

**Unpublished Juvenile Cases Decided by the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

October 1, 2013

Delinquency

The following opinions from the Court of Appeals are **unpublished and may be cited only in accordance with N.C. R. App. P. 30(e)(3). They have been summarized due to the lack of recent published opinions and because they address frequently litigated issues in juvenile delinquency proceedings.

Custodial Interrogation; Sufficiency of Evidence

- Although a 15-year-old juvenile may not have subjectively felt “free to leave,” the juvenile was “in custody” only if circumstances objectively suggested that a reasonable 15-year-old juvenile would have believed he was under arrest.

In re N.J., ___ N.C. App. ___, ___ S.E.2d ___ (October 1, 2013) (unpublished).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy01My0xLnBkZg==>

Facts: Two armed, uniformed police officers were on foot patrol in a Durham Housing Authority (“DHA”) owned complex when they encountered two males and two females sitting on an electrical box around 7:00 p.m. As the officers approached, one of the individuals tossed a toboggan to the ground. The officers asked if anyone in the group was trespassing, and J.J., one of the males, replied that he lived there with a parent. When asked if he had any weapons, J.J. verbally consented to being searched, which revealed marijuana in his pants pocket. While one of the officers handcuffed J.J. and escorted him to the sidewalk, the other officer frisked N.J., a 15-year-old juvenile, and the two females to look for weapons. No weapons were found, and the officer retrieved the toboggan from the ground and discovered thirteen, individually wrapped bags of marijuana. The officer asked the group to whom the marijuana belonged, and N.J. replied that it was his. The trial court denied N.J.’s motion to suppress his statement, and N.J. admitted to possession with intent to sell or deliver marijuana.

Held: Affirmed in part; Vacated and Remanded in part.

1. The trial court’s findings of fact were sufficient to support its conclusion that “a reasonable 15-year-old juvenile” under the circumstances would not have believed he was in custody for purposes of *Miranda* and G.S. 7B-2101 when he admitted ownership of the marijuana.
2. Facts the court considered included that the juvenile was 15; he was frisked, but not searched; the encounter occurred in an open area, during daylight hours; and the juvenile was only asked one question, which was directed to the group, collectively. Further, the observation of his friend J.J. being detained, handcuffed, and directed to sit on the sidewalk would have indicated to a reasonable 15-year-old juvenile that his friend was under arrest and he was not.
3. However, there was an insufficient factual basis for the juvenile’s admission to possession with intent to sell or deliver marijuana. While quantity alone may be sufficient to support an inference of intent to sell or deliver, 13 individually wrapped bags of marijuana, weighing a total of 10.98 grams, does not show such intent. The packaging was not determinative, absent any evidence that 10.98 grams was more than a personal use amount. The court vacated respondent’s admission and remanded the matter to the trial court to enter a new disposition for simple possession of marijuana.

Lay Witness Testimony; Competency of Child Witness; Sufficiency of Petition; Sufficiency of Evidence

In re J.K.C., ___ N.C. App. ___, ___ S.E.2d ___ (October 1, 2013) (unpublished).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0xMzYtMS5wZGY=>

Facts: A 15-year-old juvenile was charged with committing sex acts against a 3-year-old child, while babysitting the 3-year-old child and her 7-year-old sister. At the adjudication hearing, the 3-year-old child testified the juvenile “licked my private while in the bathroom” and “[p]ut her finger in me and she tasted my private.” The child’s 7-year-old sister testified the juvenile took the 3-year-old child to the bathroom, and the door was locked when she went to check on them. Video and written reports of a forensic interview of the 3-year-old child were also admitted into evidence. Juvenile petitions were filed against the 15-year-old juvenile, alleging two counts of first degree sexual offense, two counts of crime against nature, and one count of indecent liberties between children. The juvenile was found responsible for two counts of first degree sexual offense and one count of crime against nature, and the remaining two petitions were dismissed.

Held: Affirmed.

1. The father’s testimony that he believed the child was telling the truth was properly admitted under Rule 701 as lay witness testimony because it was not meant to establish the credibility of the child’s statements, but rather, to reveal the father’s perception of and response to the events of that night.
2. The trial court did not abuse its discretion by ruling that the child was competent to testify because the decision was based upon the trial court’s personal observations of the child during *voir dire*. Further, any conflicts in a witness’s statements during *voir dire* affect the witness’s credibility, but not the competency of the testimony.
3. An incorrect statutory citation in the juvenile petitions charging first degree sexual offense was not a fatal defect where the body of the petitions clearly alleged the appropriate offense. The court relied, in part, on G.S. 15A-924(a)(6), which states that a citation error or its omission is not a ground for reversal of a criminal conviction.
 - ❖ Note that in *In re D.L.H.*, 364 N.C. 214, 219-20 (2010), the N.C. Supreme Court cautioned against assuming the applicability of criminal procedures to juvenile cases.
4. The trial court properly denied the juvenile’s motion to dismiss the charges. The child’s testimony that the juvenile “licked [her] private” and “put her finger in me” was sufficient to establish two separate sexual acts constituting first degree sexual offense under G.S. 14-27.4(a)(1). Also, either sexual act was sufficient to establish crime against nature under G.S. 14-177, since no specific act was alleged in the juvenile petition charging that offense.

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>.



UNC
SCHOOL OF
GOVERNMENT

LaToya Powell

School of Government

The University of North Carolina at Chapel Hill

Campus Box 3330, Knapp-Sanders Building

Chapel Hill, NC 27599-3330

T: 919.843.4167 F: 919.962.2706

latoya.powell@sog.unc.edu