

**Juvenile Cases Decided by the
North Carolina Court of Appeals**

April 16, 2013

Delinquency

- **Sexual battery and simple assault; adjudication and disposition orders**

In re K.C., ___ N.C. App. ___, ___ S.E.2d ___ (April 16, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMTU3LTEucGRm>

Facts: The juvenile was alleged to be delinquent for simple assault and sexual battery. At adjudication, a female classmate of the male juvenile testified that the juvenile “grabbed and squeezed her butt” in class when she went to shelve a book. The juvenile testified that he accidentally touched her butt, when picking up a pencil, but did not squeeze it. The court denied the juvenile’s motion to dismiss at the close of the state’s evidence, and the juvenile did not renew the motion at the end of all the evidence. The court adjudicated the juvenile delinquent for both offenses, placed him on nine months’ probation, and ordered him to submit to a sex offender evaluation and follow any treatment recommendations.

Held: Vacated in part; affirmed in part; remanded in part; and dismissed in part.

The court of appeals considered the juvenile’s claim of insufficiency of the evidence pursuant to Appellate Rule 2, despite the juvenile’s failure to move to dismiss at the close of the evidence.

1. **Sexual battery**. The court vacated the adjudication for sexual battery, for insufficient evidence. Because the juvenile admitted touching the girl’s buttocks, there was sufficient evidence of sexual contact, the court said. However, evidence that the juvenile had made a possibly sexually suggestive statement to her months before was not sufficient to prove sexual purpose, a necessary element, beyond a reasonable doubt. When children are involved, the purpose cannot be inferred from the act itself. There must be “evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting.”
2. **Simple assault**. The court affirmed the adjudication for simple assault, based on the juvenile’s having touched the classmate without her consent.
3. **Adjudication order**. The order was sufficient when it included the date of the offense, the fact that the assault was a class 2 misdemeanor, the date of the adjudication, and a statement that proof was beyond a reasonable doubt – the minimum required by G.S. 7B-2411.
4. **Disposition**. The court remanded the disposition order for additional findings of fact, holding that the trial court’s findings were not sufficient to show that it considered all of the factors listed in G.S. 7B-2501(c).
5. **Ineffective assistance**. The court dismissed without prejudice the juvenile’s claim that he received ineffective assistance of counsel, indicating that the juvenile could pursue that claim by filing a motion in the cause.

- **Disposition: risk and needs assessment**

In re E.K.H., ___ N.C. App. ___, ___ S.E.2d ___ (April 16, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMjUzLTEucGRm>

Facts: After adjudicating the juvenile delinquent for common law robbery and conducting a dispositional hearing, the trial court ordered a Level 3 disposition. On appeal the juvenile’s only argument was that the trial court erred by entering a disposition order without either (1) receiving

and considering a risk and needs assessment or (2) making a written finding that it was not needed.

Held: Affirmed.

The court of appeals held that the trial court erred by failing to do either of those things, as required by G.S. 7B-2413, but that the error was harmless. The court reviewed the evidence that was considered by the trial court, and noted that the juvenile did not object at the hearing to the absence of the assessment and did not indicate in his brief any prejudice resulting from the court's error.

Appellate court opinions: <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries: <http://www.sog.unc.edu/node/513>.

Other juvenile law resources: <http://www.sog.unc.edu/node/1689>.



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