UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0344

September Term, 2015

IN RE: TERELLE A.

Meredith,
Nazarian,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: February 19, 2016

We are asked to determine whether the State presented sufficient evidence that appellant Terelle A. willfully disturbed school activities in violation of § 26-101 of the Education Article ("ED") of the Maryland Code.

BACKGROUND

Terelle was adjudicated delinquent[1] by the Circuit Court of Wicomico County, acting as a juvenile court. The juvenile court found that Terelle had willfully disturbed school activities in violation of ED § 26-101 when he cursed at an assistant principal in the hallway while students were changing classes. At Terelle's adjudication proceeding, two witnesses testified about the incident—the school's assistant principal, Ron Green, and a school resource officer, Corporal Brian Donohoe of the Wicomico County Sherriff's Office, although Corporal Donohoe testified that he didn't actually see what happened.

Green testified that a teacher had sent Terelle, who was 14 years old at the time, to the school's disciplinary referral room, a room for students who misbehave during the school day. After Terelle spent a class period in the disciplinary referral room, Green met him in the hallway. Green had received a report that Terelle had "cussed [teachers] out" and "said a lot of inappropriate things to them." Green asked Terelle about the incident with the teachers and Terelle "tried to explain to [Green] what happened." Green then directed Terelle to his next class, at which point Terelle told Green, "[G]et the fuck out of

[1] The Courts and Judicial Proceedings Article ("CJ") of the Maryland Code defines a "delinquent act" as "an act [that] would be a crime if committed by an adult," and a "delinquent child" as "a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation." CJ § 3-8A-01(l), (m).

my face, you ain't fucking nobody, you fucking soft, [the] only reason you talk shit is because the deputy's here."[2] According to Green, Terelle was "ten feet maybe" away from him, Terelle's voice was "pretty loud," and the entire interaction lasted "probably 30 seconds." Green testified that, during this incident, some of the students in the hallway stopped to watch and some students continued on to their next class period. Green testified that he did not tell the stopped students to move, and was unable to say if another adult told them to go to class. Green testified that the incident ended when Terelle walked away. Not knowing where Terelle went, Green went to the main office and called Corporal Donohoe.

Corporal Donohoe did not witness the incident. Despite this, Corporal Donohoe testified that Green had told him that Terelle had "caused a major disturbance for the kids going from fifth to sixth period." Corporal Donohoe began looking for Terelle about an hour and 10 minutes after the hallway incident with Green.

Corporal Donohoe testified that he found Terelle in the school's front lobby, where Terelle immediately apologized. Notwithstanding the apology, Corporal Donohoe testified that he explained to Terelle that "the school has requested charges." According to Corporal Donohoe, Terelle was cooperative and the school made contact with Terelle's parents about the incident. Green also saw Terelle later that day, and, according to Green, Terelle was "fine."

[2] It appears that Terelle was referring to Corporal Donohoe, the school resource officer. In fact, Corporal Donohoe was not present in the hallway at the time of the incident, because he was "either away from the school or on another assignment."

The State charged Terelle with violating ED § 26-101, which provides, in relevant part:

> (a) A person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education.

At Terelle's adjudication proceeding, the juvenile court found that Terelle had violated ED § 26-101 because other students were present during the incident:

> THE COURT: The Court, however, finds that … [Terelle] was, in effect, sent to the [disciplinary referral] room, was given the opportunity in effect to comply, to work within the school rules to cool down, and, in effect, I think [Terelle's Counsel] would agree, probably did that. The issue got to be when … Mr. Green then went to get [Terelle] back to class, we then had another occurrence in the hallway with abusive language.
>
> I'm not sure [Terelle], in my recollection of the testimony, specifically threatened [Green] but was teetering on the edge of threatening him, was cussing at him, was doing it while there were other students in the hallway.
>
> And so the Court finds that, I think [Terelle] did violate Section 26-101 of the Education Article. I think the allegations have been proven beyond a reasonable doubt. He is found involved as to count one.

The juvenile court placed Terelle on probation.

DISCUSSION

On appeal, Terelle argues that the State failed to present sufficient evidence that he "willfully disturb[ed]" school activities in violation of ED § 26-101. The State contends that there was sufficient evidence. We conclude that there was no evidence that Terelle disturbed—much less significantly interfered, as required by ED § 26-101—the school's activities, administration, or classes. As a result, we hold that the juvenile court's adjudication was in error.

As an appellate court "reviewing the sufficiency of the evidence that a juvenile has committed a delinquent act, we must determine [whether] the evidence, adduced either directly or by rational inference, enabled the trier of fact to be convinced beyond a reasonable doubt that the juvenile committed the act." *In re Eric F.*, 116 Md. App. 509, 519 (1997). We determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *In re Timothy F.*, 343 Md. 371, 380 (1996) (quotation omitted).

