

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-163

Filed: 17 September 2019

Jackson County, No. 18 JB 25

In the Matter of D.W.L.B.

Appeal by Defendant from orders entered 11 May 2018 and 8 June 2018 by Judge Richard Walker in Jackson County District Court. Heard in the Court of Appeals 4 June 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tiffany Lucas, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for the Defendant.

DILLON, Judge.

Defendant D.W.L.B. (“Dexter”),¹ a juvenile, appeals from the trial court’s orders adjudicating him delinquent and entering a Level 1 disposition. After careful review, we vacate and remand for further proceedings, as explained in the Conclusion section of this opinion.

I. Background

Dexter is an elementary school student in Sylva. On 11 April 2018, a janitor at Dexter’s school cleaned certain graffiti from a stall in a boy’s bathroom. About ten

¹ We use a pseudonym for ease of reading and to protect the identity of the juvenile. N.C. R. App. P. 42.

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minutes later, while standing in a hallway, the janitor observed a student lean out of that bathroom, look around, and then quickly dart back into the bathroom. The janitor went inside the bathroom to investigate and found Dexter and another boy. Dexter was standing next to the hand dryer by the sinks. Dexter left the bathroom immediately. The janitor then discovered new graffiti, the words “BOMB INCOMING” written in black magic marker on the wall above the hand dryer.

The janitor reported the incident to the principal. Later that day, Dexter was called to the principal’s office. Dexter was found to be carrying a black magic marker in his pants pocket. The principal and two officers spoke with Dexter and his parents and viewed surveillance footage of the hallway outside the bathroom.

Based on this investigation, the officers filed a petition seeking a declaration that Dexter was a delinquent juvenile, alleging that Dexter violated Section 14-277.5 of our General Statutes, a Class H felony, by making a false report concerning mass violence on educational property. After a hearing on the matter, the trial court orally found that Dexter had violated Section 14-277.5 *and* entered a written order adjudicating Dexter delinquent, ordering a Level 1 disposition, and prescribing twelve (12) months of probation.

Dexter timely appealed.

II. Analysis

A. Sufficiency of the Petition

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Dexter argues that the trial court lacked jurisdiction over him because the delinquency petition did not sufficiently allege each element of the offense for which he was charged. For the following reasons, we conclude that the petition failed to allege the elements of a violation of Section 14-277.5.

We typically hold juvenile petitions to the same standards as adult criminal indictments, *In re Griffin*, 162 N.C. App. 487, 493, 592 S.E.2d 12, 16 (2004), and therefore review the sufficiency of a petition *de novo* as a question of law, *see State v. White*, ___ N.C. ___, ___, 827 S.E.2d 80, 82 (2019) (“The sufficiency of an indictment is a question of law reviewed de novo.”).

The petition in this case stated that Dexter:

did make a report by writing a note on the boy’s bathroom wall at [his] Elementary School stating, “bomb incoming”; that being an act of violence is going to occur on educational property, that being [his] Elementary School, a public school in Jackson County; knowing and having reason to know that the report is false. GS 14-277.5

Section 14-277.5 criminalizes the communication of any false report of mass violence to occur on educational property, expressly stating that:

A person who, by any means of communication *to any person or groups of persons, makes a report*, knowing or having reason to know the report is false, that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school, is guilty of a Class H felony.

N.C. Gen. Stat. § 14-277.5(b) (2018) (emphasis added).

Dexter argues that the petition is defective because it fails to allege “an act of mass violence.” We disagree. Certainly, a threat of “bomb incoming” could reasonably be construed as something that could cause mass violence, potentially causing permanent physical injury to two or more people. *See* N.C. Gen. Stat. § 14-277.5(a)(2) (defining “mass violence”).

Nonetheless, we conclude that the petition otherwise fails to allege a violation of Section 14-277.5. Specifically, it fails to allege that Dexter was “ma[king] a report” when he wrote the graffiti. We so conclude for two independent reasons.

First, we so conclude because the petition fails to allege that Dexter directed his “bomb incoming” graffiti message to anyone in particular or that anyone in particular actually saw it. Indeed, the essence of a Section 14-277.5 violation is not so much uttering or writing a statement, but rather making a report of the statement to someone else.² By way of illustration, if Dexter had written the “BOMB INCOMING” message and then immediately erased it, he would not be guilty of making a report as described in Section 14-277.5. But the petition in this case, if held valid, would serve to initiate criminal proceedings for such behavior all the same.

² We note that the petition recites that Dexter did “make a report,” but then the petition described exactly what he did. The mere fact that the petition states that he made a report does not cure the fact that the allegation itself does not constitute a report. Certainly, a petition that alleged that “Defendant made a report by dreaming about making a bomb threat to his principal” would be determined to be defective, notwithstanding that it stated that a report was made.

Second, and alternatively, we so conclude because it would not be reasonable for a person seeing the graffiti on the bathroom wall to construe said graffiti as *a report* of a credible threat. Indeed, a visitor to the bathroom seeing the graffiti would not know when the graffiti was written.

We note that our research has not revealed any case law or General Assembly official comment indicating what type of conduct constitutes the “mak[ing of] a report” within the meaning of Section 14-277.5. We construe statutory language to proscribe *as a Class H felony under this Section* only credible reports, that is, those that a reasonable person would believe could represent a threat. Again, by way of illustration, if a person calls in a threat that “Martians will be invading the school with heat rays this afternoon,” no reasonable person would believe that she was in danger of imminent death by Martian invasion. Such a phone threat might be a crime, such as a Class 2 misdemeanor under Section 14-196(a), but we do not believe that the General Assembly contemplated criminalizing such behavior as a Class H felony. *See* N.C. Gen. Stat. § 14-196(a) (2018) (criminalizing the use of a telephone for harassment).

In the same respect, we conclude that no one would reasonably believe that the words “BOMB INCOMING,” written in a bathroom at some unknown time in the past and obviously by an elementary-school-aged student, represented a report of an

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actual threat that a bomb was incoming to the school. Such behavior may constitute a crime, but not a Class H felony.³

Accordingly, we vacate the orders of the trial court adjudicating Dexter a delinquent juvenile and ordering a Level 1 disposition.

VACATED.

Chief Judge MCGEE and Judge ZACHARY concur.

³ We note that the petition does allege facts which could constitute the crime of “graffiti vandalism,” codified in Section 14-127.1 of our General Statutes, which states that anyone who “unlawfully write[s] or scribble[s] on . . . the walls of [] any real property, whether public or private,” is guilty of a Class 1 misdemeanor. N.C. Gen. Stat. § 14-127.1(a), (b) (2018). However, since the clear intent of the drafter of the petition was to charge Dexter with a violation of Section 14-277.5 and since “graffiti vandalism” is not a lesser-included offense of that Class H felony, Dexter was not on notice that he needed to defend against a “graffiti vandalism” charge. *See State v. Langley*, 371 N.C. 389, 396, 817 S.E.2d 191, 197 (2018) (recognizing that “[w]hen a defendant is indicted for a criminal offense, he may be convicted of the charged offense or a lesser included offense when the greater offense charged in the bill of indictment contains all of the essential elements of the lesser”); *State v. Wortham*, 318 N.C. 669, 673, 351 S.E.2d 294, 297 (1987) (holding that trial court lacked jurisdiction to sentence for an offense which was not a lesser-included offense for the crime charged in the indictment). Therefore, it would not be appropriate for our Court to remand and allow the trial court to enter a disposition based on a finding of “graffiti vandalism,” based on the language of the petition in this case.