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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-615

Filed 19 March 2024

Wake County, No. 22 JB 550

IN THE MATTER OF: S.C.

Appeal by juvenile from orders entered 31 January 2023 by Judge Eric Chasse in Wake County District Court. Heard in the Court of Appeals 10 January 2024.

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

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for juvenile-appellant.*

MURPHY, Judge.

N.C.G.S. § 14-33(c) prohibits punishment for both assault on a school employee and assault inflicting serious bodily injury for the same underlying conduct. Here, although the trial court did not err in denying the juvenile’s motion to dismiss all charges, where it adjudicated her delinquent for both assault on a school employee and assault inflicting serious bodily injury, it reversibly erred. We therefore vacate the orders of the trial court and remand for a new sentencing hearing.

**BACKGROUND**

This case arises out of an altercation that took place between the juvenile,

Rachel,<sup>1</sup> and another female student at Rachel's middle school. On 22 March 2022, the two students began fighting in the hallway while the school's assistant principal was standing between them—an exchange which, by the assistant principal's account, was initiated by Rachel. During the conflict, the assistant principal suffered a concussion and was knocked unconscious—allegedly by a punch from Rachel—and began to speak with a stutter and experience high levels of anxiety in the wake of her injury. The school resource officer (“SRO”) would later testify that he had to physically remove Rachel from the assistant principal and the other student and pin her to a nearby wall to deescalate the conflict.

The State filed petitions on 28 April 2022 alleging Rachel was delinquent for committing the offenses of assault inflicting serious bodily injury, assault on a school employee, resisting a public officer, and simple affray, and a hearing was held on 14 December 2022. At the close of all evidence, including the testimonies of the assistant principal and SRO, Rachel moved to dismiss all allegations for insufficiency of the evidence. The trial court denied the motion and, ultimately, found Rachel was responsible for all four allegations.

Rachel filed a *Notice of Appeal* on 22 December 2022; however, the trial court did not enter its disposition order until 31 January 2023. As this timing discrepancy has created a question as to our appellate jurisdiction, Rachel filed a *Petition for Writ*

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<sup>1</sup> We use pseudonyms for all relevant persons throughout this opinion to protect the juveniles' identities and for ease of reading.

*of Certiorari* on 24 August 2023.

### **ANALYSIS**

On appeal, Rachel argues that the trial court erred in denying her motion to dismiss all charges and that the trial court acted contrary to a statutory mandate when it adjudicated her delinquent for both assault on a school employee and assault inflicting serious bodily injury. Furthermore, as the arguably premature notice of appeal has created a question as to our appellate jurisdiction, Rachel has separately argued that we have appellate jurisdiction and, in the alternative, filed a *Petition for Writ of Certiorari* on 24 August 2023 seeking our discretionary review of her substantive claims.

#### **A. Appellate Jurisdiction**

At the threshold, we must address whether we have appellate jurisdiction. The entirety of the dispute as to appellate jurisdiction concerns *In re: E.A.*, a case in which we held appeal noticed prior to the entry of a written order in a juvenile delinquency case is premature for purposes of appellate jurisdiction:

Evan filed written notice of appeal on 10 October 2018. Typed into the trial court’s order at the bottom of the page is the date “10/9/2018.” However, the order is additionally—and quite noticeably—stamped with “2018 OCT 12 A 11:07,” indicating that the order was filed *after* Evan filed his notice of appeal on 10 October.

Before a party may file notice of appeal, there must first be an entry of judgment. *See* [N.C.G.S.] § 1A-1, Rule 58 (2017) (“[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of

court pursuant to Rule 5.”). “When a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal.” *See State v. Webber*, 190 N.C. App. 649, 651 . . . (2008) (quotation marks omitted). Consequently, Evan would need to request—and we would need to issue—a writ of certiorari to have his case reviewed. *See* N.C. R. App. P. 21(a).

*In re: E.A.*, 267 N.C. App. 396, 397 (2019). Rachel makes several arguments against the applicability of *E.A.* in this case, most notably that *E.A.* conflicts with a superior binding authority—namely, *State v. Oates*, 366 N.C. 264 (2012). Given the holding in *Oates* and the direct applicability of its reasoning to appellate procedure in juvenile delinquency cases, we agree.

