

Juvenile Delinquency Case Compendium:

Published Cases Decided Jan. 2, 2007 – September 1, 2015

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Professor Powell's Juvenile Delinquency Case Compendium is a comprehensive, searchable collection of case annotations, which covers all published appellate court decisions related to juvenile delinquency proceedings in North Carolina from January 2007 – present.¹ [Selected juvenile delinquency cases decided before 2007 and criminal cases that are relevant to juvenile proceedings are also included.] It is continually updated, with a detailed navigation pane/index. Cases are indexed by discrete legal issues, and thus, may appear multiple times throughout the compendium. The sections and subsections in the index are arranged in alphabetical order and include topics, such as: Adjudication, Appellate Issues, Counsel Issues, Criminal Offenses, Disposition, Evidence, Hearing Procedures, Interrogation and Confession, Jurisdiction, Post-Disposition, Pre-Adjudication, Records, Search and Seizure, Secure Custody, and Transfer.

Cases are listed from highest court (U.S. S.Ct.) to lowest court (N.C. App.) in reverse chronological order. A hyperlink to the full appellate court decision is provided, if available.

How To Navigate This Document:

1) *Navigation Menu*

Click on the bookmarks on the left to advance to a topic. If the bookmarks are not displaying on the left side of your browser, click on the bookmarks symbol to expand the navigation pane, or from the Adobe Reader menu, select “View – Show/Hide – Navigation Panes – Bookmarks.” Note that the bookmark links expand to reveal subtopics, if there is a + sign next to the bookmark.

2) *Table of Contents*

Click on a topic in the Table of Contents to immediately advance to that topic.

3) *Full Text Search*

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¹ Some of the case annotations from January 2007 to April 2013 are derived from summaries written by Professor Janet Mason, who retired from the School of Government in 2013 after more than 30 years of service to NC government officials working in the area of juvenile law.

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Adjudication

Adjudication Hearing *Closing Argument*

In the Matter of A.W., 209 N.C. App. 596, 706 S.E.2d 305 (2011). The court vacated an adjudication of delinquency for indecent liberties between children where the trial court prevented defense counsel from making a closing argument. The appellate court recognized that the right to present a closing argument is an essential component of due process in a juvenile proceeding, and that juveniles are entitled to the same rights as criminal defendants, except for bail, self-representation, and trial by jury under G.S. 7B-2405(6). Because the juvenile's attorney was denied the opportunity to make a closing argument, the court vacated the indecent liberties adjudication and remanded for a new adjudication hearing.

Adjudication Order *Burden of Proof*

In the Matter of D.K., 200 N.C. App. 785, 684 S.E.2d 522 (2009). The trial court committed reversible error by stating ambiguously which standard of proof it applied, referring in its order both to facts proven beyond a reasonable doubt and to the state's having shown by clear and convincing evidence that the juvenile committed the act. Because the judge who presided at trial was no longer on the district court bench, the court ordered a new trial.

In the Matter of C.B., 187 N.C. App. 803, 654 S.E.2d 21 (2007). The trial court erred when it did not unequivocally state the standard of proof used in its adjudication order. The order adjudicating the juvenile delinquent for assault inflicting serious injury recited that the facts were found "beyond a reasonable doubt." The part of the order specifically finding that the juvenile committed an assault inflicting serious injury, however, stated that the court made the finding by "clear, cogent and convincing evidence." The Court of Appeals remanded for clarification of the standard of proof.

In the Matter of B.E., 186 N.C. App. 656, 652 S.E.2d 344 (2007). The trial court erred by making conflicting statements regarding which standard of proof it applied to the adjudication of delinquency. The adjudication order "found beyond a reasonable doubt" that the juvenile "violated G.S. 14-202.2 by clear, cogent, and convincing evidence." Because the trial court must unequivocally state the standard of proof in its order pursuant to G.S. 7B-2411, the Court of Appeals remanded for clarification of the standard of proof.

Clerical Errors

In the Matter of D.B., 214 N.C. App. 489, 714 S.E.2d 522 (2011). Because the trial court's order incorrectly stated that the juvenile admitted the alleged offenses, remand to correct that part of the order was appropriate. The Court of Appeals noted that when an appellate court

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discovers a clerical error in the trial court's order on appeal, it is appropriate to remand the case for correction because of the importance that the record speak the truth.

Findings

In the Matter of K.M.M., __ N.C. App. __, __ S.E.2d __ (July 7, 2015). The trial court included sufficient findings of fact in the adjudication order to comply with G.S. 7B-2411, which requires the court to find, at a minimum, that the allegations in the petition have been proved beyond a reasonable doubt. The trial court found in its written order that it was proved beyond a reasonable doubt "that on or about the date of 10-16-2013, the juvenile did unlawfully and willfully steal, take, and carry away a White Apple [iP]hone with a pink and gray otter box case, the personal property of [Ms.] Nguyen having a value of \$300.00." G.S. 7B-2411 does not require the trial court to state in writing the evidence which satisfies each element of the offense.

In the Matter of M.J.G., __ N.C. App. __, 759 S.E.2d 361 (2014). In an assault case, the trial court's adjudication order complied with G.S. 7B-2411, which requires a written finding that "the allegations in the petition have been proved [beyond a reasonable doubt]." In the blank space on the adjudication order where the trial court is to state its findings of fact which "have been proven beyond a reasonable doubt," the trial court indicated "please see attached 'Adjudication Findings of Fact.'" The attached document contained detailed findings that, according to the adjudication order, had been proven beyond a reasonable doubt.

In the Matter of K.C., __ N.C. App. __, 742 S.E.2d 239 (2013). An adjudication order for simple assault was sufficient when it included the date of the offense, the fact that the assault was a class 2 misdemeanor, the date of the adjudication, and a statement that proof was beyond a reasonable doubt – the minimum required by G.S. 7B-2411.

In the Matter of J.J., Jr., 216 N.C. App. 366, 717 S.E.2d 59 (2011). Failure of the adjudication order to state findings that were made "beyond a reasonable doubt," although stated in open court, required remand. The court noted that the "Juvenile Adjudication Order" entered by the trial court contained a blank space for the court to state its findings of fact which the court found to be proved beyond a reasonable doubt. The court failed to use this space and made no written findings at all. Therefore, the Court of Appeals vacated the adjudication order and remanded for the trial court to make the requisite findings.

In the Matter of J.V.J., 209 N.C. App. 737, 707 S.E.2d 636 (2011). The Court of Appeals reversed and remanded the juvenile's adjudication for assault on a government officer because the trial court failed to make the statutorily mandated findings in its adjudicatory order, which did not address the allegations in the petition. At a minimum, G.S. 7B-2411 requires the trial court to state in a written order that "the allegations in the petition have been proved [beyond a reasonable doubt]." The statute also requires that the order include the date of offense, the misdemeanor or felony classification of the offense, and the date of adjudication. In this case, the order did not even summarily aver that the allegations in the petition had been proved. The form used by the trial court to enter its order contained a large blank space for the court to state its findings. Rather than address any allegations in the petition, the trial court wrote a fragmentary

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collection of words and numbers in that space, which indicated that an offense occurred and that the juvenile was “responsible.” These “findings” were insufficient to comply with the statute.

Admissions

Admission Colloquy

In the Matter of N.J., 221 N.C. App. 427, 728 S.E.2d 9 (2012). The trial court erred by failing to inform the juvenile of the most restrictive disposition on the charge before accepting his admission to possession of a controlled substance with intent to manufacture, sell, or deliver. The court was required to inform the juvenile personally of the most restrictive possible disposition under G.S. 7B-2407. Relying on a transcript of admission or on the juvenile’s consultation with his or her attorney is not sufficient.

In the Matter of J.A.G., 206 N.C. App. 318, 696 S.E.2d 809 (2010). The trial court erred by accepting the juvenile’s admission because it did not comply with G.S. 7B-2407(a). Of the six mandatory requirements in that subsection for accepting a juvenile’s admission, the trial court omitted three, in that the court did not inform the juvenile of the most restrictive disposition, that his admission waived his right to confront the witnesses against him, or that he had a right to remain silent and anything he said could be used against him

In the Matter of A.W., 182 N.C. App. 159, 641 S.E.2d 354 (2007). The trial court committed reversible error by accepting the juvenile’s admission where the court omitted two of the six mandatory inquiries in G.S. 7B-2407(a). The fact that the juvenile signed a transcript of admission did not relieve the trial court of its duty to orally address the juvenile as to each of the questions. Therefore, the juvenile’s admission to possession of marijuana with the intent to sell or deliver was not a product of informed choice.

Alford Admission

In the Matter of C.L., 217 N.C. App. 109, 719 S.E.2d 132 (2011). The trial court did not err in accepting the juvenile’s *Alford* admission where the court adequately advised the juvenile of the consequences of his *Alford* admission and the juvenile made an informed choice to admit responsibility. After noting that G.S. 7B-2405(6) affords juveniles “all rights afforded adult offenders” except those then mentioned in the Juvenile Code, the Court of Appeals evaluated the trial court’s actions pursuant to G.S. 15A-1022, relating to guilty pleas in superior court, rather than under G.S. 7B-2407, the Juvenile Code provision for accepting a juvenile’s admission. The court held that the trial court basically complied with G.S. 15A-1022 and had not erred in accepting the juvenile’s *Alford* admission. Contrary to the “strict compliance” rule that applies to the acceptance of a juvenile’s admission under G.S. 7B-2407(a), the Court of Appeals held that the “totality of the circumstances” test applies to determine “whether [the trial court’s failure to make the inquiry specified in N.C. Gen. Stat. § 15A-1022(d)] either affected [Juvenile’s] decision to plead or undermined the plea’s validity.”

Factual Basis

Adjudication

In the Matter of D.C., 191 N.C. App. 246, 662 S.E.2d 570 (2008). The trial court erred by accepting the juvenile's admission to felonious larceny and attempted felonious larceny of a vehicle valued at more than \$1,000 because the prosecutor's statement of the facts did not contain any statement or evidence showing that the stolen pickup truck was worth more than \$1,000; thus, there was an insufficient factual basis to support the plea in violation of G.S. 2407(c).

Privilege Against Self-Incrimination

In the Matter of J.R.V., 212 N.C. App. 205, 710 S.E.2d 411 (2011), rev. improvidently allowed, 365 N.C. 416, 720 S.E.2d 387 (2012). Before a juvenile respondent testifies in his or her own delinquency case, the court must inform the juvenile of the privilege against self-incrimination and determine that the juvenile understands the privilege. In this case, the juvenile was alleged to be delinquent for committing misdemeanor larceny in relation to stolen farm equipment. After the State's evidence at the adjudicatory hearing, the juvenile testified that he was not involved in the larceny and that he had not seen anyone else steal the farm equipment. The juvenile was adjudicated delinquent and placed on probation. He argued on appeal that the trial court erred by failing to inform the juvenile, before he testified, of his privilege against self-incrimination. The Court of Appeals agreed and held that G.S. 7B-2405, by stating that the trial court "shall" protect a juvenile's delineated rights, places an affirmative duty on the trial court to protect a juvenile's right against self-incrimination, which cannot be satisfied by doing nothing. The court said, "the statute requires, at the very 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 at his adjudication hearing." The court went on, however, to find that the trial court's failure to advise the juvenile had not been prejudicial ("was harmless beyond a reasonable doubt"), because all of the juvenile's testimony was either consistent with the State's evidence or favorable to the juvenile. Because the trial court's error "implicates the juvenile's constitutional right against self-incrimination, the error is prejudicial unless it was harmless beyond a reasonable doubt."

Proof of Adjudication as Aggravating Factor at Sentencing

State v. Rivens, 198 N.C. App. 130, 679 S.E.2d 145 (2009). The trial court did not err in failing to dismiss the aggravating factor in G.S. 15A-1340.16(d)(18a) where the State could only provide proof of the defendant's Transcript of Admission, and not the Juvenile Adjudication Order or the Disposition/Commitment Order. Because a juvenile admission carries the same protections and implications as a guilty plea by an adult and a formal entry of judgment is not required in order to have a conviction, the juvenile's admission in a delinquency proceeding was sufficient to establish the aggravating factor of being adjudicated delinquent.

Appellate Issues

Appealable Orders

In the Matter of Z.T.W., __ N.C. App. __, 767 S.E.2d 660 (2014). Due to the lack of a file stamp on the trial court's orders finding the juvenile to be in willful violation of his probation, ordering an out-of-home placement, and placing him in secure custody pending the out-of-home placement, it was unclear whether the juvenile gave notice of appeal in a timely manner, pursuant to G.S. 7B-2602. Recognizing this issue, the juvenile filed a cert petition simultaneously with his brief. Because the juvenile may have lost his right to appeal through no fault of his own, the court granted the petition to review the appeal, pursuant to Rule 21(a)(1).

In the Matter of J.V.J., 209 N.C. App. 737, 707 S.E.2d 636 (2011). The Court of Appeals granted the juvenile's petition for writ of certiorari to review the juvenile's adjudication of delinquency for assault on a government officer. After entering the adjudication order, the trial court continued disposition several times because the juvenile was in the hospital and "unavailable for court." The juvenile filed notice of appeal from the adjudication order and also filed a cert petition. The Court of Appeals noted that an adjudication of delinquency is not a final order under G.S. 7B-2602, and therefore, it may not be appealed. Because no appealable order had been entered in the case, the court granted the cert petition under Rule 21(a)(1), which permits review of an order of the trial court "when no right of appeal from an interlocutory order exists."

In the Matter of A.J. M.-B., 212 N.C. App. 586, 713 S.E.2d 104 (2011). The trial court's "dismissal" of the case at disposition did not result in a dismissal of the underlying adjudication. After an adjudication of delinquency for resisting an officer, the juvenile was in court for disposition on that charge and for a hearing on a motion to revoke his post-release supervision from a youth development center. The court revoked post-release supervision and, "as a disposition" in the resisting an officer case, dismissed that case. The juvenile appealed. The trial court's dismissal of the case at disposition did not have the effect of erasing the underlying adjudication. Therefore, the juvenile's appeal was properly before the court, because appealing the disposition of dismissal was the only way for the juvenile to appeal the adjudication. The juvenile had an interest in appealing the adjudication because it could affect his "delinquency history" in a subsequent proceeding.

In the Matter of M.L.T.H., 200 N.C. App. 476, 685 S.E.2d 117 (2009), rev. improvidently granted, 364 N.C. 420, 700 S.E.2d 225 (2010). The Court of Appeals first held that it did not have jurisdiction to hear the appeal because the juvenile's notice of appeal was not timely. The juvenile appealed the adjudication order and an order denying his motion to suppress, which are not appealable final orders under G.S. 7B-2602. However, the disposition was not entered until 127 days after the adjudication order. G.S. 7B-2602 provides that "if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry." In that provision, "entry of the order" refers to the order being appealed. Since notice of appeal from the order denying the suppression motion was given 85 days after entry of

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the order, it was not timely. Also, the oral notice given at the adjudication hearing was not timely because there was no final order entered in the case. However, the Court of Appeals treated the appeal as a petition for certiorari under N.C. R. App. P. 21(a)(1), which it granted.

Delay in Delivery of Transcript

In the Matter of T.H., 218 N.C. App. 123, 721 S.E.2d 728 (2012). There was no due process violation where a delay of less than one-year in production of the transcript was not presumptively prejudicial. The delay in the production of a trial transcript can result a violation of a juvenile's "constitutional and statutory rights to meaningful and effective appellate review." Factors in determining whether a delay violates due process are the same as those for pre-trial delay in a criminal case: length of delay; reason for delay; respondent's assertion of his right to speedy action; and prejudice resulting from the delay. In this case, the juvenile's attorney was partly responsible for the delay, he did not specifically assert a right to a speedy trial [appeal], and he was not "particularly prejudiced" by the delay.

Failure to Cite Authority

In the Matter of J.R.V., 212 N.C. App. 205, 710 S.E.2d 411 (2011), **rev. improvidently allowed**, 365 N.C. 416, 720 S.E.2d 387 (2012). The juvenile's brief cited no authority to support his argument that the trial court, in a bench trial, must state aloud the standard of proof for ruling on a motion to dismiss. Therefore, the argument was abandoned pursuant to N.C. R. App. P. 28(b)(6).

