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## 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 in order 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.