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Insufficient evidence of communicating a threat of mass violence on educational property

In the Matter of C.S., ___ N.C. App ____, 911 S.E.2d 263 (December 31, 2024)

Held: Reversed

Facts: The juvenile posted a screenshot of his school's announcement of a three-day spirit week on Snapchat. The juvenile superimposed the following over the screenshot: "THIS IS SOME FUCKING BULLSHIT, IMMA SHOOT UP AL BROWN (for reason that I do not wish to have the police come to my house, it is a joke I do not nor have I ever owned a gun.) Thank you pls don't report me[.]" Snapchat flagged the post as containing a threat of mass violence and the SBI connected the post to the juvenile. The juvenile explained that the post was a joke during his interview with the investigating officer. The juvenile was charged with communicating a threat to commit an act of mass violence on educational property (G.S. 14-277.6) and making a false report concerning mass violence on educational property (G.S. 14-277.5). The trial court denied a motion to dismiss both petitions for insufficient evidence and the youth was adjudicated delinquent on both petitions.

Opinion:

Insufficient evidence to support charge of communicating a threat of mass violence on educational property

A true threat analysis is required to apply G.S. 14-277.6 in accordance with the protections of the First Amendment. A true threat requires both an objectively threatening statement and the subjective intent to threaten a listener or an identifiable group. *In re D.R.F.*, 293 N.C. App. 544, 549. The factors for analyzing a true threat in *State v. Taylor*, 379 N.C. 589 (2021), include both the context of the communication and the negating language of the communication. The context in this case was a post on social media and not a message to any particular person. There was no evidence presented as to how Snapchat flagged the post or that anyone outside of Snapchat, the SBI, and the investigating officer was aware of, reported, or feared the communication. The negating language in the post, including that the juvenile did not own a gun and characterization of the post as a joke, are also factors that indicate that the post was a distasteful "joke" and not objectively threatening. *Slip op. at 13*. No evidence was presented that any student or staff member felt threatened or notified the school of the post. There was also no evidence that the school made any changes to the school day as a result of the post. Evidence that creates "'a suspicion that it would be objectively reasonable' to think Fabian was serious in making his threat... is not 'enough to create an inference to satisfy the State's burden.'" *Slip op. at 12*, quoting *In re Z.P.*, 280 N.C. App. at 446. Considered in the light most favorable to the State, the evidence presented was insufficient to prove that the communication was objectively threatening. The trial court's denial of the motion to dismiss the petition is reversed.

Insufficient evidence to support charge of making a false report concerning mass violence on educational property

The State must prove that the juvenile was making a report to survive a motion to dismiss the charge of making a false report concerning mass violence on educational property. The State did not present substantial evidence that the juvenile made a report. The post was not directed to any specific person, there was no evidence that anyone unrelated to the investigation saw the post, and law enforcement

was not aware of any statements about the post made to any individuals. The only evidence was that Snapchat flagged the post and brought it to the attention of law enforcement. Alternatively, it would not have been reasonable for someone to construe the post as a report of a credible threat, especially considering the context and negating language described in the true threat analysis. Considering the evidence in the light most favorable to the State, there was not substantial evidence that the post was a report within the meaning of G.S. 14-277.5. The trial court's denial of the motion to dismiss the petition is reversed.

Insufficient findings in dispositional order, including order changing custody

[In the Matter of T.O.C., N.C. App. , 907 S.E.2d. 99 \(October 15, 2024\), Unpublished](#)

Held: Affirmed in part, Remanded in part for additional findings

Facts: The juvenile ran away from his mother's house, was found by his mother and her boyfriend while walking down a road, and the boyfriend held the juvenile until the police arrived. The juvenile kicked, bit, scratched, spat on, and hit the boyfriend in the face with gravel while being held down. He was adjudicated delinquent for simple assault of the mother's boyfriend and placed on probation with special conditions that included a change in parental custody. The disposition order incorporated the contents of the predisposition report, risk assessment, and needs assessment by reference. It also included findings that stated

“Based on the risk and needs assessment reports submitted by the department of juvenile justice, the court finds that the juvenile has a pre-screen risk score of 41, which is high, a full assessment needs score of 74, which is moderate, and full assessment strengths score of 43, which is high moderate.”

The custody change was contained in a separate “Juvenile Order” which did not contain any findings. The juvenile appealed, arguing that the trial court erred by denying his motion to dismiss and by failing to state sufficient findings of fact in the dispositional order.

Opinion:

The trial court did not err in denying the motion to dismiss. Self-defense did not apply because the juvenile was not without fault in provoking, or engaging in, or continuing the difficulty.

Testimony from the mother and the mother's boyfriend included that the juvenile kicked, hit, and threw gravel on the boyfriend. The juvenile also testified that he hit and kicked the boyfriend. The juvenile asserted that he engaged in this conduct in self-defense. Self-defense applies only when the juvenile is without fault in provoking, or engaging in, or continuing a difficulty with the other person. The juvenile was not without fault in this case because he was running away from home after a dispute with his mother and was found at night walking down a road. The boyfriend's action of holding the juvenile down to stop him from going further was reasonable for the juvenile's protection. The juvenile also asserted that his high blood sugar level at the time of the incident was relevant to whether he had the intent needed for an assault adjudication. However, the juvenile did not present any evidence related to that assertion at trial.

