UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1338

September Term, 2016

IN RE: G.B.

Beachley,
Shaw Geter,
Thieme, Jr., Raymond G.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: May 10, 2017

At a June 27, 2016 adjudicatory hearing, the Circuit Court for Prince George's County, sitting as a juvenile court, found 17-year-old G.B., appellant, involved in what would constitute the crime of possession of ammunition when prohibited from possessing a regulated firearm if committed by an adult. At the disposition hearing on August 8, 2016, the juvenile court determined that G.B. was a delinquent child and placed him on supervised probation, with the condition that he enroll in and complete the juvenile drug court program, along with 32 hours of community service.

G.B. noted a timely appeal of the juvenile court's decision, raising the following questions for our consideration:

1. Did the trial court err by relying on facts not in evidence in finding that G.B. committed the delinquent act of possession of ammunition by a person prohibited from possessing a regulated firearm?

2. Did the trial court err by allowing the State to reopen its case, during its argument in opposition to the defense motion for judgment of acquittal, to allow the State to present evidence of G.B.'s disqualifying status?

For the reasons that follow, we shall reverse the juvenile court's finding of delinquency.

FACTS AND LEGAL PROCEEDINGS

On January 14, 2016, Prince George's County Police Detective Brian Newcomer responded to an apartment in Upper Marlboro, Prince George's County, as a follow-up to a burglary investigation; three firearms had been stolen from a deputy sheriff's home. Detective Newcomer made contact with G.B., who was about to enter the apartment. G.B. told the detective that his father was not home, so Detective Newcomer phoned Mr. B. and waited with G.B. until Mr. B. arrived at the apartment.

Detective Newcomer advised Mr. B. about the burglary and the association among G.B., A.L., who was the burglary victim's son, and other students who attended school with them. Mr. B. consented to a search of the premises for guns. A search of G.B.'s bedroom turned up three unspent .40 caliber bullets in a dresser drawer. G.B. told Detective Newcomer that A.L. had given him the bullets, and G.B. claimed them as his own.

After Detective Newcomer's testimony, the State rested its case. The juvenile court thereafter denied G.B.'s motion to suppress the ammunition evidence, and the defense rested without putting on any evidence.[1]

G.B. moved for judgment of acquittal, arguing that the State had rested without proving a required element of the charged offense. Specifically, the State had presented no evidence that G.B. had been adjudicated delinquent of an act that would disqualify him from possessing a regulated firearm, counsel argued, and the court was not permitted to take judicial notice of a required element of the crime.

The State responded that the "court's own file" regarding its finding of G.B.'s involvement in a charge of third-degree burglary in a related matter, case number JA-15-0632, provided sufficient evidence of the required element of the charged offense.

[1] Although G.B. did not object to the admission of the bullets into evidence, he nonetheless moved to suppress the bullet evidence after the State had rested its case, on the grounds that he had made his statement of ownership of the bullets in the absence of appropriate *Miranda* warnings and that Mr. B. was not entitled to give consent to search G.B.'s bedroom, in which he had a reasonable expectation of privacy.

Although the court did not specifically rule on G.B.'s motion, it implicitly denied it by finding G.B. involved as to the count charged.

Finding that G.B. was a danger to himself and the community, the court ordered him detained until his disposition hearing on July 12, 2016. That hearing was postponed until July 29, 2016, at the request of the Department of Juvenile Services ("DJS").

At the July 29, 2016 hearing, DJS recommended that G.B. be placed in drug court, a recommendation with which defense counsel concurred. The State countered that G.B. was nothing more than a recreational marijuana user, and drugs were not his underlying problem in the ammunition possession matter, so drug court was not warranted. The disposition hearing was continued until August 8, 2016, pending a review for drug court.

At the August 8, 2016 disposition hearing, the juvenile court placed G.B. on supervised probation, with the condition that he enroll in and complete the juvenile drug court program, along with 32 hours of community service.

DISCUSSION

G.B. argues that the evidence adduced by the State is insufficient to sustain a finding of involvement in what would be the crime of possession of ammunition when prohibited from possessing a regulated firearm if committed by an adult because the State did not offer any evidence that he had been found involved in a disqualifying crime, as required by the applicable statute. The State's argument, after it had rested its case, that the "court's own file" in a related burglary case was sufficient to prove the disqualifying crime, G.B. continues, was unavailing because the court may not take judicial notice of its file so as to supply proof of a required element of the charged offense. Moreover, he concludes, the

State, after it rested, did not request that the court re-open the case to accept evidence of the disqualifying crime.