In *Oates*, the trial court granted the defendant’s motion to suppress and announced its ruling from the bench at the close of a suppression hearing on 14 December 2009. *State v. Oates*, 215 N.C. App. 491, 492 (2011). The State filed a written notice of appeal on 22 December 2009; and, subsequently, on 22 March 2010, the trial court filed a written order granting the motion to suppress. *Id.* Reasoning that the term “entry” in North Carolina Rule of Appellate Procedure 4(a)’s requirement that written notice of appeal be filed “within fourteen days after entry of the [judgment or] order” referred to the reduction of the order to writing, we dismissed the State’s appeal because the State failed to timely provide oral notice of appeal. *Id.* at 494. However, our Supreme Court reversed, holding that “written notice may be filed at any time between the date of the rendition of the judgment or order and the fourteenth day after entry of the judgment or order”:

[T]he Court of Appeals misinterpreted Rule 4 to find that the Rule provides two separate windows during which a party may appeal a criminal case. [*State v. Oates*, 215 N.C. App. 491, 493 (2011).] Under the Court of Appeals' analysis, the first window opened when the trial judge rendered his decision at the conclusion of the suppression hearing, giving the State the opportunity to give immediate oral notice of appeal in open court, and closed when the hearing ended. *See id.* . . . (interpreting N.C. R. App. P. 4(a)(1)). The second window opened when the trial judge entered his order by filing it with the clerk of court, beginning the time during which the State could file written notice of appeal, and closed fourteen days later. *See id.* . . . (interpreting N.C. R. App. P. 4(a)(2)). The Court of Appeals determined that, because neither window was open when the State filed its notice of appeal, the notice was improper.

We believe this interpretation of Rule 4 would discourage thoughtful litigation and could lead to absurd results. For example, a judge ruling on a suppression motion that is not determined summarily is required to "set forth in the record his findings of facts and conclusions of law." N.C.G.S. § 15A-977(f) (2011). While a written determination is the best practice, nevertheless the statute does not require that these findings and conclusions be in writing. *See State v. Horner*, 310 N.C. 274, 279[] . . . (1984). As a result, under the holding of the Court of Appeals, a party considering whether to appeal an adverse result would either be required to enter oral notice of appeal at once even if uncertain of the basis of the judge's decision or the merits of the appeal, or, after considering the wisdom of an appeal and deciding to proceed, be forced to monitor the clerk's office for an indeterminate period of time while waiting for an order (that may or may not be in writing) to be entered on the record. We cannot adopt such a technical reading of Rule 4(a) that not only would encourage unnecessary oral notices of appeal but also would jeopardize the right of appeal of a party who might not receive notice of the entry of a judgment or order.

Instead, we believe Rule 4 authorizes two modes of appeal for criminal cases. The Rule permits oral notice of appeal, but only if given at the time of trial or, as here, of the pretrial hearing. N.C. R. App. P. 4(a)(1). Otherwise, notice of appeal must be in writing and filed with the clerk of court. [N.C. R. App. P.] 4(a)(2). Such written notice may be filed at any time between the date of the rendition of the judgment or order and the fourteenth day after entry of the judgment or order. *Id.*

*Oates*, 366 N.C. at 267-68.

Here, we note that Rule 4(a), which governs appeal timeframes in criminal cases, does not apply to juvenile delinquency cases, which are instead governed by N.C.G.S. § 7B-2602. *See* N.C.G.S. § 7B-2602 (2023) (“Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order.”). However, N.C.G.S. § 7B-2602 contains all of the same relevant features of Rule 4(a) that would warrant *Oates*’s applicability. Like Rule 4(a), N.C.G.S. § 7B-2602, on its face, appears to create two separate windows for appeal. *Compare* N.C.G.S. § 7B-2602 (2023) (“Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order.”) *with* N.C. R. App. P. 4(a) (2023) (“Any party entitled by law to appeal from a judgment or order of a [S]uperior or [D]istrict [C]ourt rendered in a criminal action may take appeal by: (1) giving oral notice of appeal at trial, or (2) filing notice of appeal with the clerk of [S]uperior [C]ourt and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order . . .”). But, as our Supreme Court held in

*Oates*, such a reading creates the risk of discouraging thoughtful litigation and placing an undue burden on litigants. *See Oates*, 366 N.C. at 267-68.

Especially given that “the right and opportunity of an indigent juvenile to have her case presented on appeal” is, just as in criminal cases, an “essential[] of due process[.]” *In re May*, 153 N.C. App. 299, 301 (2002), *aff’d*, 357 N.C. 423 (2003), we understand *Oates* to apply in this case, thereby establishing appellate jurisdiction. Accordingly, we dismiss Rachel’s *Petition for Writ of Certiorari* as moot.

