

Juvenile Delinquency Case Update

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District Court Judges Conference (Summer 2019)

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Juvenile Interrogation – Waiver of Rights

State v. Saldierna, 817 S.E.2d 174 (August 17, 2018)

On discretionary review of a unanimous decision of the Court of Appeals in *State v. Saldierna*, ___ N.C. App. ___, 803 S.E.2d 33 (2017), the Supreme Court held that the findings of fact in the trial court had adequate evidentiary support and that those findings of fact supported the trial court’s conclusion that the ***defendant knowingly and voluntarily waived his juvenile rights to have a parent, guardian, or custodian present during questioning***. The Supreme Court therefore reversed the Court of Appeals, finding that the trial court appropriately denied the defendant’s motion to suppress his confession.

- ***Facts:*** The defendant, age 16, was arrested for his alleged involvement in burglaries of Charlotte area homes. The arresting officers took him to a police station where a detective provided him with copies of a juvenile waiver of rights form in both English and Spanish and read the English version to him. The juvenile initialed the waiver on the English version of the form and signed the form indicating that he was waiving his right to have a parent or guardian present during questioning, but then immediately asked, “Um, can I call my mom,” and was allowed to place the call. After being unable to reach his mother, the interrogation resumed and he confessed. The defendant filed a motion to suppress his confession on the basis that the interrogation violated his juvenile rights provided under N.C.G.S. § 7B-2101 and his federal constitutional right not to be deprived of liberty without due process of law. The trial court denied that motion.
- ***Procedural History:*** This case was initially heard by the Supreme Court in *Saldierna I*, 369 N.C. 401 (2016). The Court held that the defendant’s request to call his mother during custodial questioning by police was not a clear invocation of his juvenile right to consult a parent or guardian before proceeding with questioning. The Court remanded the case back to the Court of Appeals, which had reversed the trial court’s denial of the motion to suppress. The Court of Appeals was directed to determine whether the defendant knowingly, willingly, and understandingly waived his right to have a parent or guardian present during questioning. On remand the Court of Appeals determined that, given the totality of the circumstances, the trial court erred in determining that the defendant knowingly, willingly, and understandingly waived his rights. The decision of the trial court to deny the motion to suppress the confession was reversed, the judgments entered upon the guilty plea were vacated, and the case was remanded to the trial court. The decision summarized here results from an appeal of this order.
- ***Waiver of rights:*** The burden is on the State to show by a preponderance of evidence that the waiver was knowingly and intelligently made. The trial court is required to assess the totality of the circumstances in determining whether the State met its burden of proof, including evaluation of the juvenile’s age, experience, education, background, intelligence, and capacity to understand the warnings given to him along with his rights and the consequences of waiving those rights.

The trial court’s finding of facts that the defendant knowingly, willingly, and understandingly waived his rights was supported by adequate evidence. That evidentiary support included (1) the detective

advised the defendant of his juvenile rights in spoken English and written Spanish and English, (2) the defendant initialed each of the rights on the juvenile rights waiver form, (3) the defendant signed the juvenile rights waiver form to indicate that he had decided to waive his rights, and (4) the defendant answered affirmatively when asked if he understood what the detective was saying. While some of the evidence presented at trial could support a different finding of fact, resolution of these kinds of evidentiary conflicts are matters for trial court resolution. Given the sufficient evidentiary support for the trial court's finding of facts in this matter, the decision by the Court of Appeals was reversed and the trial court's finding that the defendant knowingly, willingly, and understandingly waived his juvenile rights was upheld.

Advising Juvenile of Right against Self-Incrimination

In the Matter of J.B., 820 S.E.2d 369 (September 18, 2018)

Held: Reversed and remanded for new trial

The trial court erred in ***failing to advise the juvenile of his right against self-incrimination before he testified and incriminated himself during an adjudication hearing***. The juvenile was charged with assault on a government employee after allegedly throwing a milk carton at a teacher and hitting her in the face with it. Defense counsel called the juvenile as a witness and, on direct examination, the juvenile admitted to throwing the milk carton at the teacher out of frustration and intending to hit her with it. After closing arguments, the trial judge informed the juvenile that he had forgotten to advise him of his right against self-incrimination prior to his testimony and asked if the juvenile understood that right. Pursuant to the plain language of G.S. 7B-2405, there is an affirmative duty on the trial court to protect the enumerated rights set forth in that statute, including the privilege against self-incrimination. *In re J.R.V.*, 212 N.C. App. 205 (2011). This includes at least some colloquy between the trial court and the juvenile to ensure that the juvenile understands his right against self-incrimination before choosing to testify. The trial court committed error in asking whether the juvenile understood his right against self-incrimination after he had already testified. This was not harmless error because his testimony was incriminating and prejudicial.