G.B. was charged with what would constitute the crime of possession of ammunition when prohibited from possessing a regulated firearm if committed by an adult, pursuant to Md. Code (2011 Repl. Vol., 2015 Supp.), §5-133.1(b) of the Public Safety Article ("PS"), which states: "A person may not possess ammunition if the person is prohibited from possessing a regulated firearm under §5-133 (b) or (c) of this subtitle." To prove that G.B. was prohibited from possessing a regulated firearm, the State relied upon PS §5-133(b)(13), which precludes possession of a regulated firearm by a person "under the age of 30 at the time of the possession," who "has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult." PS §5-101(g) defines "disqualifying crime," in pertinent part, as a crime of violence or a felony. Under PS §5-101(c)(4), first-, second-, or third-degree burglary is considered a crime of violence. Each is also a felony. *See* Md. Code, (2012 Repl. Vol., 2015 Supp.), §6–204 of the Criminal Law Article. Thus, to prove G.B.'s involvement in the charged offense, the State was required to prove that he: possessed ammunition; was under the age of 30 when he possessed the ammunition; and had been adjudicated delinquent in what would be an underlying disqualifying crime if committed by an adult.

Following Detective Newcomer's discovery of the ammunition in G.B.'s bedroom, the State filed the juvenile petition in case number JA-16-0262, at issue in this matter. At the time of the filing, G.B. was on probation for a finding of involvement in a charge of third-degree burglary in case number JA-15-0632, which had been adjudicated on

December 9, 2015.[2] When case number JA-16-0262 was called for the adjudicatory hearing on June 27, 2016, the court clerk called it together with case number JA-15-0632, although no information specific to the latter case was provided at the hearing.

In its case-in-chief, the State offered only the testimony of Detective Newcomer and the admission of the ammunition evidence. Neither party disputes the fact that no evidence relating to a disqualifying underlying crime was presented during the State's case.

After both sides rested, G.B. moved for judgment of acquittal, arguing as follows:

> [DEFENSE COUNSEL]: Your Honor, in this case, count one, [G.B.] has been alleged to have been possessing regulated ammunition, being prohibited from possessing a regulated firearm under PS 5-133(b). Under that statute it states that subject to 5-133 of this subtitle a person may not possess a regulated firearm if the person, if under the age of 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be disqualifying if committed by an adult.
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> At this time, the State has rested. There has been no testimony that has brought out of any adjudication [sic] that would qualify as a disqualifying crime that was committed by [G.B.].
>
> In addition, the Court cannot take judicial notice of an element that is needed to prove the crime. In 225 Md. App. 516, Smith v. State, the State has the burden of proving the element of the disqualifying offense. The State has not presented any certified court record, which would be considered as a business record, which they would have had to give notice of. So there was no notice. There has not been testimony. And there has been nothing put forward where the State has proved the element that [G.B.] has been adjudicated of a disqualifying crime, if committed by an adult.
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> Additionally, there has been no testimony of his age. And again, that would—so we would ask at this time that the State [sic] grant the motion for judgment of acquittal, because the State has not proven their case beyond a reasonable doubt.

[2] The only information in the record regarding case number JA-15-0632 is contained in reports to the court from DJS.

Without a request to re-open its case to provide the necessary evidence, the State simply responded that, with regard to the age element of the predicate crime, the facts that the juvenile petition listed G.B.'s birth year as 1999 and that the matter was being heard in juvenile court (which is reserved for litigants under the age of 18) sufficiently proved that he was under the age of 30. As for the showing of an adjudication of delinquency in an underlying offense, the State continued:

> Defense counsel argued that there was no notice placed that the State would be using a certified record. The State would actually argue that the court file itself would be the record that the state is going to be using. And I know it might seem a little unorthodox, but I will explain why.
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> If the Respondent has a prior third degree—he admitted involvement or found involved—and I will read the specific case number. That would be the JA-15-0632. The State would argue that the Respondent's own court file would be the certified document proving the Respondent's own—the Respondent's delinquency.
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> Here, Your Honor, the State would also argue that the State did provide defense counsel in its response a notice of intent to use public records, certified records, Your Honor. The State did provide defense counsel with that notice. And the State would, again, a little bit unorthodox, I would reference to [sic] the notice of intent to offer self-authenticating records or regularly conducted business established a notice provided to defense counsel under Maryland Rules 5-902(b). And the State would refer to the Respondent's own case file as that public record, Your Honor, regularly conducted business, self-authenticating records of regularly conducted business, Your Honor, under 5-902(b), specifically referencing the Respondent's prior adjudication and involvement, prior involvement, under JA-15-063 [sic], where he was found to be involved in a third degree burglary, which is a disqualifying offense where—if the crime committed by an adult, Your Honor.
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> And I would reference 5-101 as to—5-101(g) where it says disqualifying crime. It says a violation classified as a felony. And the State here third degree burglary would be considered a felony, Your Honor. The State would ask that you deny defense counsel's motion. And the State has met, again, even in this section or in this portion in the motion for judgment of acquittal, Your Honor, the State would ask that in the light most favorable to the State that the State has met its burden, Your Honor.

The court did not permit defense counsel to respond to the State's argument, despite her request to do so. It immediately rendered its ruling, referencing the "straightforward" and "quite credible" testimony of Detective Newcomer, which proved beyond a reasonable doubt that G.B. had committed the delinquent act as alleged in the juvenile petition. The court made no reference to G.B.'s age or any finding of involvement in a disqualifying offense.

It is beyond cavil that the State must prove every element of a charged crime beyond a reasonable doubt to obtain a conviction. *Furda v. State*, 194 Md. App. 1, 65 (2010), *aff'd*, 421 Md. 332 (2011), *cert. denied*, 132 S.Ct. 2376 (2012) (citing *Bennett v. State*, 283 Md. 619, 625 (1978)); *see also Smith v. State*, 225 Md. App. 516, 520 (2015), *cert. denied*, 447 Md. 300 (2016) ("Certainly, if an element of the offense has not been established, then the conviction fails as a matter of law."). The same standard applies to findings of delinquency in juvenile matters. Md. Code (2013 Repl. Vol., 2015 Supp.), §3-8A-18(c)(1) of the Courts & Judicial Proceedings Article; Md. Rule 11-114(e)(1).

There is no question that the State was tasked with proving that G.B. had been adjudicated involved in a prior offense that would be a disqualifying crime if committed by an adult. This it failed to do.[3]

Although the State could have introduced into evidence G.B.'s court records in case number JA-15-0632, asked the defense to stipulate to the finding of involvement in third-

[3] As neither party appears to dispute the fact that G.B. was 17 years old at the time of the adjudicatory hearing, we do not discuss the failure of the State specifically to prove that he was under the age of 30 when he allegedly committed the charged offense.

degree burglary in that case, or asked the juvenile court to take judicial notice of its own record of that case and G.B.'s history with the juvenile justice system—any of which would have sufficed to prove the underlying disqualifying offense—it did none of those things.[4] Additionally, the court made no statement that it would take judicial notice of its record in case number JA-15-0632, so the basis for the court's implicit ruling that the State had proved the underlying disqualifying offense is entirely unclear.[5]

The lack of proof of a required element of the crime was not ameliorated, as the State suggested in its argument in response to G.B.'s motion for judgment of acquittal, by the fact that it had provided defense counsel with a pre-trial general notification of its intent to offer "public records, certified records," *i.e.*, G.B.'s "own case file," at the adjudicatory hearing. Even assuming, for the sake of argument, that the general notification was sufficient to put the defense on notice as to the specific records the State intended to offer, the fact remains that the State did not actually offer *any* records into evidence at the hearing.

As a result, the State failed to prove adequately that G.B. had been adjudicated involved in an underlying disqualifying offense, as required by PS §5-133.1. In the absence

[4] Included among the categories of things of which judicial notice may be taken are "'facts relating to the . . . records of the court.'" *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (quoting *Smith v. Hearst Corp.*, 48 Md. App. 135, 136 n. 1 (1981)).

[5] Moreover, in its ruling finding G.B. involved in the charged offense, the court focused solely on Detective Newcomer's testimony, which proved only that G.B. possessed the ammunition recovered by the police.

of proof of that required element, the evidence was insufficient to support a finding of involvement in the charged offense.[6]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT, REVERSED; COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

[6]Because we reverse on the issue of the sufficiency of the evidence, we do not consider G.B.'s alternate contention, that, assuming the State's argument in response to G.B.'s motion for judgment of acquittal may be construed as a motion to reopen its case to prove G.B.'s disqualifying status, the juvenile court erred in implicitly granting that request without giving the defense a chance to respond.