### **B. Motion to Dismiss**

Rachel argues the trial court erred in denying her motion to dismiss with respect to each allegation—assault inflicting serious bodily injury, assault on a school employee, resisting a public officer, and simple affray. Specifically, Rachel argues (1) that the evidence “raised no more than a suspicion” that an assault against the assistant principal was committed by Rachel, (2) that the State presented no evidence rebutting self-defense with respect to any of the charges, and (3) that there was no evidence Rachel actually resisted the SRO. Reviewing the trial court’s ruling de novo and taking the evidence in the light most favorable to the State, as we must, *see State v. Summey*, 228 N.C. App. 730, 733 (2013), we disagree.

According to the assistant principal’s testimony at the hearing, on the day of Rachel’s alleged misconduct, a male student who had been speaking with Rachel informed the assistant principal that Rachel and the other student intended to fight. The assistant principal intervened, stepping between the students and instructing

Rachel to go to class. Upon turning around to address the other student, the assistant principal testified that she “felt someone yank [her] by the back of [her] head, and then [] felt [her]self going into the wall[,]” after which she fell unconscious. She also testified she believed she was punched before hitting the wall. The assistant principal also testified that, to her knowledge, only Rachel was behind her at the time she was pulled back, but was uncertain due to the number of students walking the hallways at the time. As a result of the injuries the assistant principal sustained, she permanently damaged her elbow, developed a stutter when she spoke as a result of a concussion, and began to experience high anxiety.

The SRO also testified at the hearing, indicating that, after the assistant principal lost consciousness, he observed a crowd of students forming and heard the sound of shouting coming from the direction of Rachel and the assistant principal. Though he could not see through the crowd at first, the SRO pushed through the gathering of students to discover that both Rachel and the student she was fighting were holding the assistant principal by the hair and throwing punches at one another around her. The SRO commanded the students to stop fighting as he approached; and, when those commands were not heeded, he removed Rachel from the assistant principal and the student she was fighting. However, when he turned back, the assistant principal was lying down, unresponsive.

Given this testimony, the trial court had sufficient evidence to conclude that Rachel had committed the assault, that she did not act in self-defense, and that she



resisted the SRO. The assistant principal's testimony that Rachel was behind her at the time of the assault, together with the SRO's testimony that Rachel was found clinging to the other student and the assistant principal when he arrived, was sufficient evidence to have identified Rachel as the assailant. This is especially the case in light of the assistant principal's testimony that the student with whom Rachel was fighting was in *front* of her when the altercation began. This likewise constitutes sufficient evidence that Rachel did not act in self-defense, as it indicates, in the light most favorable to the State, that Rachel initiated the altercation.

Finally, the SRO's testimony that he had to physically remove Rachel to deescalate the conflict and had issued commands such that Rachel would recognize him as the school's SRO constituted sufficient evidence that Rachel resisted him. The elements of resisting a public officer are

- 1) that the [person resisted] was a public officer;
- 2) that the defendant knew or had reasonable grounds to believe that the [person resisted] was a public officer;
- 3) that the [person resisted] was discharging or attempting to discharge a duty of his office;
- 4) that the defendant resisted, delayed, or obstructed the [person resisted] in discharging or attempting to discharge a duty of his office; and
- 5) that the defendant acted willfully and unlawfully, that is intentionally and without justification or excuse.

*State v. Nickens*, 262 N.C. App. 353, 364 (2018). Here, there is no meaningful dispute as to whether the SRO was a public officer or whether deescalating the altercation on 22 March 2022 constituted a duty of the SRO's office. Furthermore, the fact that the

SRO verbally commanded the students to stop fighting and the fact that Rachel ignored those commands, requiring the SRO to physically separate her from the conflict, constitutes evidence, when taken in the light most favorable to the State, *Summey*, 228 N.C. App. at 733, that Rachel knew the SRO was a public officer, resisted him, and did so willfully.

The trial court therefore did not err in denying Rachel's motion to dismiss.