Disorderly Conduct

In the Matter of T.T.E., 818 S.E.2d 324 (July 17, 2018)

Held: Vacated

- ***Facts:*** The incident occurred at school and began with the juvenile throwing a chair in the cafeteria. The School Resource Officer (SRO) testified that no one was hit by the chair, nor did he see anyone who could have been hit by the chair. After throwing the chair the juvenile ran from the cafeteria and the SRO followed him. The SRO came up quietly behind the juvenile and grabbed him. The juvenile yelled "no" and cursed, and subsequently explained that he had been playing with his brother in the cafeteria. He was adjudicated delinquent for disorderly conduct and resisting a public officer.

- ***Opinion: The evidence, even when considered in the light most favorable to the State as required on appeal, did not support adjudication on either charge.*** Disorderly conduct requires evidence of a public disturbance in which the juvenile engaged in 1) fighting; 2) other violent conduct; or 3) conduct creating the threat of imminent fighting or other violence. G.S. 14-288.4(a)(1). The evidence was not sufficient to establish fighting, violence, or the imminent threat thereof. “Throwing a single chair with no other person nearby and without attempting to hit another person and without hitting even any other item in the cafeteria is not disorderly conduct as defined by North Carolina General Statute § 14-288.4(a)(1).” Slip. Op. at 7.

Adjudication for resisting a public officer requires: “(1) that the victim was a public officer; (2) that the defendant knew or had reasonable grounds to believe that the victim was a public officer; (3) that the victim was discharging or attempting to discharge a duty of his office; (4) that the defendant resisted, delayed, or obstructed the victim in discharging or attempting to discharge a duty of his office; and (5) that the defendant acted willfully and unlawfully, that is intentionally and without justification or excuse.” Slip Op. at 8. Evidence did not show that the juvenile knew or had reasonable grounds to know that the person grabbing him was a public officer, that the juvenile resisted, delayed, or obstructed the SRO, nor that the juvenile acted willfully and unlawfully, as testimony established that the SRO intentionally snuck up behind the juvenile and the juvenile merely cursed and quickly returned to calm.

- ***Concurrence in Part and Dissent in Part:*** The evidence was not sufficient to support an adjudication for resisting a public officer. However, the act of throwing a chair at his brother amounted to violent conduct and therefore the adjudication for disorderly conduct should have been upheld.

Author’s Note: The North Carolina Supreme Court heard oral arguments on May 28, 2019 related to the adjudication for disorderly conduct.

Dispositional Factors

In the Matter of I.W.P., 815 S.E.2d 696 (May 1, 2018)

Held: Dismissed in Part, Affirmed in Part, Remanded in Part

- ***Facts:*** The juvenile, who was already on probation, encouraged another youth to pull the fire alarm of a middle school on the last day of school. Evidence presented during adjudication included that the juvenile asked the other youth to pull the alarm four different times during at least two classes before the other youth pulled the alarm. Chaos followed as students attempted to exit the school. The juvenile was adjudicated delinquent for disorderly conduct.
- ***Dispositional Considerations: The trial court must consider each of the five factors listed in G.S. 7B-2501(c) when crafting a disposition.*** This holding resolves the conflict created by *In re D.E.P.* ___ N.C. App. ___ (February 7, 2017) which diverged from a previous line of cases in holding that there is not a need for finding of facts regarding all five factors listed in G.S. 7B-2501(c), including factors which are irrelevant to the case or regarding which no evidence was presented. When two lines of

cases conflict, the older line of cases is controlling. *Respass v. Respass*, 232 N.C. App. 611 (2014). The older line of cases on this issue (*In re Ferrell*, 162 N.C. App. 175 (2004); *In re V.M.*, 211 N.C. App. 389 (2011); *In re K.C.*, 226 N.C. App. 452 (2013); and *In re G.C.*, 230 N.C. App. 511 (2013)) hold that all five factors enumerated in the statute must be considered when developing a disposition and that is therefore the controlling law. Two required factors, the seriousness of the offense and the degree of culpability of the juvenile, were not addressed in this dispositional order. Remanded for further findings of fact to address these two factors.