In the Matter of D.A.S., 183 N.C. App. 107, 643 S.E.2d 660 (2007). The court dismissed the juvenile's argument that the trial court erred when it entered its findings of fact because the juvenile's brief failed to cite any authority to support this argument. The assertion in the juvenile's brief that the juvenile "adopted and incorporated the arguments set out in" the previous argument was insufficient to comply with N.C. R. App. P. 28(b)(6).

Failure to Object at Trial

In the Matter of M.L.T.H., 200 N.C. App. 476, 685 S.E.2d 117 (2009), **rev. improvidently granted**, 364 N.C. 420, 700 S.E.2d 225 (2010). In the juvenile's appeal from the denial of his motion to suppress his confession, the State could not argue on appeal that the juvenile was not "in custody" when that was not argued in the trial court and where it was clear that everyone assumed he was in custody. The State did not assert at trial that the juvenile was not subjected to a custodial interrogation or that *Miranda* and juvenile warnings were not required. Instead, the arguments focused on the adequacy of the juvenile *Miranda* rights advisement. The State was not permitted to "swap horses" on appeal.

In the Matter of J.J.D.L., 189 N.C. App. 777, 659 S.E.2d 757 (2008). In a first degree sex offense case, the court held the juvenile had not preserved for appeal his argument that the trial court erred by proceeding to disposition without a sex offender specific evaluation, because he

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had made no objection at the trial level. The court said, in addition, that the juvenile had failed to show how the absence of such an evaluation affected the court's ability to enter a disposition.

Mootness

In the Matter of Z.T.W., __ N.C. App. __, 767 S.E.2d 660 (2014). The court rejected the State's argument that the juvenile's appeal of the trial court's order placing him in secure custody pending his transfer to an out-of-home placement was moot on the ground that the issue is "capable of repetition, yet evading review." The court noted that an order is reviewable under this exception to the general rule prohibiting the judicial system from addressing moot issues when (1) the challenged action is too short in duration to be fully litigated prior to its expiration, and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. The secure custody order in this case is an inherently temporary measure that is likely to recur in the future. As a result, the court addressed the merits of the appeal.

In the Matter of J.L.H., __ N.C. App. __, 750 S.E.2d 197 (2013). The juvenile's appeal of an order denying his release from a youth development center was not rendered moot by his release from YDC during the pendency of the appeal because there were adverse collateral consequences, such as the fact that his release date and the commencement of his post-release supervision were delayed by several months.

In the Matter of D.L.H., 198 N.C. App. 286, 679 S.E.2d 449 (2009), **rev'd on other grounds**, 364 N.C. 214, 694 S.E.2d 753 (2010). Although issues raised by the juvenile were moot because the juvenile's probation had expired, dismissal of the appeal was not required because the issues were "capable of repetition, yet evading review."

Notice of Appeal

In the Matter of D.K.L., 201 N.C. App. 443, 689 S.E.2d 508 (2009). The court dismissed the juvenile's appeal for lack of jurisdiction because the juvenile gave oral notice of appeal at the disposition hearing but before the entry of the "final order," and thus, the notice of appeal was not timely under G.S. 7B-2602. At a disposition hearing on October 15, 2008, the court specified conditions of the juvenile's release from detention (curfew, obey parents' rules, stay in school) but did not enter a final disposition order until November 26, 2008. In open court the juvenile gave notice of appeal. Notice of appeal given before the court renders or enters a final order of disposition is not effective.

In the Matter of M.L.T.H., 200 N.C. App. 476, 685 S.E.2d 117 (2009), **rev. improvidently granted**, 364 N.C. 420, 700 S.E.2d 225 (2010). The Court of Appeals first held that it did not have jurisdiction to hear the appeal because the juvenile's notice of appeal was not timely. The juvenile appealed the adjudication order and an order denying his motion to suppress, which are not appealable final orders under G.S. 7B-2602. However, the disposition was not entered until 127 days after the adjudication order. G.S. 7B-2602 provides that "if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry." In that provision, "entry of the order" refers to the order being appealed. Since

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notice of appeal from the order denying the suppression motion was given 85 days after entry of the order, it was not timely. Also, the oral notice given at the adjudication hearing was not timely because there was no final order entered in the case. However, the Court of Appeals treated the appeal as a petition for certiorari under N.C. R. App. P. 21(a)(1), which it granted.

In the Matter of A.V., 188 N.C. App. 317, 654 S.E.2d 811 (2008). The Court of Appeals did not review any of the juvenile's claims relating to the disposition order because the notice of appeal designated error only in the adjudication order and not in the disposition order, and the violation of Rule 3(d) of the N.C. R. App. P. constitutes a *jurisdictional defect* which cannot be waived.

Plain Error

In the Matter of D.L.D., 203 N.C. App. 434, 694 S.E.2d 395 (2010). In reviewing whether the trial court committed plain error by admitting an officer's testimony about the identification of marijuana and its street value, the Court of Appeals reiterated that the first step in the plain error analysis is to determine whether the action complained of constitutes error at all. Plain error analysis requires a showing that the trial court committed error, and that absent the error, the trial court probably would have reached a different result.

State's Right to Appeal

In the Matter of P.K.M., 219 N.C. App. 543, 724 S.E.2d 632 (2012). In a delinquency case, the State may appeal an order suppressing evidence only if the order terminates the prosecution. Police received word that 12-year-old P.K.M. was among a group of juveniles who vandalized a vacant building. At school, P.K.M. was taken from the principal's office to the school resource officer's (SRO's) office to meet with the SRO and the detective investigating the vandalism. During the meeting P.K.M. made incriminating statements. After a petition was filed alleging that P.K.M. was delinquent, the trial court granted the juvenile's motion to suppress those statements, based on J.D.B. v. N.C., 141 S.Ct. 2394 (2011) (holding that a juvenile's age is a relevant factor in determining whether a juvenile is "in custody"). The State gave notice of appeal and certified under G.S. 15A- 979(c) that the appeal was not for purposes of delay and that the suppressed evidence was essential to the State's case. The Court of Appeals held that the State's right to appeal in a delinquency case is governed by G.S. 7B-2604(b) and includes appeal of an order granting a motion to suppress only if the order terminated the prosecution of the petition. Here, the trial court did not dismiss the petition, the State did not argue in its brief that it could not proceed with the prosecution, the record suggested there was other evidence of the juvenile's involvement, and the State did not petition for certiorari. Also, G.S. 15A-979(c) (State's appeal of order suppressing evidence in a criminal case) does not apply in a delinquency case.

Sufficiency of the Evidence

In the Matter of K.C., ___ N.C. App. ___, 742 S.E.2d 239 (2013). The court exercised its authority to suspend the appellate rules, under Rule 2, to review the juvenile's adjudications of

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sexual battery and simple assault because the juvenile did not move to dismiss at the close of all the evidence. Because the court concluded that the evidence was insufficient to support the juvenile's adjudication, it reviewed the appeal to prevent "manifest injustice" to the juvenile.

In the Matter of A.W., 209 N.C. App. 596, 706 S.E.2d 305 (2011). Although the juvenile's attorney did not move to dismiss the petitions alleging indecent liberties between children and second degree sex offense at the close of the evidence, the court exercised its authority under Rule 2 to review the juvenile's arguments regarding the insufficiency of the evidence. Rule 2 permits an appellate court to "suspend or vary the requirements or provisions" of the appellate rules to prevent "manifest injustice." The Court of Appeals noted that our appellate courts have regularly invoked Rule 2 to address challenges to the sufficiency of the evidence to support a conviction.

In the Matter of D.M.B., 196 N.C. App. 775, 676 S.E.2d 66 (2009). The court held that the juvenile had not preserved for appellate review his argument that the evidence was insufficient to establish serious bodily injury, because the juvenile did not move to dismiss at the end of the state's evidence or the end of all the evidence. The plain error doctrine was not available because (in criminal cases) it applies only to error in jury instructions or error relating to the admissibility of evidence, not the sufficiency of the evidence.

In the Matter of S.M., 190 N.C. App. 579, 660 S.E.2d 653 (2008). Although respondent did not formally renew her motion to dismiss at the close of all of the evidence, her lawyer's vigorous argument at that point that the evidence was insufficient to support the charge was sufficient to preserve respondent's right to appeal.

Transcript Errors

In the Matter of R.N., 206 N.C. App. 537, 696 S.E.2d 898 (2010). In a crime against nature case, the court held that it was the juvenile-appellant's responsibility to ensure that any error in the transcript due to recording problems was addressed at the trial court level. With respect to the charge based on an allegation that he placed his penis in the girl's mouth, the transcript did not include evidence of penetration, an essential element of the offense. However, one witness testified that during her interview of the child she asked the child whether there had been penetration. The witness's testimony about how the child answered the question was muddled and could not be determined from the transcript. The court rejected the juvenile's argument that the adjudication must be reversed because it was impossible to determine the witness's testimony based on the transcript. The juvenile was responsible for ensuring that the transcript was adequate and should have requested a hearing to reconstruct the substance of the witness's testimony either by stipulation or by the court. The Court of Appeals remanded for such a hearing.

Counsel Issues

Ineffective Assistance of Counsel

In the Matter of C.W.N., Jr., __ N.C. App. __, 742 S.E.2d 583 (2013). Failure of counsel to present a closing argument in a nonjury juvenile delinquency hearing is *per se* ineffective assistance of counsel because to do so would create a presumption that silence is always prejudicial. The juvenile, who was 15 years old, and three other boys were engaged in horseplay in the boys' bathroom at their school when the 13-year-old victim entered the bathroom and entered a stall. When the victim exited the bathroom stall, the juvenile approached him and said, "watch this," swung his arm, and struck the victim in the groin area. The victim fell to the ground. Following the presentation of evidence at the adjudication hearing, the juvenile's counsel declined to give a closing argument, although the prosecutor did give one. The trial court adjudicated the juvenile delinquent for misdemeanor assault. The court held that counsel's failure to present a closing argument was not *per se* ineffective assistance of counsel. Further, counsel's representation was not deficient because counsel's cross-examination of the State's witnesses clarified evidence that was favorable to the juvenile and revealed inconsistencies between a witness's trial testimony and prior statement to law enforcement; and on direct examination, counsel presented evidence through the juvenile that the incident was an accident. The juvenile also failed to establish a reasonable probability that, had counsel asserted on closing argument that the assault was an accident, the result of the proceeding would have been different, because three witnesses testified that the assault was not an accident.

In the Matter of K.C., __ N.C. App. __, 742 S.E.2d 239 (2013). The court dismissed without prejudice the juvenile's claim that he received ineffective assistance of counsel, indicating that the juvenile could pursue that claim by filing a motion in the cause. The court noted that due to the nature of IAC claims, defendants will typically be unable to develop such claims on direct appeal. When an appellate court determines that an IAC claim is premature, it must dismiss the claim without prejudice to allow the claim to be reasserted in a subsequent motion for review proceeding. In this case, the record was unclear on whether counsel's performance fell below an objective standard of reasonableness or prejudiced the juvenile as to the charge of simple assault. The juvenile's IAC claim as to the charge of sexual battery was moot, since that adjudication was vacated for insufficient evidence.

In the Matter of A.V., 188 N.C. App. 317, 654 S.E.2d 811 (2008). Failure of the juvenile's attorney to renew a motion to dismiss at the close of all the evidence did not constitute ineffective assistance of counsel because substantial evidence supported the allegations in the petition that the juvenile assaulted a government employee in violation of G.S. 14-33(c)(4), and the juvenile could not show that he was prejudiced by the lawyer's failure.

Criminal Offenses

Assault by Pointing a Gun

In the Matter of N.T., 214 N.C. App. 136, 715 S.E.2d 183 (2011). The trial court erred by denying the juvenile's motion to dismiss the charge of assault by pointing a gun because an airsoft gun was not a "gun" within the meaning of G.S. 14-34, which does not penalize individuals for pointing imitation firearms at another person. The evidence showed that while another child held an "airsoft pump action imitation rifle," the juvenile pulled the trigger and a pellet hit and injured another child. The juvenile was adjudicated delinquent for the offense of assault by pointing a gun, under G.S. 14-34. The juvenile asserted on appeal that the airsoft gun, which shot plastic pellets using a pump action mechanism, was not a "gun" for purposes of G.S. 14-34. (The parties agreed that it was neither a "firearm" nor a "pistol.") The Court of Appeals applied "general principles of statutory construction," consulting dictionary definitions and the treatment of the term "gun" in appellate court decisions, to conclude that the term refers to "devices ordinarily understood to be firearms." Because the term "gun" in G.S. 14-34 is ambiguous, the "rule of lenity" requires interpreting it narrowly. The court noted that there were other offenses for which the juvenile might have been adjudicated delinquent.

Assault Inflicting Serious Injury

In the Matter of C.B., 187 N.C. App. 803, 654 S.E.2d 21 (2007). There was substantial evidence to support a reasonable inference that the juvenile was the perpetrator of an assault inflicting serious injury where the evidence showed the juvenile had attempted to engage the victim in "play fighting," that the victim responded by shoving the juvenile and turning away from him, that seconds later, the victim was struck in his jaw, and when the victim regained consciousness, the juvenile was standing nearby taunting the victim.

Breaking and Entering

In the Matter of S.D.R., 191 N.C. App. 552, 664 S.E.2d 414 (2008). The trial court properly denied the juvenile's motion to dismiss a felonious breaking and entering petition where the evidence showed that the juvenile entered an office in the public building where he was completing community service, without permission to be there, and took money from the director's purse. Although the juvenile was properly in the building, he did not have consent, implied or otherwise, to enter the director's office, which was not a space held out for public use.

Common Law Robbery

In the Matter of T.H., 218 N.C. App. 123, 721 S.E.2d 728 (2012). There was sufficient evidence of common law robbery and simple assault under the principle of "acting in concert" where State's evidence showed the victim was robbed of his iPod by a group of boys after school, the victim twice identified the juvenile in a photo lineup as one of the assaulters and testified that the juvenile had patted him down, a co-defendant testified that the juvenile walked

Criminal Offenses

behind the victim during the incident, and the victim's statement vividly described how he was "beat up" by a group of boys, which included the juvenile.

Crime Against Nature

In the Matter of R.L.C., 361 N.C. 287, 643 S.E.2d 920, **rev. denied**, 552 U.S. 1024 (2007). (1) Consensual oral sex between the 14-year-old juvenile and his 12-year-old girlfriend violated the crime against nature statute and supported the adjudication of delinquency because the statute does not contain any age differential and the plain language of the statute encompasses the juvenile's activity. (2) The crime against nature statute was not unconstitutional as applied to the 14-year-old juvenile in this case because the statute furthers a legitimate state interest in promoting proper notions of morality and limiting health ramifications of sexual conduct between minors.

In the Matter of J.F., __ N.C. App. __, 766 S.E.2d 341 (2014). (1) In a case involving first-degree sex offense and crime against nature petitions, the State was not required to present evidence of "sexual purpose." Sexual purpose is not an element of first-degree sex offense and crime against nature. Noting that the legislature intentionally included sexual purpose as an element of indecent liberties between children but omitted it from other sex offenses, the court held the omission was intentional, and it had no authority to add an additional element to an unambiguous criminal statute. (2) However, the court reversed the crime against nature adjudications for insufficient evidence of penetration. Penetration is not an element of a sex offense involving fellatio; but, it is an essential element of crime against nature. Therefore, evidence was insufficient to prove crime against nature because the victim testified that he "licked" but did not suck the juvenile's penis, and likewise, the juvenile "licked" his penis. The court distinguished *In re Heil*, 145 N.C. App. 24 (2001) (where it inferred penetration in a crime against nature case involving a 4-year-old victim who performed fellatio on an 11-year-old juvenile because the size difference between juvenile and victim and the fact that incident occurred in the close quarters of a closet suggested there was some penetration, however slight, of the juvenile's penis into the victim's mouth), and rejected the State's argument that penetration could be inferred from the surrounding circumstances.

