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Juvenile Delinquency Case Update

August 16, 2019 – January 21, 2020

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Disorderly conduct

In the Matter of T.T.E., 372 N.C. 413 (August 16, 2019)

Held: Reversed

- Facts: T.T.E threw a chair in the school cafeteria during a period when students can receive tutoring and relax in the cafeteria. The chair did not hit anyone or anything. T.T.E. ran out of the cafeteria after throwing the chair. The School Resource Officer (SRO) was in the cafeteria and saw T.T.E. throw the chair. He followed T.T.E. out of the cafeteria, caught up to him, grabbed him from behind and instructed T.T.E to come with him. T.T.E. told the SRO "no." The SRO then brought T.T.E. to the school lobby and searched him, at which time T.T.E. cursed at the SRO and other students began to get involved, yelling at the SRO. T.T.E. subsequently told the SRO that he had thrown the chair at his brother in the course of playing. He was adjudicated delinquent for disorderly conduct and resisting a public officer.

- History: The Court of Appeals vacated the adjudication and disposition orders, 818 S.E.2d 324 (2018), holding that the juvenile's motion to dismiss based on insufficiency of the evidence should have been granted. The decision related to the adjudication for resisting a public officer was a unanimous decision by the Court of Appeals. However, the panel was divided regarding the sufficient of the evidence to support the adjudication for disorderly conduct.

- Opinion: The petition followed the "true and safe rule" by closely tracking the language of G.S. 14-288.4, alleging that the juvenile engaged in disorderly conduct. The juvenile was clearly apprised of the charges against him because the petition tracked the language of G.S. 14-288.4 with sufficient specificity. The court therefore had subject matter jurisdiction in the matter.

  In determining whether the evidence was sufficient to withstand a motion to dismiss the charge of disorderly conduct, the Court must view the evidence in the light mist favorable to the State and give the State the benefit of every reasonable inference. Under this standard of review, substantial evidence was presented that T.T.E. perpetrated an "annoying, disturbing, or alarming act…exceeding the bounds of social toleration normal for" the school through a public disturbance by "engaging in violent conduct" by "throwing a chair toward another student in the school's cafeteria." Slip. Op. at 15. The evidence included that: (1) the juvenile threw a chair at his brother across the cafeteria where other students were present, (2) the juvenile then ran through the school's hallways, (3) the behavior occurred at a time when other students were able to observe the hallway interaction between T.T.E. and the SRO, (4) the juvenile cursed at the deputy while being searched, (5) other students became involved in yelling and cursing at the SRO, to the point that another student was also handcuffed and arrested, (6) the SRO considered the act of throwing the chair to be conduct that disrupted or disturbed the school, and (7) another school faculty member described the circumstances as a significant safety issue as other students gravitated to the situation.

When viewed in the light most favorable to the State, the evidence presented was sufficient to deny a motion to dismiss regarding adjudication for disorderly conduct.

- Dissent: The evidence was not sufficient to support an adjudication for disorderly conduct. In order to be sufficient, the evidence, when considered in the light most favorable to the State, must be substantial evidence from which a rational trier of fact could find beyond a reasonable doubt that T.T.E. intentionally caused a public disturbance by engaging in violent conduct. The petition alleged that the juvenile engaged in disorderly conduct by throwing a chair toward another student in the cafeteria. The only evidence specific to the throwing of the chair was the SRO's testimony. Viewed in the light most favorable to the State, the SRO's testimony can be fairly said to raise a suspicion that the juvenile engaged in violent conduct. However, based on the evidence presented specifically about throwing the chair, any rational trier of fact could not find beyond a reasonable doubt that T.T.E. intentionally threw a chair in a manner that constituted violent conduct in order to cause a public disturbance. The evidence regarding events after the chair was thrown is relevant to the adjudication of resisting a public officer, which was previously unanimously vacated. It is irrelevant to the question of whether T.T.E. engaged in disorderly conduct--intentionally causing a public disturbance by engaging in violent conduct by throwing a chair toward another student in the cafeteria.