**C. N.C.G.S. § 14-33(c)(6)**

Rachel also argues that N.C.G.S. § 14-33(c)(6) does not authorize her being held responsible for both assault on a school employee and assault inflicting serious bodily injury. She bases this argument on the language in N.C.G.S. § 14-33(c), which provides for liability under that provision “[u]nless the conduct is covered under some other provision of law providing greater punishment[.]” N.C.G.S. § 14-33(c) (2023). The State, meanwhile, argues that Rachel may properly be found responsible under both N.C.G.S. § 14-33(c)(6) and N.C.G.S. § 14-32.4 because each offense contains an element not included in the other, with N.C.G.S. § 14-33(c)(6) requiring the victim to be a school employee and N.C.G.S. § 14-32.4 requiring the victim to suffer serious bodily injury.

In *State v. Jamison*, we addressed a directly analogous issue. There, the defendant was convicted of both assault on a female and assault inflicting serious bodily injury at trial, challenging his convictions on appeal on the basis of the very same statutory language in N.C.G.S. § 14-33(c) that Rachel uses to challenge her own

adjudications. *State v. Jamison*, 234 N.C. App. 231, 238 (2014). We held that the language “[u]nless the conduct is covered under some other provision of law providing greater punishment” precluded liability for both offenses:

Defendant argues that the plain language of the prefatory clause contained in this statute, *i.e.*, “[u]nless the conduct is covered under some other provision of law providing greater punishment,” reveals an intent by our General Assembly to limit a trial court’s authority to impose punishment for assault on a female when punishment is also imposed for higher class offenses that apply to the same conduct. Here, because Defendant was also convicted and sentenced for assault inflicting serious bodily injury, a felony, Defendant argues that he should not be punished for committing an assault on a female. *Compare* [N.C.G.S.] § 14-33(c) (classifying assault on a female as a Class A1 misdemeanor), *with* [N.C.G.S.] § 14-32.4 (classifying assault inflicting serious bodily as a Class F felony). We agree.

As our Supreme Court has stated,

[t]he intent of the Legislature controls the interpretation of a statute. When a statute is unambiguous, this Court will give effect to the plain meaning of the words without resorting to judicial construction. [C]ourts must give [an unambiguous] statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.

*State v. Davis*, 364 N.C. 297, 302[] . . . (2010) (second and third alterations in original) (internal quotation marks and citations omitted).

Here, Defendant’s interpretation of the assault on a female statute comports with its plain language. The prefatory clause unambiguously bars punishment for assault on a female when the conduct at issue is punished by a higher

class of assault. Furthermore, this interpretation is consistent with previous decisions of our appellate courts dealing with other statutes that contain identical prefatory language. *See, e.g., id.* at 304-05[] . . . (collecting cases).

Accordingly, because Defendant was convicted and sentenced for both categories of assault in the court below, the trial court acted contrary to the statutory mandate of [N.C.G.S.] § 14-33(c).

*Jamison*, 234 N.C. App. at 238-39.

*Jamison* is on point and directly controls our holding in this case. While the State defends the result at trial on the basis that “felony assault inflicting serious bodily injury [] and misdemeanor assault of a school employee [] involve different statutory provisions and each offense contains an element not present in the other”—seemingly conflating the statutory construction analysis with our elemental test for double jeopardy, *see, e.g., State v. Etheridge*, 319 N.C. 34, 50 (1987), *State v. Sparks*, 182 N.C. App. 45, 47 (2007), *aff’d*, 362 N.C. 181 (2008)—it ignores the fact that the same could have been said for the offenses in *Jamison*. Accordingly, we vacate the adjudication order in part inasmuch as it did not arrest judgment for the charge under N.C.G.S. § 14-33(c)(6). As a result, we vacate the disposition order and remand for entry of a new adjudication order and a new dispositional hearing.<sup>2</sup>

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<sup>2</sup> We note that the vacated *Disposition Order* in this matter contains a clerical error in that it reflects a conclusion of law that “[t]he [trial c]ourt is required to order a Level 1 disposition” on the AOC-J-461. As the trial court properly observed at the hearing, the juvenile’s disposition was subject to either a Level 1 or a Level 2 disposition in accordance with N.C.G.S. § 7B-2508(f) for the “serious” offense with a “low” delinquency history. N.C.G.S. § 7B-2508(f) (2023).

**CONCLUSION**

Th trial court did not err in denying Rachel's motion to dismiss. However, Rachel could not be held responsible for both assault on a school employee and assault inflicting serious bodily injury for the same conduct. The trial court's adjudication and disposition orders are therefore vacated in part, and we remand for a new sentencing hearing.

NO ERROR IN PART; VACATED AND REMANDED IN PART.

Chief Judge DILLON and Judge CARPENTER concur.

Report per Rule 30(e).