In the Matter of R.N., 206 N.C. App. 537, 696 S.E.2d 898 (2010). The trial court erred by denying the juvenile's motion to dismiss allegations of crime against nature based on evidence that the 12-year-old juvenile "licked" the genitals of his 7-year old cousin while she was fully clothed because there was no evidence of penetration, which is an essential element of the offense; and although the petition also alleged the juvenile placed his penis in the victim's mouth, there was insufficient evidence in the transcript to support that allegation.

Disorderly Conduct at School

In the Matter of M.J.G., __ N.C. App. __, 759 S.E.2d 361 (2014). The trial court did not err by denying the juvenile's motion to dismiss a disorderly conduct petition. The juvenile, a Sixth grade student, was charged with simple assault and disorderly conduct at school arising from his behavior during a charity volleyball game in the school gymnasium. The juvenile was seated in

the bleachers near two other boys who were “getting ready to fight.” When a teacher tried stop the altercation, the juvenile waved her off and told her “no, don’t stop it, go away.” Another teacher saw the juvenile’s actions and told him to come down from the bleachers, so they could talk outside. After repeated requests, the juvenile angrily stood up and left the gym but “body checked” a bystander on his way out. In the hallway, outside the gym, the juvenile shouted obscenities at two teachers who tried to intervene. An SRO physically removed the juvenile from the hallway and escorted him to the main office. The court held there was sufficient evidence that the juvenile’s behavior caused a “substantial interference” to support the disorderly conduct adjudication, including testimony that approximately 200 to 300 students were in the gym at the time, “everybody” witnessed the disturbance, the teacher who escorted the juvenile from the gym was not able to supervise other students or fulfill her duties, and a group of special needs students missed their bus due to the confusion surrounding the incident.

In the Matter of S.M., 190 N.C. App. 579, 660 S.E.2d 653 (2008). The trial court erred by denying the juvenile’s motion to dismiss the charge of disorderly conduct in a school, under G.S. 14-288.4(a)(6), where the evidence showed that the juvenile and a friend were walking and giggling in a hallway when they should have been in class but there was no substantial disruption of the school or classroom instruction, and there was no evidence that respondent was aggressive or violent or used vulgar language. The offense is not committed when a student engages in “ordinary misbehavior or rule-breaking.”

Driving With No Operator’s License

In the Matter of A.N.C., Jr., __ N.C. App. __, 750 S.E.2d 835 (2013). The evidence was sufficient to sustain a juvenile’s adjudication as delinquent for driving with no operator’s license under the corpus delicti rule. The thirteen-year-old juvenile admitted that he drove the vehicle. Ample evidence, apart from this confession existed, including that the juvenile and his associates were the only people at the scene and that the vehicle was registered to the juvenile’s mother.

False Report Concerning a Destructive Device

In the Matter of B.D.N., 186 N.C. App. 108, 649 S.E.2d 913 (2007). The trial court properly denied the juvenile’s motion to dismiss the petition charging her with making a false bomb threat under G.S. 14-69.1 where the evidence showed the juvenile was the last student to use a calculator prior to a “Bomb at Lunch” message being found on it and witnesses testified that juvenile stated she meant it as a “prank” and thought it would be fun to get out of school.

Indecent Liberties Between Children

In the Matter of A.W., 209 N.C. App. 596, 706 S.E.2d 305 (2011). There was sufficient evidence to support an adjudication of delinquency for indecent liberties between children committed by a 13-year-old juvenile against a 3-year-old victim where the juvenile told the victim his penis “taste like candy,” so the victim would lick it. The element of a “purpose to arouse or gratify sexual desires” may not be proven by the act itself. However, it may be shown by “evidence of the child’s maturity, intent, experience, or other factor, indicating his purpose in

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acting. In this case, the juvenile's age and maturity, as well as the age disparity between him and the victim, coupled with the inducement of the victim and evidence that he had previously engaged in prior sexual activity with a 4-year-old was sufficient to establish the element of a sexual purpose.

In the Matter of B.E., 186 N.C. App. 656, 652 S.E.2d 344 (2007). The trial court properly denied the juvenile's motion to dismiss the charge of indecent liberties between children because the uncorroborated testimony of the 7-year-old victim that the 15-year-old juvenile masturbated in front of the victim was sufficient to establish all the elements of the offense.

Injury to Property

In the Matter of R.D.L., 191 N.C. App. 526, 664 S.E.2d 71 (2008). The trial court erred in denying the juvenile's motion to dismiss seven of the nine petitions charging the juvenile with damaging personal and real property of several different individuals and businesses where the juvenile only admitted involvement in two of the offenses and the State failed to present individualized proof that respondent participated in the other offenses.

Larceny

In the Matter of D.K., 200 N.C. App. 785, 684 S.E.2d 522 (2009). The trial court did not err by denying the juvenile's motion to dismiss a larceny petition where the evidence tended to show that a teacher saw the property (her visor) in the juvenile's possession when he left the classroom, the juvenile admitted that he had the property in his hand when he left the classroom but must have dropped it, and the juvenile did not contest the fact that he did not have permission to hold and look at the property.

In the Matter of S.D.R., 191 N.C. App. 552, 664 S.E.2d 414 (2008). The trial court properly denied the juvenile's motion to dismiss a larceny petition where the evidence showed that the juvenile entered an office in the public building where he was completing community service, without permission to be there, and that upon returning to the office, the director discovered her purse had been tampered with and money was missing.

Manslaughter

In the Matter of Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894, disc. rev. denied, 362 N.C. 682, 671 S.E.2d 532 (2008). The trial court did not err by denying the juvenile's motion to dismiss the manslaughter petition for insufficient evidence. The juvenile argued the state failed to establish proximate cause where the victim died from a drug overdose after ingesting various drugs because it failed to prove that the Ecstasy, the only drug he provided, caused the victim's death. Rather than address that issue, the Court of Appeals concluded that the juvenile's actions after the victim became ill constituted "culpable negligence," which is sufficient to support an adjudication for involuntary manslaughter.

Criminal Offenses

Possession of Weapons on School Grounds

In the Matter of J.C., 205 N.C. App. 301, 695 S.E.2d 168 (2010). The evidence was sufficient to support the court's adjudication of a juvenile as delinquent for possession of a weapon on school grounds in violation of G.S. 14-269.2(d) where evidence showed that, while on school grounds, the juvenile possessed a 3/8-inch thick steel bar forming a C-shaped "link" about 3 inches long and 1½ inches wide, the link closed by tightening a ½-inch thick bolt and the object weighed at least one pound, and the juvenile could slide several fingers through the link so that it could be held securely across his knuckles and used as a weapon. The trial court found that the juvenile possessed a "steel link from a chain which is equivalent in appearance and use to metallic knuckles." The statute specifically lists metallic knuckles as weapons, and a box for that type weapon is on the form petition but was not checked.

In the Matter of B.N.S., 182 N.C. App. 155, 641 S.E.2d 411 (2007). The trial court properly denied the juvenile's motion to dismiss a petition charging him with possession of a weapon on school property where evidence showed the juvenile possessed a closed pocketknife at school. The Court noted that "[a]lthough the knife's blade was closed, the operability of the weapon is irrelevant" because the focus of the statute is on safety in schools.

Possession of Drugs with Intent to Sell or Deliver

In the Matter of D.L.D., 203 N.C. App. 434, 694 S.E.2d 395 (2010). The trial court properly denied the juvenile's motion to dismiss a petition charging him with possession with intent to sell or deliver marijuana where the evidence showed that upon seeing an officer and a school official, the juvenile ran into the bathroom and placed a container inside his pants, which contained three individually wrapped bags of marijuana worth \$20.00 each, and the juvenile also possessed \$59.00 in cash, which he spontaneously stated did not come "from selling drugs."

Reckless Driving

In the Matter of A.N.C., Jr., __ N.C. App. __, 750 S.E.2d 835 (2013). The evidence was insufficient to adjudicate the thirteen-year-old juvenile delinquent for reckless driving under G.S. 20-140(b). The evidence showed that the juvenile was driving a vehicle registered to his mother at the time of the wreck and that the vehicle that he was driving collided with a utility pole. However there was no evidence showing that the collision resulted from careless or reckless driving. The court concluded that the "mere fact that an unlicensed driver ran off the road and collided with a utility pole does not suffice to establish a violation of [G.S.] 20-140(b)."

Resisting a Public Officer

In the Matter of A.J. M.-B., 212 N.C. App. 586, 713 S.E.2d 104 (2011). The trial court should have granted the juvenile's motion to dismiss the petition alleging resisting an officer. The anonymous tip that led to the investigatory stop of the juvenile was not sufficient to support a reasonable suspicion to justify the stop. The anonymous call was "two juveniles in Charlie district . . . walking, supposedly with a shotgun or a rifle" in an open field behind a residence."

Criminal Offenses

An officer who went to the field to investigate saw two juveniles, neither carrying firearms, who ran when he called out to them. The Court of Appeals held that the juvenile's detention and arrest were not justified. Therefore, the officer was not lawfully discharging a duty of his office.

In the Matter of S.D.R., 191 N.C. App. 552, 664 S.E.2d 414 (2008). The trial court properly denied the juvenile's motion to dismiss a petition charging him with resisting a public officer, under G.S. 14-223, where the evidence showed an officer was investigating an alleged larceny of missing cash, the officer was on duty and in uniform at the time, the juvenile consented to a search by the officer, the juvenile refused to comply when the officer asked him to open his mouth, and a struggle ensued when the juvenile attempted to swallow the money in his mouth.

Second Degree Trespass

In the Matter of S.M.S., 196 N.C. App. 170, 675 S.E.2d 44 (2009). The trial court properly denied the juvenile's motion to dismiss the petition for second degree trespass where the evidence showed that he entered the girl's locker room at school, that he knew that it was the girl's locker room and that he was not allowed inside, and that he was breaking school rules by going into the girl's locker room. The Court of Appeals also stated, however, that it was unclear to the court "why our Courts were involved in this matter when the school, in its administrative capacity, was fully capable of dealing with respondent's conduct and disciplining him appropriately."

Sexual Battery

In the Matter of K.C., __ N.C. App. __, 742 S.E.2d 239 (2013). The court vacated the adjudication for sexual battery for insufficient evidence. At adjudication, a female classmate of the male juvenile testified that the juvenile "grabbed and squeezed her butt" in class when she went to shelve a book. The juvenile testified that he accidentally touched her butt, when picking up a pencil, but did not squeeze it. Because the juvenile admitted touching the girl's buttocks, there was sufficient evidence of sexual contact. However, evidence that the juvenile had made a possibly sexually suggestive statement to her months before was not sufficient to prove sexual purpose, a necessary element, beyond a reasonable doubt. When children are involved, the purpose cannot be inferred from the act itself. There must be "evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting."

Sexual Offense

First Degree Sex Offense

In the Matter of J.F., __ N.C. App. __, 766 S.E.2d 341 (2014). (1) In a case involving first-degree sex offense and crime against nature petitions, the State was not required to present evidence of "sexual purpose." Sexual purpose is not an element of first-degree sex offense and crime against nature. Noting that the legislature intentionally included sexual purpose as an element of indecent liberties between children but omitted it from other sex offenses, the court held the omission was intentional, and it had no authority to add an additional element to an unambiguous criminal statute. (2) However, the court reversed the crime against nature

adjudications for insufficient evidence of penetration. Penetration is not an element of a sex offense involving fellatio; but, it is an essential element of crime against nature. Therefore, evidence was insufficient to prove crime against nature because the victim testified that he “licked” but did not suck the juvenile’s penis, and likewise, the juvenile “licked” his penis. The court distinguished *In re Heil*, 145 N.C. App. 24 (2001) (where it inferred penetration in a crime against nature case involving a 4-year-old victim who performed fellatio on an 11-year-old juvenile because the size difference between juvenile and victim and the fact that incident occurred in the close quarters of a closet suggested there was some penetration, however slight, of the juvenile’s penis into the victim’s mouth), and rejected the State’s argument that penetration could be inferred from the surrounding circumstances.

Second Degree Sex Offense

In the Matter of T.W., 221 N.C. App. 193, 726 S.E.2d 867, **disc. rev. denied**, 366 N.C. 245, 731 S.E.2d 158 (2012). The trial court erred by denying the juvenile’s motion to dismiss the petition for second degree sex offense, under G.S. 14-27.5, because the State failed to prove the element of force required for that offense. The juvenile instigated and engaged in various sexual activities with other boys around his age. While the boys may have participated willingly initially, when they tried to say “no,” the juvenile threatened to disclose their secrets (*e.g.*, bedwetting) and the sexual conduct. He did not inflict or threaten physical harm. The juvenile was adjudicated delinquent for the offense of indecent liberties between minors, three counts of second degree sexual offense, and three counts of crimes against nature. On appeal the juvenile challenged only the second degree sexual offense adjudications, arguing that the state failed to prove either actual or constructive force, a necessary element of the offense. The court held that coercion by threatening to disclose other children’s embarrassing secrets and their sexual conduct was not sufficient to establish constructive force. Except when the abuse is by a parent (or someone in a comparable relationship to a child), the “force” element of second degree sex offense requires proof of either actual or threatened physical harm. When a parent uses his position of power to force his child to engage in sexual acts, proof of neither actual nor threatened physical harm is required, because the threat is inherent in the relationship. That kind of relationship did not exist in this case.

In the Matter of A.W., 209 N.C. App. 596, 706 S.E.2d 305 (2011). The court vacated an adjudication of delinquency for second-degree sex offense where the petition alleged the 3-year old victim was mentally disabled, mentally incapacitated, or physically helpless because there was no evidence the victim had any mental or physical limitations, as those terms are defined by N.C.G.S. § 14-27.1. The petition alleged the 13-year-old juvenile engaged in a sexual act, “namely, having victim lick his penis and testicles with [victim] who was mentally disabled, mentally incapacitated, or physically helpless.” The State conceded there was no evidence the agreed.

Simple Assault

In the Matter of M.J.G., __ N.C. App. __, 759 S.E.2d 361 (2014). The trial court did not err by denying the juvenile’s motion to dismiss an assault petition. The juvenile, a Sixth grade student,

was charged with simple assault and disorderly conduct at school arising from his behavior during a charity volleyball game in the school gymnasium. The juvenile was seated in the bleachers near two other boys who were “getting ready to fight.” When a teacher tried stop the altercation, the juvenile waved her off and told her “no, don’t stop it, go away.” Another teacher saw the juvenile’s actions and told him to come down from the bleachers, so they could talk outside. After repeated requests, the juvenile angrily stood up and left the gym but “body checked” a bystander on his way out. In the hallway, outside the gym, the juvenile shouted obscenities at two teachers who tried to intervene. An SRO physically removed the juvenile from the hallway and escorted him to the main office. The court held there was sufficient evidence of the juvenile’s intent to support the assault adjudication, including testimony that: there was “plenty of room” for the juvenile to walk around the bystander, she had to steady herself to keep from falling when the juvenile “body checked” her, and the juvenile angrily stormed off the bleachers and “ran right over her.”

In the Matter of K.C., __ N.C. App. __, 742 S.E.2d 239 (2013). The court upheld the juvenile’s adjudication for simple assault. At adjudication, a female classmate of the male juvenile testified that the juvenile “grabbed and squeezed her butt” in class when she went to shelve a book. The juvenile testified that he accidentally touched her butt, when picking up a pencil, but did not squeeze it. The court affirmed the adjudication for simple assault, based on the juvenile’s having touched the classmate without her consent. The court noted that where a battery has occurred, an assault may be proven by a finding of either assault or battery on the victim. When the evidence discloses an actual battery (unlawful touching of another without consent), as it did here, whether the victim is put in fear is irrelevant.

In the Matter of T.H., 218 N.C. App. 123, 721 S.E.2d 728 (2012). There was sufficient evidence of common law robbery and simple assault under the principle of “acting in concert” where State’s evidence showed the victim was robbed of his iPod by a group of boys after school, the victim twice identified the juvenile in a photo lineup as one of the assaulters and testified that the juvenile had patted him down, a co-defendant testified that the juvenile walked behind the victim during the incident, and the victim’s statement vividly described how he was “beat up” by a group of boys, which included the juvenile.