Second-degree sexual exploitation of a minor, first-degree forcible sexual offense, factual basis for admission, order of disposition, confinement pending appeal

In the Matter of J.D.., 832 S.E.2d 484, ___ N.C. App. ___ (August 20, 2019)

Appeal pending as of 5/14/20

Held: Reversed

- Facts: Zane, a guest at J.D.'s house for a sleepover, awoke to find his pants pulled down and J.D. behind him. J.D. also had his pants down and was engaged in a thrusting motion behind Zane. Zane testified that he believed someone was holding his legs and that he felt J.D.'s privates on his butt, although he did not feel penetration. Two other boys, Dan and Carl, were also present for the sleepover. Dan videotaped some of the incident on his phone. J.D. can be heard on the video telling Dan not to record the incident. At the end of the video, J.D. gives a thumbs up. The video eventually ended up on Facebook. J.D. was adjudicated delinquent for committing first-degree forcible sexual offense and second-degree exploitation of a minor. Prior to disposition, J.D. admitted to attempted larceny of a bicycle in a separate incident. The trial court entered a Level 3 disposition, committing J.D. to a YDC, and denied J.D.'s request to be released pending his appeal.
- Second-degree sexual exploitation of a minor: The evidence was insufficient to support this charge as a matter of law. There was no evidence that J.D. took an active role in the production or distribution of the video, as required for this offense. There is no evidence that J.D. acted with Dan as part of a common plan or purpose. Instead, the evidence shows that J.D. did not want to be filmed as he explicitly told Dan to stop. There is no evidence that J.D. wanted the video to be made or that he was the one who distributed it. Adjudication for this charge should be vacated.

- First-degree forcible sexual offense: This offense requires that the juvenile engaged in a sexual act with another person by force and against the will of the other person. A sexual act requires penetration, however slight. The victim specifically testified that penetration did not occur. The circumstantial evidence provided by the video cannot overcome the direct testimony of the victim. Therefore, the evidence was not sufficient to show that penetration occurred. The trial court erred in denying J.D.'s motion to dismiss this charge.
- Attempted larceny: There was not a sufficient factual basis for J.D.'s admission to this offense. There was not a showing of intent to steal, or assist others in stealing, the bicycle. The adjudications for attempted larceny should be vacated.
- Right of confrontation: While J.D.'s attorney failed to object to the entry of out-of-court statements made by Dan and Carl during adjudication, the issue is still properly before the court on appeal because G.S. 7B-2405 requires the court to protect the rights of juveniles during a delinquency hearing, including the right of confrontation. The right to appeal is preserved when a trial court acts contrary to a statutory mandate and the juvenile is thereby prejudiced.
  The out-of-court statements by Dan and Carl were used to overcome the testimony of the victim indicating that penetration did not occur. The State referenced the statements numerous times in closing statements. The additional evidence provided in these statements, that penetration occurred, was prejudicial to J.D.'s defense. The State failed to prove that admission of this testimony was harmless beyond a reasonable doubt.
- Disposition errors: The disposition and commitment orders did not contain adequate written findings. The trial court did not adequately explain its decision to ignore the evaluations and recommendation by the court counselor and CHA, which both recommended a Level 2 disposition. It also did not explain how its findings satisfied the five factors required by G.S. 7B-2501(c).
- Confinement pending appeal: The trial court's order that only recited allegations made by defense counsel and the State does not satisfy the requirement that the court list compelling reasons for continuing J.D.'s confinement while the appeal was pending, as required by G.S. 7B-2605. There were also no compelling reasons stated on the Appellate Entries form.

Dissent

- First-degree forcible sexual offense: Penetration can be proved by circumstantial evidence alone. The video provides such circumstantial evidence through the position and proximity of J.D. and Zane and J.D.'s constant thrusting motion. J.D.'s own statement is also evidence of penetration, as he stated that he had a semi-erect penis, it was pressing against Zane's anus, and he was thrusting. He also described the incident as "intercourse." The trial court appropriately weighed this evidence against Zane's testimony and found that at least slight penetration occurred. It is not the job of the appellate court to re-weigh the evidence. Zane's testimony also provided sufficient evidence that J.D. acted with force and against Zane's will. Finally, the tone of the conversation on the video between Dan and J.D. as well as the nature of their actions on the video support the inference that J.D. was aided and abetted by Dan. There was sufficient evidence to deny the motion to dismiss this charge.
- Sexual exploitation of a minor: The evidence, viewed in the light most favorable to the State, supports an inference that J.D. acted in concert with Dan in recording the incident. J.D.'s tone, the position of the cell phone, and J.D.'s action of giving a thumbs up at the end of the recording

all support the inference that J.D. had knowledge and approved of the recording and that he was working with Dan to make the video.