- **Sufficiency of the Evidence:** While counsel for the juvenile made a motion to dismiss at the close of the State's evidence, counsel proceeded to present evidence on behalf of the juvenile after that motion was denied. Counsel did not renew the motion at the close of all evidence, failing to preserve the issue for appeal. The Court declined to review this argument pursuant to Rule 2 because there was sufficient evidence for each element of the criminal offense. Manifest injustice cannot exist and suspension of appellate rules pursuant to Rule 2 is not justified when there is sufficient evidence of each element of the offense. This issue is dismissed.
- **Sufficiency of Adjudication Order:** The adjudication order was sufficient to comply with G.S. 7B-2411. It included: identification of disorderly conduct as the type of offense; offense date; and date the petition was filed. It also included: delinquency hearing as the type of proceeding; judge's signature; date; proof of filing; a description of the specific conduct; and the conclusion of law indicating delinquency.
- **Improper Delegation of Authority:** The trial court properly selected community dispositions that are allowable under G.S. 7B-2506, appropriately leaving day-to-day implementation to the court counselor. An error in the date listed in the supplemental order that was incorporated by reference was clerical error. Remanded for correction of the clerical error.
- **Clerical Error:** Failure to check the appropriate box in the conclusions of law section on the pre-printed adjudication order form was clerical error. An error in the supplemental order regarding the date that twelve months of probation would terminate was clerical error. Remanded for correction of both clerical errors.

Mental Health Evaluation Prior to Disposition

In the Matter of E.M., 823 S.E.2d 674 (January 15, 2019)

Held: Vacated and Remanded

- **Facts:** The juvenile was initially placed on probation as a Level 2 disposition following an admission to conspiracy to criminal common law robbery. He subsequently admitted to violating his probation by being suspended from school and leaving home without permission for three days. Substantial evidence was provided at the hearing on the motion for review regarding the juvenile's long history of mental health issues, including inpatient, outpatient, and intensive in-home services. Additionally, several risk and needs assessments documented mental health treatment needs. The trial court

entered a Level 3 disposition and committed the juvenile to a YDC while also ordering custody of the juvenile to the Department of Social Services. The juvenile appealed on the following three issues: 1) entering a disposition without referral to the area mental health services director, 2) finding that the juvenile had been involved in criminal activity while on probation when no competent evidence supported that finding and 3) transferring legal custody to the Department of Social Services.

- *Opinion:* When evidence of mental health issues arise, referral of the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action is mandatory. G.S. 7B-2502(c). "Evidence of mental illness compels further inquiry by the trial court prior to entry of any final disposition." Slip Op. at 6, quoting *In re Mosser*, 99 N.C. App. 523 at 529 (1990). While a substantial amount of evidence regarding the juvenile's mental illness was presented here, any amount of evidence that a juvenile is mentally ill triggers the statutory duty of the trial court to refer the juvenile to the area mental health services director per G.S. 7B-2502(c). This requirement was not rendered unnecessary by a significant history of mental health services prior to disposition or the ability of the trial court to order mental health services during commitment. Instead, the statute envisions involvement of the area mental health services director in the disposition and tasks the area mental health services director with arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. The disposition is vacated because the trial court did not follow this procedure. The court did not therefore consider the second and third grounds for appeal. However, the decision does note that the juvenile's custody shall remain with the Department of Social Services.

Author's Note: This decision was appealed and the Supreme Court of North Carolina issued a temporary stay while determining if it will hear the case. As of the writing of these materials, this decision is temporarily stayed.