Unauthorized Use of a Motor Vehicle

In the Matter of A.N.C., Jr., __ N.C. App. __, 750 S.E.2d 835 (2013). The evidence was insufficient to adjudicate the thirteen-year-old juvenile delinquent for unauthorized use of a motor vehicle. Although the evidence showed that the juvenile was operating a motor vehicle registered to his mother, there was no evidence that he was using the vehicle without his mother’s consent.

Disposition

Comments by Judge

In the Matter of J.S.W., 211 N.C. App. 620, 711 S.E.2d 471 (2011). The Court of Appeals rejected the juvenile's argument that the trial court abused its discretion in entering a disposition order by improperly considering punishment as a purpose of the Juvenile Code, instead of considering the factors in G.S. 7B-2501(c). At a motion for review hearing, the trial court heard testimony related to DJJDP's request for the juvenile to have home and overnight visits and work off-campus during his commitment to a YDC. Afterwards, the trial judge stated that one goal of juvenile court is rehabilitation but twice stated that punishment was also a goal of the court. The trial court ordered that the juvenile (i) could work off campus, but only if he would not be around anyone age 25 or younger; (ii) could have no home or overnight visits; and (iii) could participate in YDC outings if there were direct supervision at all times. The Court of Appeals held that the trial judge's statements reflected that he had considered the dispositional factors in G.S. 7B-2501(c) and noted that the trial court ultimately balanced the importance of protecting the public safety with the juvenile's rehabilitative needs.

In the Matter of D.M.B., 196 N.C. App. 775, 676 S.E.2d 66 (2009). The court rejected the juvenile's argument that the trial court made improper remarks and was not fair and impartial. Although the judge expressed a desire to impose a harsher disposition than allowed by law, such comments (1) did not violate G.S. 15A-1222 because that provision only applies when a jury is present and (2) did not indicate that the judge was not impartial in his role as finder of fact because the juvenile did, in fact, receive a disposition within the boundaries set out by statute.

Commitment to YDC

Extension of Commitment

In the Matter of J.L.H., ___ N.C. App. ___, 750 S.E.2d 197 (2013). The trial court erred by denying the juvenile's motion for release from his YDC commitment. Following adjudications of delinquency for possession of a firearm by a minor and carrying a concealed weapon, the trial court committed the juvenile to a youth development center (YDC) for a maximum period of six months. Approximately 30 days prior to the expiration of the juvenile's commitment period, the juvenile's treatment team notified his father by telephone of its plan to extend the juvenile's commitment. One week later, the Division of Juvenile Justice formally approved an extension of the juvenile's commitment period for up to six months and mailed written notice to the juvenile's parents. The juvenile filed a motion for release from his commitment based on the Division's failure to provide written notice of the proposed extension to the juvenile and his parents at least 30 days prior to the expiration of his scheduled release date, as required by G.S. 7B-2515. The trial court denied the motion, and the juvenile appealed. The Court of Appeals held that the oral notice the Division provided to the juvenile's father was insufficient to comply with the plain language of G.S. 7B-2515(a), which "clearly and unambiguously" requires *written* notice be provided to the juvenile and his parents at least 30 days in advance of the juvenile's scheduled release date. The error was not harmless because the lack of sufficient notice directly impacted

Disposition

the juvenile's ability to contest the proposed extension of his commitment, as provided in G.S. 7B-2515(c). The trial court's order was reversed and remanded for the juvenile to be given credit toward his one-year period of post-release supervision for the additional time he was committed beyond his initial six-month maximum commitment.

Maximum Possible Commitment Period

In the Matter of R.D., __ N.C. App. __, __ S.E.2d __ (Sept. 1, 2015). The trial court's disposition order did not violate G.S. 7B-2513(a), which authorizes a maximum commitment period that does not exceed the maximum possible sentence that *any adult* could receive for the same offense, without consideration of prior record levels or the existence or nonexistence of aggravating and mitigating factors under structured sentencing. G.S. 7B-2513(a) provides that "[n]o juvenile shall be committed to a [YDC] beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense[.]" In this case, the juvenile was adjudicated delinquent for the Class I felony of breaking or entering a motor vehicle, for which an adult could be sentenced to a maximum of 21 months in the presumptive range or a maximum of 24 months in the aggravated range. The juvenile was committed for an indefinite period of at least 6 months, but not to exceed his 18th birthday, resulting in a maximum commitment period just short of 24 months. On appeal, he argued that because G.S. 7B-2513(a) does not explicitly reference the maximum *aggravated* term for an adult, his maximum possible commitment should be limited to the maximum presumptive term for an adult in a prior record level VI, based on the rule of lenity. The appellate court rejected this argument, relying on its holding in *In re Carter*, 125 N.C. App. 140 (1987), that former G.S. 7A-652 (the predecessor to G.S. 7B-2513(a)) authorized a maximum commitment equivalent to the maximum possible sentence that *any adult* could receive for the same offense. The court said that its rationale for the holding in *Carter* – maintaining "judicial flexibility" in juvenile dispositions – applies equally to G.S. 7B-2513(a).

***In a footnote, the court noted that a juvenile's commitment may, nonetheless, be extended beyond the maximum adult sentence when the Division of Juvenile Justice determines that an extension is necessary to continue the juvenile's plan of care or treatment. A juvenile must receive written notice of the extension at least 30 days prior to the juvenile's scheduled release date and may request a hearing to contest the extension. *See* G.S. 7B-2515.

Delegation of Authority

In the Matter of V.A.L., 187 N.C. App. 302, 652 S.E.2d 726 (2007). Where the trial court ordered as a condition of probation that the juvenile was to cooperate with an out of home placement without designating the placement, there was no improper delegation because the trial court made the determination that an out of home placement was necessary, but simply left the specific details to the court counselor.

Disposition

Delinquency History Level Extraordinary Needs Finding

In the Matter of P.Q.M., __ N.C. App. __, 754 S.E.2d 431 (2014). The trial court did not abuse its discretion by declining to impose a Level 2 disposition based upon written findings of extraordinary needs under G.S. 7B-2508(e). Because the juvenile had a “medium” delinquency history level and was adjudicated delinquent for a “violent” offense, the disposition chart prescribed a Level 3 disposition. The record indicated the trial court made a reasoned decision after hearing all the evidence presented at the disposition hearing and considering the juvenile’s rehabilitation and treatment needs.

Prior Adjudication Definition

In the Matter of P.Q.M., __ N.C. App. __, 754 S.E.2d 431 (2014). The trial court did not err by finding that the juvenile had two prior adjudications, even though one of them occurred after the adjudication of the offense for which disposition was being ordered. The juvenile was adjudicated delinquent on three separate dates: January 5, 2012, for communicating threats, a Class 1 misdemeanor; November 29, 2012, for robbery with a dangerous weapon (RWDW), a Class D felony; and December 3, 2012, for larceny of a firearm, a Class H felony. On March 4, 2013, all three adjudications were calendared for disposition. The trial court entered the disposition based on the RWDW offense, which constitutes a “violent” offense, and found that the juvenile had two prior adjudications for communicating threats and larceny of a firearm, which placed him at a “medium” delinquency history level. Based on the dispositional chart in G.S. 7B-2508(f), the court entered a Level 3 disposition and committed the juvenile to a youth development center. The juvenile appealed. Finding that a prior adjudication is analogous to a prior conviction, as defined by G.S. 15A-1340.11(7), the court held the larceny adjudication was a prior adjudication within the meaning of G.S. 7B-2507(a) because it occurred before the disposition hearing and entry of the disposition.

Prior Adjudications, Proof

In the Matter of D.R.H., 194 N.C. App.166, 668 S.E.2d 919 (2008). Although a work sheet alone is not sufficient proof of a juvenile’s delinquency history, the Court of Appeals concluded that the juvenile stipulated to the history information in the court counselor’s report when the juvenile’s attorney received and reviewed the report and failed to object. The court noted, in addition, that nothing in the juvenile’s brief suggested that any of the listed adjudications did not in fact exist. [Because there was no precedent interpreting G.S. 7B-2507(h), which addresses proof of prior adjudications in juvenile cases, the Court of Appeals looked to cases decided under the comparable criminal law provision in G.S. 15A-1340.14(f).]

Probation Status

In the Matter of A.F., __ N.C. App. __, 752 S.E.2d 245 (2013). The trial court erred by denying the juvenile’s motion to modify the disposition order based upon the erroneous calculation of the juvenile’s delinquency history level. Because the trial court never extended the

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juvenile's probation, it expired on June 13, 2012, which precluded the assignment of the two additional points for the juvenile's probation status at the time of the offense, which occurred in August, 2012. [Prior to the expiration of the juvenile's probation, a motion for review was filed alleging the juvenile violated his probation, but the juvenile failed to appear for that hearing. At the adjudication hearing on the August 2012 offense, the juvenile admitted he violated his probation, as alleged in the earlier motion for review, but his probation was not extended.] The court rejected the State's argument that by assigning the two additional points and entering a Level 3 disposition, the trial court had implicitly and retroactively extended the juvenile's probation. In the absence of this error, the trial court had no authority to impose a Level 3 disposition and commit the juvenile to a YDC. The court reversed and remanded for entry of a new disposition order.

Dismissal

In the Matter of A.J. M.-B., 212 N.C. App. 586, 713 S.E.2d 104 (2011). The "dismissal" of the case at disposition does not result in a dismissal of the underlying adjudication. After an adjudication of delinquency for resisting an officer, the juvenile was in court for disposition on that charge and for a hearing on a motion to revoke his post-release supervision from a youth development center. The court revoked post-release supervision and, "as a disposition" in the resisting an officer case, dismissed that case. The juvenile appealed. The trial court's dismissal of the case at disposition did not have the effect of erasing the underlying adjudication. Therefore, the juvenile's appeal was properly before the court, because appealing the disposition of dismissal was the only way for the juvenile to appeal the adjudication. The juvenile had an interest in appealing the adjudication because it could affect his "delinquency history" in a subsequent proceeding.

Disposition Hearing

Parent's Right to be Heard

In the Matter of M.J.G., __ N.C. App. __, 759 S.E.2d 361 (2014). In an assault case, the trial court ordered as a condition of the disposition that the juvenile's parents attend parenting classes. Following the entry of the disposition, the juvenile's attorney informed the court that the juvenile's mother wanted "to say a few words." Assuming *arguendo* that the trial court violated G.S. 7B-2501(b) by failing to give the juvenile's mother an opportunity to speak before entering the disposition, any error was harmless given that the juvenile's mother did not object to the disposition when she was, ultimately, permitted to speak.

Procedure

In the Matter of J.J., Jr., 216 N.C. App. 366, 717 S.E.2d 59 (2011). Although the court did not follow the statutory procedure for conducting a disposition hearing, it complied in substance if not in form, and the juvenile failed to show how the disposition might have been different if the court had followed the correct procedure. Immediately after the juvenile's transfer hearing, the court announced that it retained jurisdiction, found beyond a reasonable doubt that the juvenile was delinquent for first degree sex offense, and committed the juvenile to a youth development

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center. The juvenile made no objection and gave oral notice of appeal. On appeal, the juvenile argued the trial court failed to conduct a dispositional hearing before entering a disposition. The Court of Appeals agreed with the juvenile that the trial court failed to follow Juvenile Code procedures for conducting a disposition hearing. However, while the trial court held a more abbreviated proceeding than contemplated by the Juvenile Code, the record showed the court received and considered a predisposition report. Thus, the trial court complied with the requirements of the Juvenile Code in substance. The juvenile also failed to object to the disposition and did not show that he was prejudiced.

Timing

In the Matter of S.S., 193 N.C. App. 239, 666 S.E.2d 870 (2008). Delaying the disposition for more than six months after adjudication, so the juvenile could comply with an agreement to testify truthfully in a co-offender's trial, did not deprive the court of subject matter jurisdiction under G.S. 7B-2501(d). This statute is intended to provide an opportunity for families to seek non-judicial solutions for troubled juveniles and is not a limit on the trial court's jurisdiction in juvenile matters. In this case, conducting the disposition hearing within six months would have deprived the juvenile of the benefit of the dispositional agreement with the prosecutor.

Disposition Level

In the Matter of K.L.D., 210 N.C. App. 747, 709 S.E.2d 409 (2011). The trial court did not abuse its discretion by entering a Level 2 disposition because it was within the range of statutorily permitted dispositions. The juvenile was adjudicated delinquent for simple assault and sexual battery, for conduct on a school bus. He had one prior adjudication for simple assault for similar conduct. The trial court indicated that it was required to enter a Level 2 disposition (and also could enter a Level 1 disposition), and ordered a Level 2 disposition. The juvenile argued on appeal that because the disposition chart authorized the court to enter a Level 1 or a Level 2 disposition, the trial court erred by concluding that it was required to enter a Level 2 disposition without first considering a Level 1 disposition. Because the disposition ordered by the court was authorized by the Juvenile Code's dispositional provisions, the appellate court would not disturb it unless it was "manifestly unsupported by reason," and that was not the case here.

In the Matter of Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894, disc. rev. denied, 362 N.C. 682, 671 S.E.2d 532 (2008). The Court of Appeals rejected the juvenile's argument that the trial court failed to exercise dispositional discretion. Although the trial judge noted a general policy preference in ordering Level 2 dispositions for juveniles who commit felonies, the record reveals the trial judge considered a variety of factors before designing an appropriate plan to meet the juvenile's needs and to achieve the objectives of the State, pursuant to G.S. 7B-2500.

In the Matter of D.A.S., 183 N.C. App. 107, 643 S.E.2d 660 (2007). Where the juvenile was adjudicated delinquent for assault on a government employee, a Class A1 misdemeanor, the trial court did not abuse its discretion by entering a Level 3 disposition order and committing the juvenile to a youth development center. An adjudication of a Class A1 misdemeanor is a "serious" offense and the juvenile had a "high" delinquency history. Therefore, the dispositional

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chart in G.S. 7B-2508 authorized the trial court to enter a Level 2 or Level 3 disposition. The trial court's statement that "this assaultive behavior was violent" did not reflect that the trial court incorrectly labeled the offense as "violent" under G.S. 7B-2508(a).

Disposition Order

Consolidation of Offenses

In the Matter of P.Q.M., __ N.C. App. __, 754 S.E.2d 431 (2014). Where the juvenile was adjudicated delinquent in three separate sessions of juvenile court that occurred on January 5, 2012, November 29, 2012, and December 3, 2012, which were all calendared for disposition on March 4, 2013, the trial court was not required to consolidate the offenses for disposition pursuant to G.S. 7B-2508(h). That statute only requires the consolidation of offenses that are adjudicated during a single session of juvenile court.

In the Matter of D.R.H., 194 N.C. App.166, 668 S.E.2d 919 (2008). The trial court erred when it entered two disposition orders for two adjudications of delinquency which occurred on the same day. G.S. 7B-2508(h) requires that offenses adjudicated in the same session of court be consolidated for disposition based on the most serious offense. The Court of Appeals vacated the trial court's disposition order and remanded for entry of a single disposition order.

Findings

In the Matter of G.C., __ N.C. App. __, 750 S.E.2d 548 (2013). The trial court did not err by entering a disposition order without making written findings demonstrating that it considered the factors listed in G.S. 7B-2501(c). Although the initial disposition order did not contain any such findings, the Chief District Court Judge filed an amended disposition order with written findings that closely tracked the oral findings of the presiding judge and sufficiently addressed these factors.

In the Matter of K.C., __ N.C. App. __, 742 S.E.2d 239 (2013). The court remanded the disposition order in a simple assault case for additional findings of fact, holding that the trial court's findings were not sufficient to show that it considered all of the factors listed in G.S. 7B-2501(c). The court said, assuming *arguendo*, that the trial court's characterization of the offense as "minor" and its statements that the juvenile needs to learn the significance and consequences of victimizing people addressed the first two G.S. 7B-2501(c) factors, the record fails to show the trial court considered the last three factors (*i.e.*, importance of protecting the public safety, juvenile's degree of culpability, and the juvenile's rehabilitative and treatment needs based on a risk and needs assessment).

