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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-465

No. COA21-124

Filed 7 September 2021

Pitt County, No. 16 JB 188

IN THE MATTER OF:

L.T.B.

Appeal by respondent-juvenile from orders entered 16 September 2020 by Judge W. Brian DeSoto in Pitt County District Court. Heard in the Court of Appeals 11 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Ameshia A. Cooper, for the State.

Law Office of Kellie Mannette, PLLC, by Kellie Mannette, for respondent-appellant juvenile.

ZACHARY, Judge.

¶ 1

Respondent-juvenile “Lawrence”¹ appeals from the trial court’s orders adjudicating him to be a Level 3 delinquent juvenile and committing him to a Youth Development Center. After careful review, we affirm the trial court’s adjudication order, but vacate the disposition order and remand for a new disposition hearing.

Background

¹ Pursuant to N.C.R. App. P. 42(b), and consistent with the parties’ briefs on appeal, we refer to the juvenile in this matter by a pseudonym.

¶ 2 The facts of this case are not in dispute. On 3 July 2020, Greenville Police Officer Casey Hargett stopped a car after noticing that one of its license-plate lights was not operating. Officer Hargett observed three people in the car; Lawrence was in the back seat. Officer Hargett smelled marijuana, and she asked the driver to exit the vehicle so that she could search it. Another officer searched Lawrence and found a gun in the front waistband of his pants. The officers detained Lawrence and removed the gun from his possession. The serial number on the gun had been altered by “several forceful” scratch marks.

¶ 3 On 15 July 2020, the State filed juvenile petitions alleging that Lawrence had committed the offenses of possession of a firearm with an altered serial number, possession of a firearm by a minor, and simple possession of marijuana. On 25 August 2020, Lawrence’s juvenile court counselor filed a motion for review alleging that Lawrence had violated the terms of his probation by possessing a firearm on 3 July 2020.

¶ 4 On 8 September 2020, Lawrence’s case came on for hearing before the Honorable W. Brian DeSoto in Pitt County District Court. At the hearing, Lawrence admitted that he violated the terms of his probation, and the State elected not to proceed on the charges of possession of a firearm by a minor and simple possession of marijuana. With regard to the charge of possession of a firearm with an altered serial number, Lawrence stipulated that the State could prove beyond a reasonable doubt

that he knowingly possessed a firearm on which the serial number had been altered or defaced for the purpose of concealing or misrepresenting the identity of the owner of the firearm. The sole issue before the trial court was Lawrence’s argument that pursuant to the provisions of N.C. Gen. Stat. § 14-160.2(b) (2019), the State was also required to prove that Lawrence knew that the firearm’s serial number had been altered. In sum, Lawrence admitted to the knowing possession of the gun, but denied knowing that the gun’s serial number had been altered, which he maintained was an element of the offense.

¶ 5

After hearing testimony from Officer Hargett and from Lawrence, as well as the arguments of counsel, the trial court adjudicated Lawrence as delinquent for the offense of possession of a firearm with an altered serial number. The trial court then received evidence regarding disposition, including the disposition report prepared by Lawrence’s juvenile court counselor, a Comprehensive Clinical Assessment (“CCA”) of Lawrence dated 28 January 2020, and the 21 August 2020 addendum to that CCA. The trial court also heard from Lawrence’s grandmother.

¶ 6

After considering this evidence along with Lawrence’s prior record, the trial court adjudicated Lawrence as a Level 3 delinquent and committed him to a Youth Development Center for a minimum of 6 months, with the term of commitment not to exceed his 18th birthday. Lawrence gave notice of appeal in open court.

Discussion

¶ 7 On appeal, Lawrence raises two issues. First, he argues that the trial court violated his constitutional right to due process by rendering an unclear verdict that failed to clearly resolve the central legal issue in the case. Second, he argues that the trial court violated a statutory mandate when it failed to order an interdisciplinary evaluation as required by N.C. Gen. Stat. § 7B-2502(c).

I. Unclear Verdict

¶ 8 Lawrence first argues that the trial court’s failure to resolve the central legal issue—whether the State had to prove beyond a reasonable doubt that he knew that the firearm’s serial number was altered—violated his constitutional right to due process and “rendered an unclear verdict requiring reversal.” We disagree.

¶ 9 Our Rules of Appellate Procedure provide:

In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party’s request, objection, or motion.