- Right of confrontation: Based on the harmless beyond a reasonable doubt standard, inclusion of the statements of Dan and Carl suggesting that penetration occurred does not justify a new hearing. The trial court based its determination that penetration occurred on the video and J.D.'s own statements and not on these statements.
- Attempted larceny admission: the recitation of facts that the bicycle was stolen by two boys and with bolt cutters, J.D. was found with two boys matching the description of the boys who stole the bike, J.D. admitted to knowing about the larceny, and the bolt cutters used in the larceny were found in J.D.'s possession laid a sufficient factual basis for accepting J.D.'s admission to the larceny.
- Disposition order: the trial court made multiple findings of fact that addressed all of the five factors required to be addressed in orders of disposition under G.S. 7B-2501. Adequate evidence was provided to support those findings. The trial court's choice between a Level 2 or Level 3 disposition should only be disturbed on a showing that the decision was manifestly unsupported by reason. Evidence of J.D.'s good behavior does not support the conclusion that the trial court's decision to impose a Level 3 disposition was unreasonable.
- Confinement pending appeal: While compelling reasons are required to justify denial of a juvenile's release pending appeal, those reasons do not need to be verbose. The trial court's written acknowledgement that J.D. had a lack of structure in the home, continued with delinquent behavior following this adjudication, and that he was to remain at the YDC for the protection of the public was sufficient.

Mental health evaluation prior to disposition

In the Matter of E.A., 833 S.E.2d. 630, ___ N.C. App. ___ (September 17, 2019)

Held: Disposition vacated and remanded

- Facts: E.A. was adjudicated delinquent for assault with a deadly weapon with intent to kill and malicious conduct upon a government official and ordered to probation supervision under a Level 2 disposition. At a subsequent hearing on a motion for review, probation was revoked and E.A. was committed to a youth development center. This new disposition was ordered after the court received and considered a predisposition report, a risk assessment, and a needs assessment. The predisposition report referred to a clinical assessment completed by Haven House in which E.A. was diagnosed with conduct disorder and intensive outpatient services were recommended.
- Grounds for appellate review: While proper notice of the appeal was not given, the facts of the case are worthy of treating EA's brief as a writ of certiorari pursuant to Appellate Rule 21. In addition, the State did not raise this jurisdictional issue in its brief and resulting prejudice to the State is not contemplated.
- Mandatory referral to the area mental health services director: As established in *In re E.M.*, __ N.C. App. __, *disc. review denied*, __ N.C. __, (2019), G.S. 7B-2502(c) mandates that the trial court refer a juvenile to the area mental health services director for appropriate action when faced with any

amount of evidence that the juvenile is mentally ill. This statute envisions the area director's involvement in the disposition and responsibility for arranging an interdisciplinary evaluation and mobilizing resource to meet the needs of the juvenile. The State conceded and the court agrees that EA's case is indistinguishable from *E.M.* The evidence before the trial court presented EA as being mentally ill. Failure to refer him to the area mental health services director is reversible error. The dispositional order is vacated and remanded for referral to the area mental health services director.

Probation extension findings

In the Matter of H.D.H.., 839 S.E.2d 65, __ N.C. App. __ (January 21, 2020)

Held: Reverse and remand

- Facts: The juvenile was originally placed on three months of protective supervision after admitting to allegations in an undisciplined petition. The juvenile subsequently admitted to allegations of indirect contempt for violations of her undisciplined disposition and was placed on a Level 1 delinquency disposition that included twelve months of probation. As the term of probation was scheduled to expire, the State requested a six-month extension of probation on a motion for review. The trial court extended the juvenile's probation for six months. The order extending probation did not include any written findings or conclusions.
- Opinion: G.S. 7B-2510(c) requires the court to find that the extensions of probation is necessary either to protect the community or to safeguard the welfare of the juvenile. The court must make written findings supporting these statutory factors when extending a juvenile's probation. Use of an outdated form may have impacted the court's failure to make the necessary written findings. Because there was information before the trial court that could have supported the necessary findings of fact, the case is reversed and remanded for entry of a new order.