In the Matter of J.J., Jr., 216 N.C. App. 366, 717 S.E.2d 59 (2011). The trial court erred by failing to include findings in the disposition order that demonstrated the court considered the factors set out in G.S. 7B-2501(c). The disposition order was vacated and remanded for the trial court to make the statutorily mandated findings.

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In the Matter of V.M., 211 N.C. App. 389, 712 S.E.2d 213 (2011). The Court of Appeals reversed and remanded for a new disposition hearing because the trial court simply checked pre-printed boxes on the disposition order but entered no additional findings to demonstrate that it considered the G.S. 7B-2501(c) factors. Based on the juvenile's admission to a probation violation and a new offense, the court entered a Level 3 disposition, "based on the probation violation." The disposition order noted that the court received, considered, and incorporated by reference the predisposition report and risk and needs assessments, but the court failed to make findings of fact sufficient to show that it considered the factors set out in G.S. 7B-2501(c). Because a probation violation proceeding is a dispositional proceeding, the order must comply with requirements for a disposition order. Every disposition order must contain "appropriate findings of fact and conclusions of law."

Receipt of Risk and Needs Assessment

In the Matter of E.K.H., ___ N.C. App. ___, 739 S.E.2d 613 (2013). The trial court is statutorily required to receive and consider a risk and needs assessment prior to entering a disposition order. After adjudicating the juvenile delinquent for common law robbery and conducting a dispositional hearing, the trial court ordered a Level 3 disposition. On appeal the juvenile's only argument was that the trial court erred by entering a disposition order without either (1) receiving and considering a risk and needs assessment or (2) making a written finding that it was not needed. The Court of Appeals held that the trial court erred by failing to do either of those things, as required by G.S. 7B-2413, but that the error was harmless. The court reviewed the evidence that was considered by the trial court and noted that the juvenile did not object at the hearing to the absence of the assessment and did not indicate in his brief any prejudice resulting from the court's error.

Modification of Disposition Order

In the Matter of A.F., ___ N.C. App. ___, 752 S.E.2d 245 (2013). The trial court erred by denying the juvenile's motion to modify the disposition order based upon the erroneous calculation of the juvenile's delinquency history level. Because the trial court never extended the juvenile's probation, it expired on June 13, 2012, which precluded the assignment of the two additional points for the juvenile's probation status at the time of the offense, which occurred in August, 2012. [Prior to the expiration of the juvenile's probation, a motion for review was filed alleging the juvenile violated his probation, but the juvenile failed to appear for that hearing. At the adjudication hearing on the August 2012 offense, the juvenile admitted he violated his probation, as alleged in the earlier motion for review but his probation was not extended.] Those two additional points made the juvenile eligible for a Level 3 disposition, which the trial court ordered. The juvenile filed a motion to modify the disposition order, under G.S. 7B-2600, asserting that the trial court erroneously calculated his delinquency history level because he was not on probation at the time of the felony B&E. The trial court denied the juvenile's motion, and the juvenile appealed. The Court of Appeals held that, pursuant to G.S. 7B-2600(b), the trial court was authorized to correct an error of law in an earlier disposition order. Its failure to do so was reversible error.

Disposition

In the Matter of D.G., 191 N.C. App. 752, 663 S.E.2d 458 (2008), appeal dismissed, 674 S.E.2d 680 (2009). The trial court did not err by modifying the disposition from residential treatment to commitment to a youth development center after finding that funding for residential treatment was no longer available. The juvenile was adjudicated delinquent after admitting a first degree sex offense based on having anal intercourse with a five-year-old child. The court ordered placement in a residential sex offender treatment facility as a Level 2 disposition. Five months later a motion for review was filed asserting that funding for the placement was no longer available and asking that the disposition be modified, and the juvenile filed a motion asking the court to compel the state to provide him with sex offender treatment. The trial court's finding that funding was not available was supported by competent evidence and therefore conclusive on appeal. Evidence included testimony from mental health and DSS personnel that they had explored all avenues of funding and that funding was not available due to federal law. The court properly ruled that it could not compel the provision of residential treatment in violation of federal law. The facts constituted a change of circumstances and justified modification of the disposition under G.S. 7B-2600.

Release of Juvenile Pending Appeal

In the Matter of G.C., ___ N.C. App. ___, 750 S.E.2d 548 (2013). The trial court erred by denying the juvenile's release pending appeal without providing written "compelling reasons," as required by G.S. 7B-2605. Here, the notation "N/A" was written in the applicable space on the Appellate Entries form where the court could have provided its compelling reasons. Also, a subsequent order entered by a different judge stated only that a previous order had committed the juvenile to a YDC and that his release "was not appropriate." Therefore, the court vacated the order denying the juvenile's release pending appeal and remanded the matter to the trial court to set forth its compelling reasons.

In the Matter of J.J., Jr., 216 N.C. App. 366, 717 S.E.2d 59 (2011). The court's failure to make written findings to support its oral denial of the juvenile's release pending appeal required remand. Although the issue may have become moot due to the passage of time, the court noted that it must vacate the order and remand for the trial court state its compelling reasons for denying release. Also, the court stated that "this error by the trial court has no effect on the juvenile's adjudication or disposition."

In the Matter of J.J.D.L., 189 N.C. App. 777, 659 S.E.2d 757 (2008). The juvenile was adjudicated delinquent for first degree sex offenses with a child, for offenses that occurred when the juvenile was 14 and the child was 7. On the appellate entries form, the court stated as a compelling reason for not releasing the juvenile pending the appeal, "first degree sex offenses with a child 14-27.4(a)(1)." Where the juvenile did not challenge the trial court's findings of fact, that finding was sufficient to support the court's decision not to release the juvenile.

Restitution

In the Matter of D.A.Q., 214 N.C. App. 535, 715 S.E.2d 509 (2011). The trial court's restitution order was reversed and remanded because the court failed to make findings regarding

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whether restitution was in juvenile's best interests and whether restitution was fair to the juvenile. The juvenile was adjudicated delinquent after admitting two counts of breaking and entering a motor vehicle. At disposition he was ordered to pay restitution. At a supplemental hearing the court set the amount of restitution at \$242.58, after finding that (i) the victim had injuries in the amount of \$265.00; (ii) another juvenile involved in the same incident had been ordered to pay restitution for this and other incidents and was ordered to pay only \$22.52 to the victim in this case because his restitution was prorated among victims; (iii) ordering the juvenile in this case to pay the same amount as the other juvenile would be unfair to the victim; (iv) the juvenile was able to pay the amount ordered completely through a community service program; and (v) the amount was reasonable. The Court of Appeals reversed and held that an order requiring a juvenile to pay restitution must include findings as to whether the requirement is in the juvenile's best interest and whether it is fair to the juvenile. Compensation and fairness to the victim may not be the court's primary concern. Also, the court could not order that the juvenile and the other juvenile who participated were jointly and severally liable because the other juvenile's case was not before the court. An order for joint and several liability would have meant that both juveniles were liable for the full amount and would have been a worse result for the juvenile than the amount ordered.

In the Matter of D.M.B., 196 N.C. App. 775, 676 S.E.2d 66 (2009). The court reversed the trial court's order of restitution. A requirement that a juvenile make restitution as a condition of probation must be supported by the record and appropriate findings of fact which demonstrate that the best interest of the juvenile will be promoted by the enforcement of the condition, which the trial court failed to do in its disposition order.

In the Matter of Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894, disc. rev. denied, 362 N.C. 682, 671 S.E.2d 532 (2008). The probation condition that the juvenile pay restitution was not supported by evidence and a finding that requiring the juvenile to pay restitution was in his best interest. The court reversed the restitution order and remanded for findings related to best interest.

Evidence

Admissions by Party-Opponent

In the Matter of J.J.D.L., 189 N.C. App. 777, 659 S.E.2d 757 (2008). A 14-year old juvenile's statements to an officer admitting to first degree sex offense allegations were admissible as an admission by a party-opponent under N.C.G.S. § 8C-1, Rule 801(d). The juvenile was adjudicated delinquent for first degree sex offenses with a child, for offenses that occurred when the juvenile was fourteen and the child was seven. A law enforcement officer testified, over the juvenile's objection, to statements the juvenile made when the officer interviewed him in his mother's presence, after reading to them and having both of them sign the juvenile rights warning. [The court also found the testimony admissible under G.S. 7B-2407, which governs when admissions by a juvenile may be accepted. That section, however, refers to in court admissions and requires the court to personally address the juvenile with respect to six subjects listed in the statute.]

Best Evidence Rule

State v. Haas, 202 N.C. App. 345, 688 S.E.2d 98 (2010). The transcript of the defendant's prior testimony in a juvenile hearing was admissible, even if the audio recording was available. Parents testified in a juvenile proceeding in which their child was alleged to be an abused juvenile, and the testimony was recorded and transcribed. At a subsequent criminal trial of one parent, the trial court denied defendant's motion to exclude the transcript, but ordered that either party could elect to have the jury hear the actual recording. The transcript of defendant's testimony was distributed to the jury, and neither party asked that the recording be played. The Court of Appeals upheld defendant's conviction of felony child abuse, holding that the best evidence rule did not preclude use of the transcript when there was no dispute about its accuracy, defendant could have offered the tape itself as evidence, and the tape was not included in the record on appeal.

Evidence of Juvenile's Demeanor

In the Matter of M.J.G., __ N.C. App. __, 759 S.E.2d 361 (2014). In an assault case, the trial court did not err by allowing the alleged victim of the assault to testify that the juvenile's expression was "very defiant" when he "body checked" her after exiting the bleachers in the school gymnasium. The court rejected the juvenile's argument that the testimony was an impermissible opinion regarding the juvenile's intent. Instead, the challenged testimony was an opinion regarding the juvenile's demeanor, which is admissible in criminal trials. Evidence of the juvenile's demeanor was relevant and admissible under Rules 401 and 402 because it was based upon the witness's personal observations of the juvenile at the time of the incident, and it helped to explain the surrounding circumstances.

Evidence

Interrogation of Witnesses by Trial Court

In the Matter of D.A.S., 183 N.C. App. 107, 643 S.E.2d 660 (2007). The trial court did not commit prejudicial error during the disposition hearing when it asked the prosecutor to clarify the court counselor's testimony regarding his recommendations for the juvenile's disposition. Under G.S. 8C-1, Rule 614(b), the trial court may interrogate witnesses, whether called by itself or by a party, and the court may question a witness to clarify the witness's testimony. In this case, the trial court's statement that the prosecutor should ask the court counselor about the terms and conditions of the juvenile's current term of probation helped to clarify the court counselor's testimony and provided the court with a better understanding of the court counselor's recommendations.

Lay Witness Testimony About Drugs

In the Matter of D.L.D., 203 N.C. App. 434, 694 S.E.2d 395 (2010). The trial court did not err in admitting the school resource officer's (SRO's) testimony about the identification of the marijuana, its approximate street value, and the common practice of drug dealers to possess both cash and drugs because it was based on personal experience and was helpful to the trial court in deciding whether the marijuana was for sale, where the juvenile was found in possession of \$59 and three small bags containing what the SRO identified as marijuana worth \$20 each.

Motion to Dismiss (Juvenile as Perpetrator)

In the Matter of K.M.M., __ N.C. App. __, __ S.E.2d __ (July 7, 2015). There was substantial evidence identifying the juvenile as the perpetrator of a misdemeanor larceny such that the trial court did not err by denying his motion to dismiss. On October 16, 2013, at approximately 5:30 p.m., three African-American males stole the victim's iPhone from her table at a Wendy's restaurant and then ran away. The victim chased after them and encountered a man, Mr. Wall, who had just driven past three African-American males down the street. Mr. Wall drove back to the same location and saw the males again, and they ran. Both the victim and Mr. Wall reported to police officers that the juvenile was wearing a red jacket and that another suspect was wearing gray. Mr. Wall identified the juvenile and one of his companions in a showup later that same day, and the victim identified the juvenile at the adjudication hearing. When the juvenile was apprehended, he was wearing a red hoodie jacket and had a Wendy's spoon in his back pocket, along with two Wendy's receipts that were time-stamped 5:29 p.m. and 5:33 p.m., despite his denial that he had been at Wendy's that day.

Hearing Procedures

Bifurcated Hearing Requirement

In the Matter of G.C., ___ N.C. App. ___, 750 S.E.2d 548 (2013). The trial court did not err by adjudicating the juvenile delinquent and entering a disposition order without first holding separate adjudicatory and dispositional hearings. The 13-year-old juvenile was charged in juvenile petitions with two counts of first-degree sexual offense under G.S. 14-27.4(a)(2) and two counts of indecent liberties between children under G.S. 14-202.2, alleging sex acts against the juvenile's 6-year-old neighbor. During a three-day probable cause hearing, the court heard testimony from the 6-year-old victim, the juvenile's stepfather, the investigating officer, and three medical professionals, who examined the victim, including a forensic interviewer, pediatrician, and licensed clinical social worker. Immediately following this hearing, the court found probable cause for the first-degree sexual offense and adjudicated the juvenile delinquent for indecent liberties between children. One month later, a transfer hearing was held, and the court retained its jurisdiction and adjudicated the juvenile delinquent for first-degree sexual offense, without holding a separate hearing. The court immediately proceeded to disposition and entered a Level III disposition order, committing the juvenile to a youth development center (YDC). Relying upon the holding of *In the Matter of J.J., Jr.*, 216 N.C. App. 366, 717 S.E.2d 59 (2011), the court found no error in the trial court's failure to hold separate hearings because the juvenile's constitutional and statutory rights were not adversely impacted by the trial court's actions.

In the Matter of J.J., Jr., 216 N.C. App. 366, 717 S.E.2d 59 (2011). The trial court did not err when it announced its adjudication and disposition decisions immediately following the transfer hearing and its decision not to transfer. The trial court, after a two-day hearing, found probable cause for attempted first-degree sex offense. At a later date the court conducted a transfer hearing at which it heard additional evidence from the State and the juvenile. In closing arguments, the two sides requested different dispositional alternatives. Immediately after that hearing, the court announced that it retained jurisdiction, found beyond a reasonable doubt that the juvenile was delinquent for attempted first-degree sex offense, and committed the juvenile to a youth development center. On appeal, the juvenile argued his right to due process was violated because the trial court failed to conduct a separate adjudication hearing. The Court of Appeals held the trial court did not err when it announced its adjudication and disposition decisions immediately following the transfer hearing because the statutorily mandated protections were afforded to the juvenile throughout the proceedings. Conducting all three hearings in one proceeding was not error, so long as the juvenile's rights set out in G.S. 7B-2405 were protected. There was no indication in this case that any of those rights was violated, and the juvenile did not indicate that there was other evidence he would have presented and or show any prejudice

Motions to Continue

In the Matter of C.L., 217 N.C. App. 109, 719 S.E.2d 132 (2011). The trial court did not err in denying the juvenile's motion for a continuance. The disposition was as the parties had agreed

and there was no indication that the juvenile would have additional evidence to present at a later time. G.S. 7B-2406 permits the trial court, upon a showing of good cause, to continue a hearing “to receive additional evidence, reports, or assessments that the court has requested” or other information related to the juvenile’s best interests or to allow the parties to conduct discovery. In this case, the juvenile sought a continuance because his attorney had not discussed with him the possibility that he might be in custody over the Christmas holiday and counsel needed more preparation time. The juvenile was not seeking to obtain additional evidence, reports, or assessments, and the predisposition report had been available to his counsel for some time. Further, the juvenile failed to show prejudice from the denial of the continuance because the disposition was consistent with the terms of the admission agreement.

In the Matter of J.L., 199 N.C. App. 605, 685 S.E.2d 11 (2009). The trial court abused its discretion in denying the juvenile’s motion to continue and denying the juvenile the right to examine his DSS and mental health records, which the court deemed irrelevant after reviewing them “in camera.” The juvenile had an absolute right under G.S. 7B-2901(b) to access his own mental health and DSS records to prepare for the disposition hearing.