The findings of fact in the dispositional order were insufficient.

There is conflicting caselaw regarding whether documents incorporated by reference in the dispositional order are part of the findings in a dispositional order used to show that the court considered all five statutorily required considerations contained in G.S. 7B-2501(c) (1) seriousness of offense; 2) need to hold the juvenile accountable; 3) protection of public safety; 4) degree of culpability based on the specific circumstance; and 5) rehabilitative and treatment needs of the juvenile as indicated by a risk and needs assessment). This court followed the older line of cases which prioritizes substance over form and allows for consideration of the documents incorporated by reference in the dispositional order.

Even considering the predisposition report, risk assessment, and needs assessment that were incorporated by reference in the dispositional order, the findings in the dispositional order were insufficient. The written findings only reiterated the risk and needs assessment scores. The findings in the dispositional order did not adequately address the five factors required by G.S. 7B-2501(c).

There were insufficient findings to support the order changing custody of the juvenile.

There was a custody order in place, outside of the delinquency proceeding, related to the juvenile. The trial court entered a supplemental custody order, altering that underlying order, during the delinquency disposition. That supplemental custody order did not contain any findings of fact to support a change in custody. Additionally, a trial court cannot enter an order modifying a custody order sua sponte, as was done in this case.

A trial court is authorized to change custody as a dispositional alternative in a delinquency case when the change in custody would protect the public and meet the needs and best interests of the juvenile based on the five required factors for consideration contained in G.S. 7B-2501(c). Because there were no findings made to support the change in custody, the case was remanded for the trial court to consider evidence that would support entering a new custody order.

The smell of marijuana was sufficient to establish probable cause to search the juvenile's vehicle based on the officer's training and experience

In the Matter of J.B.P., __ N.C. App __ (July 2, 2025)

Held: Vacated in part; Reversed and remanded in part

Facts: law enforcement officers were conducting surveillance on a home suspected to be involved in distribution of controlled substances. An officer testified that he smelled what he perceived to be the odor of marijuana as he drove past a car parked in front of the house. Later, the juvenile drove the vehicle away and the officer conducted a traffic stop. The officer testified he smelled the odor of marijuana coming from the vehicle as he approached and that he smelled the odor of marijuana on the juvenile when he stepped out of the car. Based on the odor, the officer searched the car and seized marijuana, a digital scale, and a handgun. The juvenile filed a motion to suppress the seized evidence alleging that the odor alone was not sufficient to establish probable cause. The trial court took notice of a 2019 memo issued by the State Bureau of Investigation (SBI) that stated that an officer's sight or smell of marijuana alone is not sufficient to establish probable cause because marijuana is indistinguishable

from hemp. The trial court granted the motion to suppress and dismissed the charges, finding that the officer did not have probable cause to believe that there was marijuana rather than legal hemp in the car. The State appealed.

Opinion:

The smell of marijuana was sufficient to establish probable cause to search the juvenile's vehicle

Relying on the holding in *State v Reel*, ___ N.C.App. ___, 910 S.E.2d 307 (2024), the court held that the officer's identification of the odor as marijuana was sufficient to establish probable cause because the officer had special narcotics training and extensive field experience in identifying marijuana based on odor and physical appearance. When an officer has this training and experience, their belief that they smell marijuana is sufficient to establish a reasonable probability that there is marijuana in the car, justifying a warrantless search of the vehicle. The trial court erred in granting the motion to suppress and in dismissing the charges.

Defendant was rightly required to register as a sex offender in North Carolina based on a juvenile adjudication from Delaware that required registration in Delaware

State v. Jackson, ___ N.C.App. ___ (July 16, 2025)

Held: Affirmed

Facts: The defendant was adjudicated delinquent in Delaware in 2008 for first degree rape of his younger sister. He was placed on the Delaware sex offender registry as was required under Delaware law. He moved to North Carolina and was notified to register with North Carolina's sex offender registry in March of 2022. The defendant filed a petition for judicial determinations of sex offender registration requirement and the trial court determined that he was required to register in North Carolina

Opinion:

Defendant was rightly required to register in North Carolina as a sex offender because Delaware's definition of conviction for the purposes of sex offender registration applies and the defendant was required to register as a sex offender under Delaware law.

An out-of-state person is required to register in North Carolina when that person has a reportable conviction from another state and becomes a resident of North Carolina or is present in North Carolina for 15 days. G.S. 14-208.7(a). Reportable convictions include "a final conviction in another state of an offense that requires registration under the sex offender registration statutes *of that state*." Slip op. at 4. Delaware's law regarding whether the adjudication is a reportable conviction requiring registration governs whether the adjudication counts as a reportable conviction under this provision of North Carolina law. Delaware law requires registration and the defendant therefore has a reportable conviction requiring registration in North Carolina. The proposition that the court cannot rely on out-of-state frameworks that materially deviate from North Carolina law, as explained in *State v. Melton*, 371 N.C. 750, 758 (2018), does not apply because the North Carolina statute specifically incorporates the law of the other jurisdiction in this situation. The rule of lenity does not apply to this case because there is no ambiguity. The trial court's order requiring the defendant to register is affirmed.