N.C.R. App. P. 10(a)(1).

¶ 10 At the adjudication phase of the proceeding, both the State and Lawrence’s counsel informed the trial court that it was Lawrence’s contention that his knowledge that the gun’s serial number had been altered was an element of the offense, and that this was the sole issue in dispute. The parties then proceeded with the hearing, and

while defense counsel argued in closing that there was no evidence presented that Lawrence knew that the serial number was altered, counsel did not properly present this argument to the trial court in the form of a “timely request, objection, or motion” upon which the trial court could rule. *Id.* Although Lawrence asserts that the trial court’s rendering of its verdict without reference to his statutory argument “prevented any ability to challenge or review the matter[,]” the burden of preserving this issue was his to bear. In failing to obtain a ruling on this issue by “timely request, objection, or motion” at any point during the hearing below, Lawrence did not preserve this issue for appellate review. *Id.*

¶ 11 Nevertheless, Lawrence asserts on appeal that the trial court’s verdict is unclear, requiring a new hearing, because “[t]here is no way to know if the trial court found that [he] was guilty because the State did not need to prove knowledge of the altered serial number or if the trial court found evidence beyond a reasonable doubt” that he did know that the serial number was altered. In support of this argument, Lawrence relies on *State v. Pakulski*, 319 N.C. 562, 574, 356 S.E.2d 319, 326 (1987).

¶ 12 However, *Pakulski* is inapposite to the case at bar. In *Pakulski*, the defendant was charged with, *inter alia*, felony murder and two underlying felonies, either of which could have served as the predicate felony for the charge of felony murder. *Id.* at 571, 356 S.E.2d at 325. With regard to the two potential underlying felonies, the State presented sufficient evidence of one offense to submit the charge to the jury;

however, the State failed to present sufficient evidence of the other charged felony, and thus, that offense could not support a felony murder conviction. *Id.* at 571–73, 356 S.E.2d at 325–26. Although the jury convicted the defendant of felony murder, the verdict sheet did not indicate the predicate felony upon which the verdict was based. *Id.* at 574, 356 S.E.2d at 326. Our Supreme Court awarded the defendant a new trial, explaining that:

[w]here the trial judge has submitted the case to the jury on alternative theories, one of which is determined to be erroneous and the other properly submitted, and we cannot discern from the record the theory upon which the jury relied, this Court will not assume that the jury based its verdict on the theory for which it received a proper instruction.

Id.

¶ 13 Here, Lawrence tried his case, and the verdict was not unclear as to the offense that the trial court concluded Lawrence committed; the trial court adjudicated Lawrence as delinquent for the offense of possession of a firearm with an altered serial number. The trial court was not required as part of the adjudication to inform the parties of the elements of the offense. *See* N.C. Gen. Stat. § 7B-2411 (adjudication order “shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication”); *see also In re K.C.*, 226 N.C. App. 452, 461, 742 S.E.2d 239, 245 (rejecting juvenile’s argument that adjudication order did not “apply the elements of the offense to the evidence” when

order satisfied the minimum requirements of § 7B-2411), *disc. review denied*, 367 N.C. 218, 747 S.E.2d 530 (2013). Thus, Lawrence’s unclear verdict argument lacks merit.

¶ 14 Further, Lawrence’s argument more closely resembles a contention that the State presented insufficient evidence of each element of the charged offense. At the hearing, Lawrence stipulated to certain facts: the State contended that Lawrence stipulated to every element of the charged offense, and Lawrence maintained that the State presented insufficient evidence of what he asserted was an additional element of the offense. To the extent that Lawrence raises a sufficiency of the evidence argument on appeal, we note that this argument is not preserved. *See* N.C.R. App. P. 10(a)(3) (“In a criminal case, a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action, or for judgment as in case of nonsuit, is made at trial.”). Accordingly, the trial court’s adjudication order is affirmed.

II. Interdisciplinary Evaluation

¶ 15 Lawrence next argues that the trial court erred by failing to order an interdisciplinary evaluation as required by N.C. Gen. Stat. § 7B-2502(c). We agree.

A. Standard of Review

¶ 16 “When a juvenile argues to this Court that the trial court failed to follow a statutory mandate, the error is preserved and is a question of law” that we review de

novo. *In re E.M.*, 263 N.C. App. 476, 479, 823 S.E.2d 674, 676, *disc. review denied*, 372 N.C. 353, ___ S.E.2d ___ (2019). Under de novo review, “the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Id.* (citation omitted).