In the Matter of D.A.S., 183 N.C. App. 107, 643 S.E.2d 660 (2007). Where the juvenile moved to continue disposition to obtain a 4-year old psychological evaluation, the trial court did not abuse its discretion by denying the motion because the documentation was cumulative and the juvenile’s more recent psychological information was in the court file.

Motions to Suppress

In the Matter of N.J., 221 N.C. App. 427, 728 S.E.2d 9 (2012). The trial court erred by failing to make written or oral findings of fact or conclusions of law and failed to state a rationale before denying the juvenile’s suppression motion. The evidence showed that officers approached and questioned several teenagers at a housing project. The juvenile consented to be searched for weapons and answered “yes” when an officer asked whether he had marijuana in his pocket. He also admitted that bags of marijuana the officer found on the ground were his. The juvenile was taken into custody and a petition was filed alleging possession of a controlled substance with intent to manufacture, sell, or deliver. The court denied the juvenile’s motion to suppress statements he made to the officers, but did not make findings or state reasons for doing so. The Court of Appeals held that the requirements in G.S. 15A-977(f) applied in the delinquency case and were violated, which required a remand for the entry of findings of fact and conclusions of law relating to the denial of the juvenile’s motion to suppress.

Interrogation and Confession

Custodial Interrogation

In the Matter of W.R., 363 N.C. 244, 675 S.E.2d 342 (2009). Under plain error review, the record was insufficient to conclude that the presence of an SRO, at the request of school administrators conducting the investigation, rendered the questioning of the 14-year-old juvenile by school officials a “custodial interrogation,” where no evidence was presented and no findings were made as to the SRO’s actual participation in the questioning. The court reversed the decision of the Court of Appeals which held that admission of the juvenile’s confession resulting from questioning by school officials and a school resource officer was plain error.

In the Matter of D.A.C., __ N.C. App. __, 741 S.E.2d 378 (2013). A 14-year-old juvenile was not “in custody” when officers questioned him in his backyard with his parents nearby inside the house. Law enforcement officers saw the juvenile standing across the street from a home into which shots had been fired. When asked, the juvenile denied shooting at the house. Officers spoke with the juvenile’s parents and then asked the juvenile if he would speak with them. A plain-clothes detective and uniformed officer spoke with the juvenile outside his house for about five minutes. The parents were invited to join them but stayed in the house and told the juvenile to talk to the officers and “tell the truth.” The juvenile admitted shooting at the house. The officers did not give the juvenile a *Miranda* warning. The juvenile was charged with damaging both personal and real property. The trial court denied the juvenile’s motion to suppress his oral statements. The Court of Appeals held that the trial court’s findings supported the conclusion that the juvenile was not in custody when he made the statements. Facts the court considered included that the juvenile was 14; the officers asked whether he would talk with them and did not say he had to; the questioning occurred outdoors at the juvenile’s home during the day; the juvenile’s parents were nearby and could have gone outside with the juvenile; the officers talked with the juvenile for only about five minutes; the officers stood arms-length from the juvenile and made no move to touch him; and there was no physical restraint or indication of coercion. Facts that did not suffice to render the juvenile “in custody” included that: the juvenile was very much a suspect in the shooting; his parents told him to talk to the officers and “tell the truth”; and the officers were armed and one was in uniform. The court rejected the notion that fact that the juvenile’s parents told him to be honest with the officers compelled a different conclusion.

In the Matter of A.N.C., Jr., __ N.C. App. __, 750 S.E.2d 835 (2013). A 13-year-old juvenile who made an incriminating statement to an officer during roadside questioning at the scene of an automobile accident was not in custody. An officer saw the juvenile and two others leaving the scene of an accident involving a car that crashed into a utility pole. The officer stopped the boys and after several minutes of conversation the juvenile, age 13, admitted that he had been driving the car, which belonged to his mother. The juvenile was adjudicated delinquent for unauthorized use of a motor vehicle, operating a motor vehicle without being properly licensed, and operating a motor vehicle in a reckless manner. On appeal the juvenile argued that his *Miranda* rights had been violated and that his statement to the officer was involuntary. Noting that under *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011), a reviewing court must take into account a

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juvenile's age if it was known to the officer or would have been objectively apparent to a reasonable officer, the court nevertheless concluded that the juvenile was not in custody. The fact that he was legally required to remain at the scene of an accident and provide identifying information did not mean that he was in custody or that his 5th Amendment rights were violated.

State v. Yancey, 221 N.C. App. 397, 727 S.E.2d 382, 385 (2012). The trial court did not err by denying the 17-year-old juvenile defendant's motion to suppress his statement. Two plain-clothes detectives driving an unmarked car picked defendant up from his home and drove him 2 miles away where they questioned him about recent burglaries. Defendant rode in the front seat of the patrol car, and the detectives told him he was free to leave at any time and did not touch him. However, detectives showed defendant reports of the break-ins and told him that he would not be arrested "that day," if he was cooperative. Defendant confessed. The appellate court held that the totality of the circumstances showed defendant was not in custody because he voluntarily spoke and rode with the officers, who said he was free to leave any time. Although defendant was 2 miles from home when he confessed, he sat in the front seat, and the encounter lasted under 2 hours. Defendant's age did not alter the conclusion that he was not in custody where he was 17 and 10 months old at the time of the encounter.

In the Matter of K.D.L., 207 N.C. App. 453, 700 S.E.2d 766 (2010). The trial court erred by denying a 12-year-old juvenile's motion to suppress when the juvenile's confession was made in the course of custodial interrogation but without the warnings required by *Miranda* and G.S. 7B-2101(a), and without being apprised of and afforded his right to have a parent present. The court found that the 12-year-old juvenile was "in custody," noting that he knew that he was suspected of a crime, he was questioned by a school official for about six hours, mostly in the presence of an armed police officer (SRO), and he was frisked by the officer and transported in the officer's vehicle to the principal's office where he remained alone with the officer until the principal arrived. Although the officer was not with the juvenile at all times, the juvenile was never told that he was free to leave. Furthermore, the court held that although the principal, not the officer, asked the questions, an interrogation occurred, noting that the officer's conduct significantly increased the likelihood that the juvenile would produce an incriminating response to the principal's questioning. The court concluded that the officer's near-constant supervision of the juvenile's interrogation and "active listening" could cause a reasonable person to believe that the principal's interrogation was done in concert with the officer or that the person would endure harsher criminal punishment for failing to answer.

In the Matter of L.I., 205 N.C. App. 155, 695 S.E.2d 793 (2010). A juvenile's statement that she had drugs in her coat pocket after she was placed in "investigative detention" should have been suppressed because she was "in custody" where she had been handcuffed and placed in the backseat of a patrol car for suspicion of drug possession after a vehicle in which she was a passenger was stopped for a traffic violation; however, the "exclusionary rule" did not preclude the admission of the physical evidence obtained because there was no evidence of actual coercion.

In the Matter of Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894, disc. rev. denied, 362 N.C. 682, 671 S.E.2d 532 (2008). The trial court did not err by denying the juvenile's motion to suppress

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his statements to police. The juvenile's father took him to the police station for an interview, where he was not handcuffed but was escorted at all times and was not told that he was free to leave or could refuse to talk. Viewing the entire circumstances, the court concluded that when the interview occurred the investigation was exploratory, the juvenile was not a suspect, and a reasonable person would not have believed he was under arrest or significantly restrained.

In the Matter of Hodge, 153 N.C. App. 102, 568 S.E.2d 878 (2002), appeal dismissed, rev. denied, 356 N.C. 613 (2002). A juvenile was not in custody when a detective spoke with him and his mother in their living room about his younger brother's allegation of sexual abuse because no proceedings had been initiated, the purpose of the interview was to investigate the allegation, and the detective informed the juvenile he was not under arrest and was not required to speak to her.

Exclusion of Physical Evidence

In the Matter of L.I., 205 N.C. App. 155, 695 S.E.2d 793 (2010). Although the juvenile's statement that she possessed marijuana was the result of improper interrogation and should have been suppressed, the juvenile did not argue that she was subjected to coercion, and therefore, the trial court properly admitted as evidence the marijuana the juvenile possessed. The exclusion of physical evidence obtained as a result of a *Miranda* violation requires evidence of "actual coercion" by law enforcement. The evidence revealed there was no actual coercion where the juvenile was not deceived, held incommunicado, threatened or intimidated, promised anything, or interrogated for an unreasonable period of time; nor was there evidence that the juvenile was under the influence of drugs or alcohol or that her mental condition was such that she was vulnerable to manipulation.

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In the Matter of L.I., 205 N.C. App. 155, 695 S.E.2d 793 (2010). A juvenile's statements were the result of "custodial interrogation" and should have been suppressed, where she was handcuffed and placed in a patrol car and the officer's statement that taking drugs into the jail would be another charge was made for the purpose of eliciting an incriminating response. The officer knew or should have known that his statement to the juvenile was likely to elicit an incriminating response.

By School Officials

In the Matter of W.R., 363 N.C. 244, 675 S.E.2d 342 (2009). Under plain error review, the record was insufficient to conclude that the presence of an SRO, at the request of school administrators conducting the investigation, rendered the questioning of the 14-year-old juvenile by school officials a "custodial interrogation," where no evidence was presented and no findings were made as to the SRO's actual participation in the questioning.

In the Matter of K.D.L., 207 N.C. App. 453, 700 S.E.2d 766 (2010). Statements of a 12-year-old juvenile made in response to questioning by the school principal resulted from "custodial

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interrogation,” where a school resource officer (SRO) frisked the juvenile, transported him to the principal’s office in a patrol car, and was present for most of the lengthy interrogation. Even though the officer asked no questions, a *Miranda* warning was required because the SRO’s near-constant supervision of the juvenile’s interrogation and “active listening” could cause a reasonable person to believe the principal’s interrogation was done in concert with the SRO or that the person would endure harsher criminal punishment for failing to answer.

Spontaneous Statements

In the Matter of D.L.D., 203 N.C. App. 434, 694 S.E.2d 395 (2010). A juvenile’s statement to an officer during a search at school that “the money was not from selling drugs” was admissible because it was unsolicited and spontaneous and not the result of interrogation by the SRO.

Invocation of Juvenile Rights

State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007). The trial court properly denied the 16-year-old defendant’s motion to suppress his statement, even though he requested to telephone his aunt before making the statement, because an aunt was not “a parent, guardian, or custodian” within the meaning of N.C.G.S. § 7B-2101(a)(3), and thus, questioning was not required to cease. Referencing the legal definition of the term “guardian,” the court held that a juvenile’s right to a parent, guardian, or custodian only includes a person with “legal authority over the juvenile.”

State v. Saldierna, __ N.C. App. __, 775 S.E.2d 326 (2015). The trial court erred in denying the juvenile’s motion to suppress where the juvenile made an ambiguous statement implicating his statutory right to the presence of a parent or guardian during questioning, which was not clarified by interrogating officers before continuing the interrogation. An officer verbally read the 16-year-old juvenile his rights and gave him copies of a “Juvenile Waiver of Rights” form, which the juvenile initialed and signed to indicate that he understood his rights and wished to answer questions without a lawyer or parent present. Prior to the interrogation, the juvenile asked “Can I call my mom?” The juvenile was permitted to call his mother but was unable to reach her. Officers resumed questioning, and the juvenile confessed. The Court of Appeals held that (1) competent evidence supported the trial court’s finding that the juvenile’s request to call his mom was “an ambiguous request to speak to his mother” and was not an unambiguous request to have her present. (2) However, due to the defendant’s status as a juvenile, his ambiguous statement triggered a requirement by officers to clarify whether he was invoking his right to have a parent present during the interview. The court distinguished the right to have a parent present during questioning from other rights enumerated in G.S. 7B-2101(a), which simply codify the *Miranda* rights guaranteed to everyone by the federal constitution. Thus, case law establishing that invocation of *Miranda* rights (including by juveniles) must be unequivocal did not control the analysis. Rather, the inclusion of this additional, statutory protection for juveniles “reflects the legislature’s intent that law enforcement officers proceed with great caution in determining whether a juvenile is attempting to invoke this right.” The court said its holding was significantly supported by recent legislation, S.L. 2015-58, which amends G.S. 7B-2101(b) to raise from 14 to 16 the age at which a juvenile can waive the right to have a parent or attorney present during a

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custodial interrogation, noting that children just a few months younger than the juvenile can never waive this right.

****Author's note:** The opinion does not mention G.S. 7B-2101(c), which provides that questioning must cease “if the juvenile indicates in any manner and at any stage” that the juvenile does not wish to be questioned further. This statute would have been relevant if the juvenile had argued that his request to call his mother was an indication that he did not wish to be questioned further without her being present.

State v. Williams, 209 N.C. App. 441, 705 S.E.2d 409 (2011). The trial court did not err by denying the 17-year-old juvenile defendant's motion to suppress his statement because he voluntarily and knowingly waived his right to have a parent present during questioning about a robbery and murder when he stated that he only wanted his mother present for questioning related to other charges for which he was already in custody, and not the new charges of robbery and murder. The defendant, a 17-year-old juvenile, was already in custody on unrelated charges at the time he was brought to an interview room for questioning. When the defendant invoked his right to have his mother present during questioning, the detectives ceased all questioning. After the detectives had trouble determining how to contact the defendant's mother, they returned to the room and asked the defendant how to reach her. The defendant then asked them when he would be able to talk to them about the new charges (robbery and murder) and explained that the detectives had “misunderstood” him when he requested the presence of his mother for questioning. He explained that he only wanted his mother present for questioning related to the charges for which he was already in custody, not the new crimes of robbery and murder. Although the defendant initially invoked his right to have his mother present during his custodial interrogation, he thereafter initiated further communication with the detectives; that communication was not the result of any further interrogation by the detectives. The defendant voluntarily and knowingly waived his rights.

Miranda Custody Test

J. D. B. v. North Carolina, 131 S. Ct. 2394, 180 S.E.2d 310 (2011), reversing, In the Matter of J.D.B., 363 N.C. 664, 686 S.E.2d 135 (2009). **Held:** Age should have been considered a relevant factor in determining whether a 13-year-old student who was questioned at school was in custody. **Facts:** The juvenile was adjudicated delinquent for felonious breaking and entering and larceny. The trial court had denied the juvenile's suppression motion, after making findings, including that the 13-year-old juvenile, a seventh grader in special education classes, was escorted by a uniformed school resource officer (SRO) from class into a conference room to be interviewed. Present were an investigator, an assistant principal, the SRO, and an intern. The door was closed but not locked. The juvenile was not given any *Miranda* warnings or told that he could contact his grandmother or was free to leave. The juvenile agreed to answer questions about a recent break-in. After initial denials and further questioning, the juvenile was encouraged to “do the right thing.” He asked whether he would still be in trouble if he gave the items back. The investigator said it would help but that the matter was going to court and he might seek a secure custody order. The juvenile confessed. The investigator then told the juvenile that he did not have to answer questions and was free to leave. The juvenile continued to provide

information and wrote a statement about his involvement. He was allowed to leave when the end-of-school bell rang, after being interviewed for 30 to 45 minutes. Based on these and other findings the trial court concluded that the juvenile was never in custody. Both the N.C. Court of Appeals and the N.C. Supreme Court affirmed the trial court's order denying the juvenile's motion to suppress. Both courts emphasized the objective test for determining whether a person is in custody, *i.e.*, "whether a reasonable person in the individual's position would have believed himself to be in custody or deprived of his freedom of action in some significant way." The N.C. Supreme Court declined "to extend the test for custody to include consideration of the age and academic standing of an individual subjected to questioning by police." The U.S. Supreme Court, by a vote of five to four, reversed and held that "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature" of the *Miranda* custody analysis. Justice Sotomayor, writing for the Court, said that courts can account for the fact that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go," without changing the objective nature of the custody analysis. ***Dissenting Opinion:*** Justice Alito – joined by Chief Justice Roberts, Justice Scalia, and Justice Thomas – said that the Court's decision, by injecting a personal characteristic into the *Miranda* analysis, "diminishes the clarity and administrability" that have been the "chief justifications" for the rule

In the Matter of J.D.B., 363 N.C. 664, 686 S.E.2d 135 (2009), rev'd and remanded on other grounds, 131 S. Ct. 2394 (2011). "[I]n determining whether a suspect [is] in custody, an appellate court must examine all the circumstances surrounding the interrogation; but the definitive inquiry is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. This inquiry requires application of an objective test as to whether a reasonable person in the position of the defendant would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way. . . . Circumstances supporting an objective showing that one is 'in custody' might include a police officer standing guard at the door, locked doors or application of handcuffs." *Id.* at 669 (internal quotation marks and citations omitted). Further, "subjective mental characteristics are not relevant regarding whether 'a reasonable person' would believe he had been placed under the equivalent of a formal arrest[.]" *Id.* at 671-72.