Disposition – Adhering to Statutory Requirements

In the Matter of J.B., 809 S.E.2d 353 (January 2, 2018)

Held: Affirmed in Part, Remanded in Part

- *Facts:* The juvenile pushed a printer and computer off his teacher's desk, causing damage to the printer. He made a motion to dismiss at the close of the State's evidence, asserting that there was no evidence that the owner of the property was the Charlotte-Mecklenburg Board of Education. The motion was denied and the juvenile was adjudicated delinquent for injury to personal property. He was classified as a Level 2 offender and given a disposition of 10 days in detention, which was handwritten on the order next to the statutory reference that applies to intermittent detention for Level 1 dispositions.
- *Opinion:* During the motion to dismiss at trial, counsel for the juvenile twice acknowledged that the Board of Education was properly identified as a corporate body that can own property. The issue was also not raised by the juvenile at trial and, therefore, cannot be raised on appeal. The argument regarding whether the Board of Education was an entity capable of owning property was therefore not properly before the court. The evidence clearly showed that the school supplied computers and

printers to teachers and they were therefore the property of the school. The trial court did not err in denying the motion to dismiss on these grounds. An outdated preprinted disposition form was used by the court. While the court could have properly ordered the juvenile, as a Level 2 offender, to up to 14 days of intermittent confinement under G.S. 7B-2506(20), the old version of the form did not contain that option. Instead, the only intermittent confinement option on the form allowed for only up to five days of confinement pursuant to G.S. 7B-2506(12). The box next to this option was checked with a handwritten notation of "10 days detention." ***The trial court was required to impose at least one Level 2 disposition found in G.S. 7B-2506 (13)–(23). G.S. 7B-2508(d). Failure to do so was reversible error.*** Remanded for resentencing at which time the court may order up to five days of detention pursuant to G.S. 7B-2506(12) and must impose at least one of the mandatory dispositional alternatives in G.S. 7B-2506(13)-(23).

Dispositional Order on Probation Violation

In the Matter of R.S.M., 809 S.E.2d 134 (December 19, 2017)

Held: Vacated and Remanded

- ***Facts:*** The juvenile was on probation for a variety of charges related to breaking and/or entering, robbery, larceny, and intimidating a witness. The judge announced orally that she was ordering commitment to a Youth Development Center (YDC) at a dispositional hearing on probation violations that was held on October 17, 2016. That same day a written dispositional order continuing the juvenile on probation was signed by the judge. On November 2, 2016 a subsequent disposition order committing the juvenile to a YDC for probation violations was entered. No new violation of probation motions were pending at the time.
- ***Opinion:*** the ***trial court lacked subject matter jurisdiction to enter a second written order on probation violations when a first written order had already been entered.*** The written disposition entered on October 17, 2016 controls over the earlier oral judgment that same day. Conflict between an oral announcement of judgment and a written order is resolved in favor of the written order. *State v. Buchanan*, 108 N.C. App. 338 (1992). There were no new motions, notice, or hearings following the October 17, 2016 hearing. The court therefore had no subject matter jurisdiction to enter a new dispositional order following the October 17, 2016 order. A discrepancy in the October 17, 2016 Order for Motion for Review regarding the date of entry of the initial order placing the juvenile on probation was clerical error. The second dispositional order, entered November 2, 2016, is vacated and the October 17, 2016 order is remanded for correction of the clerical error.

Mootness

In the Matter of B.B., 824 S.E.2d 203 (February 5, 2019)

Held: Dismissed as moot

- ***Facts:*** The juvenile was committed to a Youth Development Center under a Level 3 disposition that resulted from a violation of his probation. This appeal was based on the district court's denial of a request for a continuance made by the juvenile's attorney at the review hearing. The attorney

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requested a continuance because he had just met his client that afternoon and a potential witness was not available to testify. The court denied that request and ordered the Level 3 disposition.

- *Opinion:* The appeal is dismissed as moot because the juvenile reached the age of 18 and was discharged from the Youth Development Center while the appeal was pending. As a result, the subject matter of the appeal ceased to exist. While the briefing period for the appeal concluded prior to the juvenile's eighteenth birthday, the **juvenile did not file a supplemental brief addressing mootness or presenting any collateral consequences of the disposition order.**