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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-605

No. COA21-775

Filed 6 September 2022

Forsyth County, No. 19 JB 111

IN THE MATTER OF: J.M.

Appeal by juvenile-appellant from order entered 17 May 2021 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 9 August 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Erika N. Jones, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for juvenile-appellant.

ARROWOOD, Judge.

¶ 1

Juvenile-appellant “James”¹ appeals from an adjudication order finding him responsible for simple assault. On appeal, James argues, among other things, that the trial court erred by allowing him to testify and by questioning him without first advising him of his privilege against self-incrimination. The State concedes this was

¹ A pseudonym is used throughout to protect the identity of the juvenile.

reversible error. For the following reasons, we vacate and remand for a new adjudicatory hearing.

I. Background

¶ 2 On 22 January 2021, Officer B.D. Bolen (“Officer Bolen”) with the Winston-Salem Police Department filed a Juvenile Petition against James, who was then sixteen years old. The petition alleged that, on 28 November 2020, James committed simple assault against Vincent Pearsall² (“Pearsall”) by “punching and kicking” him at the Hanes Mall in Winston-Salem. The matter came on for trial on 6 May 2021 in Forsyth County District Court, Judge Hartsfield presiding. After James denied the allegation against him, the trial court began the adjudication portion of the hearing.

¶ 3 The State presented testimony from Officer Bolen. Officer Bolen testified that, on the day of the alleged assault, his lieutenant sent him a text message containing a video that had been posted to the social media platform Facebook (the “Facebook video”). The Facebook video depicted a group fight at the Hanes Mall. The following day, Officer Bolen was contacted by Latina Melton (“Melton”), whose purse had been stolen in the fight depicted in the Facebook video. Melton provided Officer Bolen “a Facebook picture of an individual by the name of Crashout[,]” which Officer Bolen used to identify “the second male suspect in the Hanes Mall video” as James.

² Pearsall was not a juvenile at the time of the alleged occurrence.

¶ 4

At the conclusion of Officer Bolen’s testimony, James’s trial counsel made a Motion to Dismiss, arguing that the State had failed to meet its burden of proof because Pearsall was absent from the hearing, the Facebook video was of poor quality, and the charging document contained a “fatal variance[,]” as it alleged that James had “punched and kicked” Pearsall though there had been no testimony to that regard. The trial court denied this motion.

¶ 5

The trial court asked James’s trial counsel, “Will there be any evidence?” Trial counsel responded affirmatively, and James took the witness stand to testify. Pertinently, the trial court did not conduct any colloquy with James regarding his privilege against self-incrimination at this time. On the stand, James denied the allegation and claimed he had been in Greensboro at the time of the alleged assault. James also made several self-incriminating statements, including: that James received a phone call on the night of the alleged assault from a friend who believed that James had been involved; that James’s girlfriend, friend, and other acquaintances were involved in the fight depicted in the Facebook video; and that James is also known under the “rap name” “Crashout.”

¶ 6

After James provided testimony, the State informed the trial court that it had made contact with Pearsall and that he could “log on through WebEx” if the trial court wanted to hear his testimony. James’s trial counsel objected, arguing that the

State had already rested its case. The trial court agreed and did not allow Pearsall to testify.

¶ 7

At the close of the adjudication phase, the trial court found that James was “responsible for the simple assault” and continued the case for disposition until 17 June 2021. The trial court filed a written order on adjudication on 17 May 2021 reflecting the same and adjudicating James as delinquent. The trial court filed an additional order on 28 June 2021, continuing the disposition hearing until 15 July 2021. On 8 July 2021, James filed Notice of Appeal from the adjudication order.

II. Discussion

¶ 8

On appeal, James argues that the trial court reversibly erred by not conducting a colloquy pursuant to N.C. Gen. Stat. § 7B-2405(4) regarding his privilege against self-incrimination prior to testifying in open court, by allowing the admission and publication of the Facebook video, and by allowing Officer Bolen to offer his identification of James from the Facebook video. We first address whether this appeal is properly before us.

A. Jurisdiction

¶ 9

“[I]f no disposition is made within 60 days after entry of the order” on adjudication, “written notice of appeal may be given within 70 days after such entry.” N.C. Gen. Stat. § 7B-2602 (2021). Here, the trial court entered its order on

adjudication on 17 May 2021; James appealed on 8 July 2021, fewer than 60 days thereafter. Thus, this appeal is not, by itself, properly before us. However, pursuant to Rule 2 of our Rules of Appellate Procedure, we, in our discretion, elect to review James’s arguments on appeal. N.C.R. App. P. 2.

B. Privilege Against Self-Incrimination

¶ 10 In an adjudicatory hearing held “to determine whether the juvenile is undisciplined or delinquent[,] . . . the [trial] court shall protect” the juvenile’s “privilege against self-incrimination[.]” N.C. Gen. Stat. § 7B-2405(4) (2021). “[P]ursuant to this statute, the trial court *shall* protect the juvenile’s delineated rights, including the right against self-incrimination.” *In re J.R.V.*, 212 N.C. App. 205, 208, 710 S.E.2d 411, 413 (2011) (emphasis in original). “The use of the word ‘shall’ by our Legislature has been held by this Court to be a mandate, and the failure to comply with this mandate constitutes reversible error.” *Id.* (citation and quotation marks omitted).

¶ 11 Here, the trial court failed to protect James’s statutory rights when it allowed James to take the witness stand and provide his testimony without first holding a colloquy to advise him of his right to remain silent and that his testimony could be used against him. Notably, the State concedes this was reversible error in its appellate brief, and argues that James’s adjudication for simple assault should be

vacated and that James is entitled to a new adjudicatory hearing. We agree, and accordingly remand for the trial court to conduct a new adjudicatory hearing.

¶ 12 Because we are vacating the adjudication for errors which the State concedes it committed, we do not need to and thus do not reach the remaining issues on appeal, and express no opinion with respect to their merit. As we are remanding this matter for a new adjudicatory hearing, we note the trial court is not bound by any evidentiary rulings in the original adjudicatory hearing and we have not addressed any of the evidentiary issues raised in this appeal, so the trial court is free to consider any objections raised and should carefully weigh the arguments regarding the admissibility of the contested evidence and make an independent determination based upon the record and arguments before it at that time.

III. Conclusion

¶ 13 For the foregoing reasons, because the trial court committed a reversible error, which the State concedes, in failing to abide by N.C. Gen. Stat. § 7B-2405, we vacate the adjudication order and remand for a new adjudicatory hearing on the matter, without reaching the merits of the remaining issues on appeal.

VACATED AND REMANDED.

Chief Judge STROUD and Judge COLLINS concur.

Report per Rule 30(e).