In the Matter of W.R., 363 N.C. 244, 248, 675 S.E.2d 342 (2009). "The test for determining if a person is in custody is whether, considering all the circumstances, a reasonable person would not have thought that he was free to leave because he had been formally arrested or had had his freedom of movement restrained to the degree associated with a formal arrest. Absent indicia of formal arrest, that police have identified the person interviewed as a suspect and that the interview was designed to produce incriminating responses from the person are not relevant in assessing whether that person was in custody for *Miranda* purposes." (Internal citation omitted)

State v. Yancey, 221 N.C. App. 397, 399-400, 727 S.E.2d 382, 385 (2012). "While no single factor controls the determination of whether an individual is in custody for purposes of *Miranda* [,] our appellate courts have considered such factors as whether a suspect is told he or she is free to leave, whether the suspect is handcuffed, whether the suspect is in the presence of uniformed

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officers, and the nature of any security around the suspect. . . . Furthermore, ‘so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test.’” (Quoting [*J.D.B. v. North Carolina*](#), 131 S. Ct. 2394, 2406 (2011)).

School Setting

[***In the Matter of J.D.B.***](#), 363 N.C. 664, 686 S.E.2d 135 (2009), **rev'd and remanded on other grounds**, 131 S. Ct. 2394 (2011). In reviewing an officer's interrogation of a student at school, the NC Supreme Court recognized that the school setting is inherently restrictive but that the typical restrictions of school do not constitute a “significant” deprivation on the students' freedom of action. Thus, the court held that “[f]or a student in the school setting to be deemed in custody, law enforcement must subject the student to restraint on freedom of movement that goes well beyond the limitations that are characteristic of the school environment in general.” *Id.* at 670.

Sixth Amendment Right to Counsel

[***State v. Williams***](#), 209 N.C. App. 441, 705 S.E.2d 409 (2011). The trial court did not err by denying the 17-year-old juvenile defendant's motion to suppress his confession based on an alleged violation of his Sixth Amendment right to counsel because the Sixth Amendment right to counsel “attaches only at or after the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information or arraignment.” In this case, the defendant conceded that he had not been formally charged with the robbery and murder at the time detectives questioned him about those crimes and that he was in police custody on charges unrelated to this case. Thus, the defendant's Sixth Amendment right to counsel had not yet attached.

Waiver of Juvenile Rights

Right to Parent, Guardian, or Custodian

[***State v. Oglesby***](#), 361 N.C. 550, 648 S.E.2d 819 (2007). The trial court properly denied the 16-year-old defendant's motion to suppress his statement, even though he requested to telephone his aunt before making the statement, because an aunt was not “a parent, guardian, or custodian” within the meaning of N.C.G.S. § 7B-2101(a)(3), and thus, questioning was not required to cease. Referencing the legal definition of the term “guardian,” the court held that a juvenile's right to a parent, guardian, or custodian only includes a person with “legal authority over the juvenile.”

[***State v. Williams***](#), 209 N.C. App. 441, 705 S.E.2d 409 (2011). The trial court did not err by denying the 17-year-old juvenile defendant's motion to suppress his statement because he voluntarily and knowingly waived his right to have a parent present during questioning about a robbery and murder when he stated that he only wanted his mother present for questioning related to other charges for which he was already in custody, and not the new charges of robbery

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and murder. The defendant, a 17-yearold juvenile, was already in custody on unrelated charges at the time he was brought to an interview room for questioning. When the defendant invoked his right to have his mother present during questioning, the detectives ceased all questioning. After the detectives had trouble determining how to contact the defendant's mother, they returned to the room and asked the defendant how to reach her. The defendant then asked them when he would be able to talk to them about the new charges (robbery and murder) and explained that the detectives had "misunderstood" him when he requested the presence of his mother for questioning. He explained that he only wanted his mother present for questioning related to the charges for which he was already in custody, not the new crimes of robbery and murder. Although the defendant initially invoked his right to have his mother present during his custodial interrogation, he thereafter initiated further communication with the detectives; that communication was not the result of any further interrogation by the detectives. The defendant voluntarily and knowingly waived his rights.

In the Matter of M.L.T.H., 200 N.C. App. 476, 685 S.E.2d 117 (2009), rev. improvidently granted, 364 N.C. 420, 700 S.E.2d 225 (2010). The court held that the 15-year-old juvenile's *Miranda* waiver was not made "knowingly, willingly, and understandingly" where he was advised incorrectly as to his right to have a person who was not his parent, guardian, or custodian present during his custodial interview and he chose his older brother, who did not have legal authority to consent on his behalf. The advisement and related form should have informed the juvenile that he had a right to have a "parent, guardian, or custodian" present. Adding "or any other person" gave the juvenile an improper choice and rendered the advisement insufficient. The purpose of the right is to ensure that the juvenile understands his situation and the warnings he is given. Cases emphasize the legal authority of the person the juvenile has a right to have present.

Voluntariness of Statements

In the Matter of A.N.C., Jr., __ N.C. App. __, 750 S.E.2d 835 (2013). A juvenile's incriminating statement to an officer at the scene of an automobile accident was not involuntary due to the fact that he was required by G.S. 20-166(c) to remain at the scene and provide his name and other identifying information "to the nearest peace officer." The court rejected the juvenile's argument that his statement was involuntary, citing *California v. Byers*, 402 U.S. 424 (1971) (a hit and run statute requiring the driver of a motor vehicle involved in an accident to stop at the scene and give his name and address did not violate the Fifth Amendment). Further, there was no indication of coercive conduct by the officer.

In the Matter of L.I., 205 N.C. App. 155, 163-64, 695 S.E.2d 793 (2010). The "totality of the circumstances" test is used to determine whether a juvenile's statement is voluntary. "A statement is involuntary or coerced if it is the result of government tactics so oppressive that the will of the interrogated party has been overborne and his capacity for self-determination critically impaired[.]" Factors to be considered in assessing whether a statement is coerced include: "whether defendant was in custody, whether he was deceived, whether his *Miranda* rights were honored, whether he was held incommunicado, the length of the interrogation, whether there were physical threats or shows of violence, whether promises were made to obtain

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the confession, the familiarity of the declarant with the criminal justice system, and the mental condition of the declarant.” (Internal quotation marks and citations omitted)

Jurisdiction

Jurisdiction After Commitment to YDC

In the Matter of J.S.W., 211 N.C. App. 620, 711 S.E.2d 471 (2011). The Court of Appeals rejected the juvenile’s argument that after commitment, all decisions about services, privileges, or punishments are to be made by DJJDP, not the court. The juvenile was adjudicated delinquent and committed to a youth development center based on his admission to first-degree rape. The court ordered both that the commitment was for an indefinite period beyond the minimum six months and that the juvenile “[r]emain in YDC for the maximum time allowed by law,” which was age 21. The order also required the juvenile, among other things, to receive a sex-offender specific evaluation and treatment. Almost 3 years later, DJJDP filed a motion seeking clarification as to whether the juvenile could participate in an off-campus work program and have home and overnight visits. At a hearing the court heard witnesses from DJJDP, a minister who knew the juvenile’s case, and the juvenile’s mother. The State opposed allowing any of the privileges that were the subject of the motion. The trial court ordered that the juvenile (i) could work off campus, but only if he would not be around anyone age 25 or younger; (ii) could have no home or overnight visits; and (iii) could participate in YDC outings if there were direct supervision at all times. On appeal, the Court of Appeals noted that when a juvenile is committed for first-degree rape, jurisdiction continues until the juvenile reaches age 21 or the court terminates jurisdiction, whichever is earlier, and that commitment does not terminate the trial court’s jurisdiction. The court also cited In re Doe, 329 N.C. 743 (1991), in which the state supreme court discussed the “necessary functional overlap” of the legislative and judicial branches inherent in the Juvenile Code. Thus, the trial court can enter orders relating to the terms of the juvenile’s commitment, such as privileges and punishment, without violating the separation of powers doctrine. The court also held that the trial court clearly considered the dispositional factors set out in G.S. 7B-2501 and did not abuse its discretion.

Jurisdiction Pending Appeal

In the Matter of J.F., __ N.C. App. __, 766 S.E.2d 341 (2014). In a sex offense case, the trial court lacked jurisdiction to conduct a dispositional hearing after the juvenile appealed the adjudication order under G.S. 7B-2602, which allows a juvenile to appeal the adjudication order when no disposition has been entered within 60 days. Unless a statute provides otherwise, an appeal stays further proceedings in the trial court until the cause is remanded by mandate of the appellate court.

Personal Jurisdiction

In the Matter of D.S.B., 179 N.C. App. 577, 634 S.E.2d 633 (2006). Citing In re Bullabough, 89 N.C. App. 171, 179 (1988), the court reiterated that delinquency proceedings under the Juvenile Code are governed by the Rules of Civil Procedure. As in a civil case, a juvenile may submit to the court’s jurisdiction by making a general appearance, even where service of process has not been completed pursuant to G.S. 7B-1806. Because the juvenile and his parents

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participated in the proceedings and did not object to service of process, he waived any defect in service by making a general appearance.

In the Matter of Hodge, 153 N.C. App. 102, 568 S.E.2d 878 (2002). The presence of the juvenile and his parents at the hearing, as well as the juvenile's denial of the allegations in the petition and his participation in the hearing without objection constituted a general appearance for purposes of waiving any defect in service.

Post-Disposition

Probation Violations

Admission of Probation Violation

In the Matter of D.J.M., 181 N.C. App. 126, 638 S.E.2d 610 (2007). The trial court did not err by not making the mandatory inquiries in G.S. 7B-2407 when accepting the juvenile's admission that the juvenile violated the conditions of court supervision because the procedural requirements of G.S. 7B-2407 do not apply when a juvenile is admitting a violation of probation. The court concluded that "a motion for review [is] a form of 'dispositional' hearing with procedural safeguards that differ significantly from those imposed on allegations that a juvenile committed a statutory or common law criminal offense." *Id.* at 131.

Commitment to YDC for "Minor" Offense

In the Matter of S.B., 207 N.C. App. 741, 701 S.E.2d 359 (2010). The trial court erred by imposing a Level 3 disposition upon finding that the juvenile violated the conditions of her probation because G.S. 7B-2510(f) precludes a Level 3 disposition of commitment when the juvenile is on probation for a "minor" offense and the exception in G.S. 7B-2508(g), which allows commitment for certain juveniles who commit a minor offense, does not apply to probation violations. In this case, the juvenile was placed on probation based on an adjudication of delinquency for resisting a public officer, a Class 2 misdemeanor, which is classified as "minor" in G.S. 7B-2508(a). Commitment would have been an option if a new petition (instead of just a motion for review) had been filed and the juvenile had been adjudicated for a minor offense, assuming she had at least four prior offenses as defined in G.S. 7B-2508(g).

Extension of Probation Term

In the Matter of D.L.H., 198 N.C. App. 286, 679 S.E.2d 449 (2009), rev'd on other grounds, 364 N.C. 214, 694 S.E.2d 753 (2010). The trial court made sufficient findings of fact to support the extension of the juvenile's probation where the court found that the juvenile was repeatedly absent from school, ignores curfews, her mother wanted an out-of-home placement, she was disrespectful to a school resource officer and received 15 risk points on a Risk and Needs Assessment.

Intermittent Confinement

In the Matter of D.L.H., 198 N.C. App. 286, 679 S.E.2d 449 (2009), rev'd on other grounds, 364 N.C. 214, 694 S.E.2d 753 (2010). The trial court was authorized to impose up to 28 days of intermittent confinement in a juvenile detention facility for a Level 2 disposition because G.S. 7B-2510(e) allows the court to impose up to twice the amount of time authorized by statute when the juvenile has violated his or her probation.

Post-Disposition

Revocation Based on Hearsay Evidence

In the Matter of Z.T.W., __ N.C. App. __, 767 S.E.2d 660 (2014). Relying upon a recent decision by the North Carolina Supreme Court, the court held that the trial court did not err by revoking the juvenile's probation based solely upon the admission of hearsay evidence. *See State v. Murchison*, 367 N.C. 461 (2014) (holding that, since the formal Rules of Evidence do not apply in probation revocation hearings, the trial court did not err by revoking the defendant's probation and activating his suspended sentence based solely on hearsay evidence). Also, the trial court's failure to advise the juvenile about the consequences of testifying at his probation revocation hearing did not affect the validity of the probation revocation because the holding of **In re J.R.V.**, 212 N.C. App. 205 (2011) (requiring the trial court to advise a juvenile of his right against self-incrimination under G.S. 7B-2405(4), if the juvenile chooses to testify at his own adjudication hearing) applies only to adjudication hearings.

Sufficiency of Notice

In the Matter of D.S.B., __ N.C. App. __, 768 S.E.2d 922 (2015). (1) Despite a clerical error referencing a previously expired term of probation for a "minor" offense, the motion for review provided adequate notice to the juvenile that he might receive a Level III disposition for violating his probation because the motion accurately stated the expiration date of the current probation term, which was for a Class H felony, and listed violations that occurred after the juvenile was placed on probation with the specified expiration date. (2) Assuming *arguendo*, that the motion for review failed to provide adequate notice, the record established the juvenile had *actual* notice that a Level III disposition was possible, in part, because his counsel acknowledged at the hearing that a YDC commitment "was on the table," and the juvenile did not object when the trial court expressly confirmed that he was on probation for committing the Class H felony of larceny from the person.

Willfulness of Violation

In the Matter of Z.T.W., __ N.C. App. __, 767 S.E.2d 660 (2014). The trial court did not err by finding the juvenile to be in willful violation of his probation by not attending school regularly and violating school rules by communicating threats to a teacher. (1) The juvenile failed to preserve his argument that the trial court did not consider his disability and Individualized Education Plan (IEP) in determining whether the probation violations were willful because no evidence was presented at the hearing to show the juvenile lacked the ability to comply with these conditions of his probation. *See* N.C. R. App. P. 10(a)(1). Also, the trial court explicitly found that the "Juvenile was able to control his behavior and comply with the applicable school rules." Thus, although not preserved, the argument had no merit. (2) Even if the juvenile did not willfully violate the school rules by threatening his teacher, the juvenile's numerous unexcused absences provided an independent basis for his probation revocation.

Post-Release Supervision

Revocation of Post-Release Supervision

In the Matter of A.J. M.-B., 212 N.C. App. 586, 713 S.E.2d 104 (2011). The court affirmed the order revoking the juvenile's post-release supervision. Although the juvenile's new adjudication for resisting an officer was reversed because an anonymous tip alone was insufficient to justify the investigatory stop, the revocation was based on other violations as well – missing school and being suspended for the remainder of the year – and was proper.

In the Matter of D.M., 192 N.C. App. 729, 666 S.E.2d 501 (2008). The trial court's findings were sufficient to support revocation of the juvenile's post-release supervision where the court found that the juvenile had violated the terms of post-release supervision by failing to comply with the rules and regulations of the group home where he had been placed and that the failure was without just cause, then ordered that he be recommitted to the YDC. The Court of Appeals pointed to In re Baxley, 74 N.C. App. 527, 328 S.E.2d 831, disc. rev. denied, 314 N.C. 330, 333 S.E.2d 483 (1985), which interpreted a very similar predecessor statute, and held that the trial court was required only to find that the juvenile violated the terms of post-release supervision. The findings and conclusions of the original commitment order supported the recommitment.

