-2407, we must reverse the court's adjudication of delinquency.

On 20 February 2018, a juvenile delinquency petition was served on N.J.M. (hereinafter “Neil”)¹ alleging that, in violation of General Statutes, section 14-277.5, he unlawfully, willfully, and feloniously did communicate, make a report, knowing or having reason to know the report was false, that an act of mass violence was going to occur on educational property, that he was going to shoot students at a Craven County middle school. The matter came on for an adjudication hearing on 16 May 2018, in Craven County District Court, before the Honorable Thomas G. Foster, Jr., Judge presiding.

On the morning of 16 May 2018, the State filed a motion to join Neil’s adjudication with that of another juvenile, Jeff,² charged with the same offense arising out of the same incident. Through counsel, both juveniles agreed to the joinder. At the outset of the hearing, Neil moved the court to dismiss the charge against him.

In his motion to dismiss, Neil argued that the statute he was charged with violating, General Statutes, section 14-277.5 (“Making a false report concerning mass violence on educational property”), was unconstitutional under both the United States Constitution and the North Carolina Constitution as it violated Neil’s right to free speech. Moreover, he argued the statute was unconstitutional on the basis that

¹ A pseudonym is used throughout this opinion to protect the juvenile’s identity and for ease of reading.

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it was unduly broad, vague, and ambiguous. After hearing the arguments of counsel, the court denied the motion to dismiss.

Following the denial of the motion to dismiss, Neil moved the juvenile court to accept his admission. To guard against unduly prejudicing Jeff, who was proceeding with an adjudication hearing, the court elected to immediately accept Neil's admission but to hear the factual basis for Neil's admission after Jeff's adjudication hearing.

The juvenile court arraigned Neil on the charge of making a false report concerning mass violence on educational property. Neil entered an *Alford* plea, which the court accepted. Then, in accordance with the court's direction, Neil and his counsel were sequestered from the courtroom for the duration of Jeff's adjudication hearing. Following Jeff's adjudication hearing, Neil and his counsel returned to the courtroom for the disposition hearing.

The juvenile court proceeded to the disposition portion of Neil's proceeding; however, the court failed to hear a factual basis for Neil's admission and adjudication. On 30 May 2018, the court entered an adjudication order adjudicating Neil a delinquent juvenile and a disposition order imposing a Level 2 disposition. The court placed Neil on probation for a period of twelve months, ordered him to participate in therapy, comply with a 7 p.m. curfew, not associate with Jeff, not be on any Craven County educational property without prior permission from a school official and

juvenile court counselor, and to perform forty hours of community service. Neil appeals.

On appeal, Neil argues that the juvenile court erred by accepting his admission (I) where the State failed to provide a factual basis and (II) where the court failed to address his statutory rights. In the alternative, Neil argues that the court erred by denying his motion to dismiss where General Statutes, section 14-277.5, is unconstitutional. Lastly, Neil argues that the court erred by finding that a Level 2 disposition was required.

Because we reverse and remand Neil's delinquency adjudication in our discussion of Issue II (statutory rights), we do not address Neil's other arguments.

Statutory Rights

Neil argues that the juvenile court erred by accepting his admission where the court failed to inform Neil of his rights. In response, the State concedes this amounts to reversible error. We agree.

Pursuant to our General Statutes, section 7B-2407 ("When admissions by juvenile may be accepted"),

[t]he court may accept an admission from a juvenile *only* after first addressing the juvenile personally *and*:

- (1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile;

- (2) Determining that the juvenile understands the nature of the charge;
- (3) Informing the juvenile that the juvenile has a right to deny the allegations;
- (4) Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;
- (5) Determining that the juvenile is satisfied with the juvenile's representation; and
- (6) Informing the juvenile of the most restrictive disposition on the charge.

N.C. Gen. Stat. § 7B-2407(a) (2017) (emphasis added).

Next, N.C.G.S. § 7B-2407(b) states that the trial court “may accept an admission from a juvenile *only* after determining that the admission is a product of informed choice.” (Emphasis added.)

The use of the mandatory word “only” together with “and” in N.C.G.S. § 7B-2407(a) undoubtedly means that all of these six specific steps are paramount and necessary in accepting a juvenile's admission as to guilt during an adjudicatory hearing. If our legislature intended for these six steps to be mere suggestions or a general guide for our trial courts, this mandatory language could have easily been omitted. . . . If the required “inquiries and statements [do not] . . . affirmatively appear in the record of the proceeding, . . . the adjudication of delinquency based on the admission must be set aside.” [*In re Kenyon N.*, 110 N.C. App. 294, 297, 429 S.E.2d 447, 449 (1993)] (citation omitted).

In re T.E.F., 359 N.C. 570, 573–74, 614 S.E.2d 296, 298 (2005) (third, fourth, and fifth alteration in original) (affirming this Court’s reversal and remand of a juvenile delinquency adjudication for a new hearing where the juvenile court failed to ask the juvenile whether he was satisfied with his representation, in accordance with General Statutes, section 7B-2407(a)(5)); *see also In re A.W.*, 182 N.C. App. 159, 641 S.E.2d 354 (2007) (reversing a juvenile court’s delinquency adjudication where the court failed to orally address the juvenile in accordance with General Statutes, section 7B-2407(a)(1), (3), despite those sections being addressed in writing in a transcript of admission, AOC Form J–410, signed by the juvenile); *id.* at 162, 641 S.E.2d at 356 (“Because of the trial court’s failure to orally inform the juvenile of his rights under N.C. Gen. Stat. § 7B–2407(a)(1) and (3), we are compelled, under *T.E.F.*, to set aside the adjudication of delinquency based on [the juvenile]’s admission.”).

Here, before accepting Neil’s admission, the trial court engaged the juvenile in the following exchange:

[Defense counsel]: I’m making an admission, Judge. You just tell me how to do it.

[Prosecutor]: Okay. I’m going to arraign your client. How does your client plead?

. . . .

. . . Making a false report concerning mass violence on educational property?

. . . .

[Defense counsel]: Your Honor, he would admit that pursuant to Alford.

. . . .

THE COURT: Are you [Neil]?

. . . .

THE COURT: Have you discussed your case with your attorney?

[Juvenile]: Yes, sir.

THE COURT: Do you understand the nature of the charges?

[Juvenile]: Yes, sir.

THE COURT: And the consequences?

[Juvenile]: Yes, sir.

THE COURT: And are you satisfied with the procedure so far?

[Juvenile]: Yes, sir.

THE COURT: And you do understand you have a right to deny the charges and have a total hearing, trial before a judge. You understand that?

[Juvenile]: Yes, sir.

THE COURT: And you choose to enter this transcript?

[Juvenile]: Yes, sir.

THE COURT: All right. I would ask you to please raise

your right hand and be affirmed to your transcript. Go ahead.

(The juvenile was sworn at 11:48 AM.)

On appeal, the State concedes that the juvenile court failed to inform the juvenile that he had the right to remain silent and that any statement that he made could be used against him, and that by admission, the juvenile waived the right to confront the witnesses against him. Moreover, the court failed to inquire as to whether the juvenile was satisfied with his attorney and to inform the juvenile of the most restrictive disposition on the charge against him. *See* N.C.G.S. § 7B-2407(a)(1), (4)–(6). This was reversible error.

We hold that because the juvenile court committed reversible error by failing to inform Neil of his rights under General Statutes, section 7B–2407(a) (1), (4)–(6), we are compelled to set aside Neil’s adjudication of delinquency. Accordingly, Neil’s adjudication of delinquency based on his admission is reversed, and the matter is remanded to the juvenile court for a new hearing.

REVERSED AND REMANDED.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).