The Court of Appeals has held that ED § 26-101(a) only applies to disturbances that "significantly interefere[ ]" with school. *In re Jason W.*, 378 Md. 596, 606 (2003). The Court explained that some disturbances are expected in schools:

> The "orderly conduct of the activities, administration, or classes" takes into account and includes within it conduct or circumstances that may momentarily divert attention from the planned classroom activity and that may require some intervention by a school official. Disruptions of one kind or another no doubt occur every day in the schools, most of which, we assume, are routinely dealt with in the school setting

> by principals, assistant principals, pupil personnel workers, guidance counselors, school psychologists, and others, as part of their jobs and as an aspect of school administration. … [T]here is a level of disturbance that is simply part of the school activity, that is intended to be dealt with in the context of school administration, and that is necessarily outside the ambit of [ED] § 26-101(a).

Id. at 604-05. Accordingly, ED § 26-101(a) applies only to disturbances that significantly interfere with school:

> The only sensible reading of [ED § 26-101(a)] is that there must not only be an "actual disturbance," but that the disturbance must be more than a minimal, routine one. It must be one that significantly interferes with the orderly activities, administration, or classes at the school.

Id.

There was no evidence before the juvenile court that Terelle had violated ED § 26-101 because there was no evidence that Terelle had caused *any* disturbance, much less a disturbance that significantly interfered with the school's activities, administration, or classes. As we will demonstrate, neither witness at Terelle's adjudication proceeding provided testimony establishing the necessary evidence of disturbance. First, Assistant Principal Green—the only eyewitness to testify—did not testify that any disturbance or prevention of the school's activities, administration, or classes occurred. And, second, Corporal Donohoe's testimony that Green told him that Terelle had caused a "major disturbance" could not establish the fact of a disturbance both because Corporal Donohoe did not witness the incident and because his account was directly contradicted by Green's own testimony.

Green did not testify that Terelle had disturbed or prevented the orderly conduct of any school activities, administration, or classes. Instead, Green testified that the incident with Terelle lasted only 30 seconds:

> [STATE'S ATTORNEY]: [A]nd how long did this confrontation between you and he go on?
>
> [GREEN]: At that point probably 30 seconds, maybe.

Green also testified that some students may have stopped and watched the confrontation, but he was unable to say whether those students required redirection:

> [STATE'S ATTORNEY]: What, if any, effect did you observe [that] what was going on between you and Terelle [had] on the general conduct of the hallway?
>
> [GREEN]: Some kids stopped and watched. The other kids just continued to go to class.
>
> * * *
>
> [DEFENSE COUNSEL]: [T]he students who stopped did they require redirection?
>
> [GREEN]: Actually I was caught up with, dealing with Terelle, so I'm not real sure exactly who told them to move. Because I wasn't the only adult present at that point … there's a teacher that mans the [disciplinary referral] room as well.

Green gave no testimony that Terelle caused *any* disturbance, much less a significant disturbance, as required under *Jason W*. Therefore, Green's testimony did not provide any

factual support for the juvenile court's finding that Terelle had disturbed the school's activities, administration, or classes.

Corporal Donohoe's testimony added nothing. Corporal Donohoe testified that Green told him that Terelle had caused a "major disturbance."[3] Corporal Donohoe, however, did not witness the interaction between Terelle and Green, and Green's own eyewitness testimony—that there was only a 30 second confrontation that some students may have witnessed—contradicted Corporal Donohoe's testimony. Therefore, Corporal Donohoe's testimony was insufficient to establish the fact of any disturbance.

The juvenile court, therefore, had no evidence before it establishing that Terelle had disturbed the school's activities, administration, or classes, much less that he had caused a significant interference as required by ED § 26-101(a). As such, we conclude that no "rational trier of fact could have found the essential elements of [ED § 26-101(a)] beyond

[3] Corporal Donohoe's testimony of Green's statement was hearsay. Md. Rule 5-801(c) ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Maryland Rule 5-802, which is located in Title 5 of the Maryland Rules, states that "hearsay is not admissible." Md. Rule 5-802. The hearsay exclusion rule is applicable to juvenile courts. Md. Rule 1-101 ("Title 5 applies to all actions in the courts of this State, except as otherwise provided by statute or rule."). Terelle's counsel, however, did not object to Corporal Donohoe's testimony at the adjudication proceeding, leaving the matter unpreserved for our review. *See* Md. Rule 8-131 ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court."). Our point here, therefore, is not that Corporal Donohoe's hearsay testimony should not have been admitted, but rather, that it was insufficient to establish the fact of a disturbance because it was directly contradicted by Green's own testimony.

a reasonable doubt." *In re Timothy F.*, 343 Md. 371, 380 (1996) (quotation omitted). Accordingly, we reverse.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.