B. N.C. Gen. Stat. § 7B-2502(c)

¶ 17 In juvenile cases, “the court *may* order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert *as may be needed* for the court to determine the needs of the juvenile.” N.C. Gen. Stat. § 7B-2502(a) (emphases added). Nonetheless, “when evidence of mental health issues arise, the authority to order the evaluation of a juvenile by certain medical professionals is no longer discretionary,” but is mandatory. *E.M.*, 263 N.C. App. at 478, 823 S.E.2d at 676. Section 7B-2502(c) provides:

If the court believes, or if there is evidence presented to the effect that the juvenile has a mental illness or a developmental disability, the court *shall* refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. . . . The area mental health, developmental disabilities, and substance abuse director is responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile’s needs.

N.C. Gen. Stat. § 7B-2502(c) (emphasis added).

¶ 18 “The use of the word ‘shall’ indicates a statutory mandate that the trial court refer the juvenile to the area mental health services director for appropriate action,

and failure to do so is error.” *E.M.*, 263 N.C. App. at 478, 823 S.E.2d at 676. This Court has also recently noted that “the position of ‘area mental health services director’ no longer exists as referenced in N.C. Gen. Stat. § 7B-2502(c) and is now identified as the ‘local management entity/managed care organization’ found in N.C. Gen. Stat. § 122C-3(20b).” *In re K.M.*, 2021-NCCOA-3, ¶ 13. “Because the General Assembly has not yet updated the language of N.C. Gen. Stat. § 7B-2502(c) to reflect this change, we will continue to refer to the position as the area mental health services director.” *Id.*

¶ 19 In the case before us, the State agrees that there was evidence before the trial court that Lawrence was mentally ill, and that “an interdisciplinary evaluation was required.” However, the State maintains that a trial court need only conduct “a *genuine inquiry* into the nature of the needs of the juvenile” and that vacatur of a disposition order and remand would be appropriate only where the trial court fails to “*gain the advice of a medical specialist*[.]” *In re Mosser*, 99 N.C. App. 523, 528, 393 S.E.2d 308, 311–12 (1990) (emphases added).

¶ 20 The State argues that here, “it is clear that there was a genuine inquiry into Lawrence’s mental health needs prior to entry of the . . . disposition order.” The State cites the 21 August 2020 addendum to the 28 January 2020 CCA, which “indicate[d] that Lawrence was experiencing an increase in problematic behaviors,” and referenced a diagnosis of Oppositional Defiant Disorder with Multi-Systemic Therapy

as a treatment plan. The State claims that the CCA “performed on Lawrence and considered by the trial court was, or was the equivalent of, an interdisciplinary evaluation[,]” and thus it “satisfied the requirement that the [c]ourt gain meaningful advice from a medical specialist prior to disposition.”

¶ 21 However, as Lawrence argues, the 28 January 2020 CCA is unsigned, and it is unclear whether a mental health professional completed the form. The 21 August 2020 addendum is signed “W.”—again, without any further attribution or indication that the signer was a mental health professional. While the State contends on appeal that the organization that performed both CCAs contracts with a “local management entity” as defined by § 122C-3(20b), there is no evidence in the appellate record to support that assertion. Further, “there was no testimony as to whether the interdisciplinary evaluation and mobilization of resources required by the statute is the same as or equivalent to” either the CCA or its addendum admitted by the trial court in this case. *In re A.L.B.*, 273 N.C. App. 523, 528, 849 S.E.2d 352, 356 (2020) (internal quotation marks omitted).

¶ 22 Based on the record before us, we cannot conclude that the CCA or the CCA addendum satisfied the statutory mandate of § 7B-2502(c). Accordingly, we vacate the trial court’s disposition order and “remand for a new hearing that includes a referral to the area mental health services director.” *E.M.*, 263 N.C. App. at 481, 823 S.E.2d at 678.

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Opinion of the Court

Conclusion

¶ 23 For the foregoing reasons, the trial court's adjudication order is affirmed. We vacate the trial court's disposition order and remand for a new disposition hearing.

AFFIRMED IN PART; VACATED IN PART AND REMANDED.

Judges HAMPSON and JACKSON concur.

Report per Rule 30(e).