Pre-Adjudication

Discovery

In the Matter of A.M., 220 N.C. App. 136, 724 S.E.2d 651 (2012). The trial court erred in not ruling on the juvenile's motion for disclosure of witnesses and not granting a continuance or otherwise remedying the problem created by the State's failure to comply with G.S. 7B-2300(b). Before the adjudication hearing, the juvenile filed a motion pursuant to G.S. 7B-2300(b) to require the State to disclose a list of witnesses and their prior records. The State provided names of some witnesses, but the court did not rule on the motion. On the day of the adjudication hearing, the State revealed the identity of a witness who would testify that she had seen the juvenile set the fire he was charged with setting. The prosecutor claimed to have learned of the witness just that day and said the juvenile's attorney had been given a chance to speak to the witness. The court denied the juvenile's motion for a continuance. The witness's testimony, including that she had received a subpoena months earlier, made clear that the State (though perhaps not the individual prosecutor) knew of the witness long before the hearing date. The court held the State's failure to disclose the identity of the eyewitness before the day of the hearing and the court's failure to grant a continuance or otherwise deal with the problem were prejudicial to the juvenile and required a new hearing. The juvenile satisfied requirements for showing that the error was prejudicial under G.S. 15A-1443(a), *i.e.*, that a different result would have been reasonably possible if the error had not occurred. With prior notice the juvenile might have been able to impeach the witness, might not have been adjudicated delinquent for setting the fire, and might not have received the disposition he received. The court ordered a new hearing.

Intake

In the Matter of T.H., 218 N.C. App. 123, 721 S.E.2d 728 (2012). The Court of Appeals rejected the juvenile's argument that G.S. 7B-1702 should be strictly construed to require, in every case, that the court counselor interview the juvenile and the alleged victim unless it is impossible to do so. The juvenile was adjudicated delinquent for simple assault and common law robbery. When the complaint was filed with juvenile services, the juvenile was already on probation, a law enforcement officer had investigated the case and interviewed the alleged victim, and the victim had made a written statement about the event and twice identified the juvenile in a photographic line-up. After talking with the complaining officer, but without interviewing the juvenile or the alleged victim, the court counselor approved the complaint for filing as a petition. On appeal, the court noted that the addition to the statute of the phrase "if practicable," in 1998, gave court counselors more flexibility in how they evaluate whether a petition should be filed. That wording means that the statute requires the suggested interviews only when additional evidence is needed in order to evaluate the matter according to the DJJDP intake factors. Here, additional information was not required and the court counselor complied with G.S. 7B-1702 in assessing the complaint and approving it for filing.

Juvenile Petitions

Fatal Variance Between Petition and Evidence

In the Matter of A.W., 209 N.C. App. 596, 706 S.E.2d 305 (2011). A one-week difference between the date of offense alleged in the petition for indecent liberties between children and the date shown by the evidence did not require a dismissal where the variance was slight and did not prevent the juvenile from presenting an adequate defense. The petition alleged the offense occurred on November 14, 2008, and the evidence showed that it occurred the weekend of November 7-9, 2008.

In the Matter of D.S., 197 N.C. App. 598, 682 S.E.2d 709 (2009), reversed on other grounds by, 364 N.C. 184, 694 S.E.2d 758 (2010). The Court of Appeals rejected the juvenile's argument that there was a fatal variance between the simple assault petition and the evidence because the petition alleged that he touched the victim with his hands, while the evidence showed only that he touched her with an object, a "Pixy Stix" candy. The court held that the variance was not material and did not affect the juvenile's ability to prepare a defense.

Sufficiency of Allegations

In the Matter of J.F., __ N.C. App. __, 766 S.E.2d 341 (2014). (1) Two juvenile petitions alleging first-degree sex offense under G.S. 14-27.4(a)(1) and two petitions alleging crime against nature under G.S. 14-177 provided sufficient notice because the allegations followed the statutory language of both offenses. The petitions charging first-degree sex offense allege the juvenile "did unlawfully, willfully and feloniously . . . [e]ngage in a sexual act with [M.H.], a child under the age of thirteen (13) years," identifying M.H. by his full name and stating that the "victim was 7." One petition further alleges that the "juvenile performed fellatio on victim," while the other alleges that the "victim performed fellatio on juvenile." The petitions charging crime against nature allege the juvenile "did unlawfully, willfully and feloniously . . . commit the abominable and detestable crime against nature with [M.H.]," identifying M.H. by his full name and stating that the "victim was 7." Likewise, one petition alleges that the "juvenile performed fellatio on victim," while the other alleges that the "victim performed fellatio on juvenile." The State was not required to identify the particular sex acts involved or describe the manner in which they were performed, and if the juvenile required more detail about whether the petitions alleged the same or multiple acts of fellatio, the juvenile should have moved for a bill of particulars. (2) The court rejected the juvenile's argument that the two petitions alleging the victim performed fellatio on the juvenile were defective because the victim was the "actor." First-degree sex offense and crime against nature do not require that the accused perform a sex act *on* the victim but rather that he "engage[] in a sexual act *with*" the victim.

In the Matter of D.B., 214 N.C. App. 489, 714 S.E.2d 522 (2011). The petition alleging larceny from the "Crossings Golf Club" should have been dismissed for lack of subject matter jurisdiction because it did not allege that the club was a corporation or other legal entity capable of owning property.

In the Matter of J.C., 205 N.C. App. 301, 695 S.E.2d 168 (2010). A juvenile petition sufficiently alleged that the juvenile was delinquent for possession of a weapon on school grounds in violation of G.S. 14-269.2(d) where it alleged the juvenile possessed an “other weapon” specified as a “steel link from chain.” The court stated that “the item . . . is sufficiently equivalent to what the General Assembly intended to be recognized as ‘metallic knuckles’ under [the statute].” The court also characterized the juvenile’s argument that the box on the petition for “metallic knuckles” was not checked as the type of hyper technical scrutiny to which petitions and indictments should not be subjected.

In the Matter of M.S., 199 N.C. App. 260, 681 S.E.2d 441 (2009). The court held that juvenile petitions alleging first-degree sexual offense were fatally defective because they failed to allege the names of the child victims as required by N.C.G.S. § 15-144.2(b).

In the Matter of B.D.N., 186 N.C. App. 108, 649 S.E.2d 913 (2007). A juvenile petition alleging the juvenile made a false bomb threat at school was not fatally deficient because it alleged a violation of the more general statute, G.S. 14-69.1(a), which applies to “any” building, as opposed to G.S. 14-69.1(c), which applies to “any public building.” Because “any building,” as used in G.S. 14-69.1(a) includes a public building, the State was not required to charge the juvenile under the more specific statute.

Untimely Filed Petitions

In the Matter of D.S., 364 N.C. 184, 694 S.E.2d 758 (2010), reversing in part, 197 N.C. App. 598, 682 S.E.2d 709 (2010). The NC Supreme Court held that the statutory time limits in G.S. 7B-1703 for the filing of juvenile petitions are not jurisdictional. On 9/25/07 the court counselor received a complaint about an incident that occurred at school, involving the juvenile’s touching a female student with an object several times. On 10/10/07 the counselor filed a petition based on the complaint, alleging simple assault. On 11/15/07 the court counselor received a second complaint relating to the same incident, and the next day the counselor filed a second petition alleging sexual battery. The trial court adjudicated the juvenile delinquent for both offenses. The Court of Appeals held that the trial court lacked subject matter jurisdiction with respect to the second, sexual battery, petition because it was untimely filed, reasoning that receipt of a second complaint about the same incident could not be the basis for a second petition based on that incident, thus extending the time within which a petition could be filed. The court did not discuss what constituted the “complaint.” The Supreme Court reversed, concluding that the second petition was timely filed because it was filed the day after a new “complaint” was received. The Juvenile Code, when it says “after the complaint is received,” means after the court counselor receives a written, sworn document alleging acts of delinquency. When the initial complaint did not allege a sexual battery, the court counselor could not file a petition alleging that offense based on that complaint. Further, nothing in the Juvenile Code indicates a legislative intent for the time limits in G.S. 7B-1703 to relate to subject matter jurisdiction. While interpreting them that way might serve the Code’s purpose of expediting juvenile cases, it would be contrary to other purposes of the Code.

Pre-Adjudication

***Note that the Supreme Court's decision in *D.S.* overrules several Court of Appeals cases on the issue of subject matter jurisdiction, including:

- *State v. Smith*, 202 N.C. App. 144, 688 S.E.2d 75, review allowed in part, and remanded by, 364 N.C. 237, 699 S.E.2d 920 (2010).
- *In the Matter of K.W.*, 191 N.C. App. 812, 664 S.E.2d 66 (2008).
- *In the Matter of J.B.*, 186 N.C. App. 301, 650 S.E.2d 457 (2007).
- *In the Matter of M.C.*, 183 N.C. App. 152, 645 S.E.2d 386 (2007).

***In the Matter of J.A.G.*, 206 N.C. App. 318, 696 S.E.2d 809 (2010).** The trial court dismissed a petition alleging that the juvenile was delinquent because it was filed more than 15 days after the court counselor received the complaint. At the request of the court counselor law enforcement filed a second complaint based on the same conduct, and within 15 days the court counselor approved and filed a second petition almost identical to the first. The trial court denied the juvenile's motion to dismiss for lack of jurisdiction, accepted the juvenile's admission and adjudicated the juvenile delinquent. When it initially heard the juvenile's appeal, the Court of Appeals vacated the trial court's orders based on lack of jurisdiction in an unpublished opinion, see *In re J.A.G.*, No. COA09-462 (N.C. Ct. App., Feb. 2, 2010). The State sought review from the Supreme Court, which granted review for the sole purpose of remanding to the Court of Appeals for reconsideration in light of *In re D.S.*, 364 N.C. 184, 694 S.E.2d 758 (2010), which held that statutory filing deadlines relating to delinquency petitions are not jurisdictional. On remand from the Supreme Court, the Court of Appeals affirmed the trial court's order denying the juvenile's motion to dismiss for lack of jurisdiction.

Records

Admissibility of Records in Criminal Case

State v. Williams, 220 N.C. App. 130, 724 S.E.2d 654, appeal dismissed, review denied, 366 N.C. 240, 731 S.E.2d 167 (2012). In a first-degree murder case, the defendant was not entitled to a hearing regarding the admissibility of his juvenile records under G.S. 7B-3000(f) before the State could cross-examine a witness about whether she knew of the defendant's prior juvenile adjudications. The testimony of defendant's mother that defendant was not a violent person opened the door to cross-examination about his prior crimes under Rule 404(a)(1). Defendant argued that because his prior crimes were juvenile adjudications, the trial court was required to hold an in camera hearing to determine the admissibility of his juvenile records. The Court of Appeals held that G.S. 7B-3000(f) was inapplicable because it concerns the use of juvenile court "records," and the State did not seek to introduce any portion of the defendant's juvenile record. The State's questions on cross-examination inquired only of defendant's mother's knowledge of his prior adjudications. Further, G.S. 7B-3000(f) mentions the use of juvenile records under Rule 404(b), and not Rule 404(a)(1).

Juvenile's Access to DSS Records

In the Matter of J.L., 199 N.C. App. 605, 685 S.E.2d 11 (2009). The trial court abused its discretion in denying the juvenile's motion to continue and denying the juvenile the right to examine his DSS and mental health records, which the court deemed irrelevant after reviewing them "in camera." The juvenile had an absolute right under G.S. 7B-2901(b) to access his own mental health and DSS records to prepare for the disposition hearing.

Search and Seizure

Reasonable Suspicion

In the Matter of V.C.R., __ N.C. App. __, 742 S.E.2d 566 (2013). The court held that both seizures of the juvenile were supported by reasonable suspicion. A Raleigh police officer was patrolling a residential community at night when he spotted a group of juveniles walking down the sidewalk. One of them, V.C.R., was smoking a cigarette and the officer stopped and asked her how old she was. When V.C.R. responded that she was 15 years old, the officer asked her to put out her cigarette and give him the pack of cigarettes she was holding. After she complied, the officer began to drive away, but stopped again when he heard V.C.R. yell “What the f---, man.” The officer exited his patrol car, approached V.C.R., and told the other juveniles to keep walking. He then asked V.C.R. for identification and engaged her in conversation, during which she raised her arms and revealed a “round bulge” in her front pants pocket. The officer instructed her to empty her pockets, and she complied, revealing a small bag of marijuana. The juvenile moved to suppress the evidence as the product of two seizures and a search that each violated the federal and state constitutions. The trial court denied the motion to suppress, and the juvenile was adjudicated delinquent for simple possession of marijuana. The court held initial stop was proper because the officer had reasonable suspicion to believe the juvenile was violating G.S. 14-313(c) (unlawful for a minor to purchase or “accept receipt” of cigarettes). Even if the officer had acted on an assumption that possession of cigarettes by a minor was an offense, our Supreme Court held in *State v. Heien*, 366 N.C. 271, 737 S.E.2d 351 (2012), that an officer’s mistake of law does not always result in the lack of reasonable suspicion. The second stop was proper because while merely stating an obscenity to another individual may be protected speech, the right of free speech is not unlimited. Referencing the offense of disorderly conduct under G.S. 14-288.4(a)(2), the court found this seizure “permissible, given [the juvenile’s] loud and profane language.” ***Concurring Opinion:*** The concurring judge would have concluded that the second encounter was unconstitutional based on the lack of record evidence that the officer had reasonable suspicion to stop the juvenile for disorderly conduct.

State v. Yancey, 221 N.C. App. 397, 727 S.E.2d 382, 385 (2012). The trial court did not err by denying the 17-year-old juvenile defendant’s motion to suppress evidence obtained from a search of his backpack based on consent. An officer saw defendant sitting on a sidewalk, around 8:00 a.m., and asked for his name and whether he should be in school. Defendant provided his name but appeared nervous and kept putting his hands in his pockets. The officer conducted a pat-down search (which was not challenged on appeal) and then asked to look in defendant’s backpack, to which defendant replied, “sure.” On appeal, defendant argued that once the officer confirmed his suspicion that defendant should have been in school, additional reasonable suspicion was required for the officer to request consent to search his backpack. The Court of Appeals disagreed, concluding that both the initial encounter between defendant and the officer and the search of defendant’s backpack were consensual. The court reiterated that an officer may approach individuals on the street and “pose questions, ask for identification, and request consent to search” without violating the Fourth Amendment. Reasonable suspicion is required only when the encounter loses its consensual nature.

In the Matter of S.D.R., 191 N.C. App. 552, 664 S.E.2d 414 (2008). An officer had reasonable suspicion that criminal activity was afoot to justify an investigatory seizure that occurred when the officer was investigating an alleged larceny of missing cash and observed the juvenile trying to swallow something green. The officer asked the juvenile to open his mouth and put his hand on the juvenile's chin to prevent him from swallowing the object, which turned out to be money.

Anonymous Tips

In the Matter of A.J. M.-B., 212 N.C. App. 586, 713 S.E.2d 104 (2011). An anonymous tip - that two juveniles were walking with a gun - did not provide reasonable suspicion for an investigatory stop where no evidence corroborated the tipster's knowledge of concealed criminal activity. The anonymous call was "two juveniles in Charlie district . . . walking, supposedly with a shotgun or a rifle in an open field behind a residence." An officer who went to the field to investigate saw two juveniles, neither carrying firearms, who ran when he called out to them. The court of appeals held that the juvenile's detention and arrest were not justified. The court reversed the juvenile's adjudication for resisting a public officer.

Scope of Terry Frisk

In the Matter of D.B., 214 N.C. App. 489, 714 S.E.2d 522 (2011). Evidence of the stolen credit card seized from the juvenile should have been excluded because the search pursuant to which the officer found it exceeded the permissible scope of a *Terry* frisk and was unconstitutional. After discovery of a break-in and theft at a golf club, an officer stopped and frisked the juvenile based on a description given by a witness who reported seeing someone running from the golf course. The juvenile refused to identify himself or respond when asked whether he had identification. The officer felt something in the juvenile's shirt pocket and, thinking it could be an identification card, removed it. The object was a credit card that had been reported stolen. The juvenile was adjudicated on three charges: (i) felony breaking and entering; (ii) felony larceny pursuant to breaking and entering; and (iii) misdemeanor possession of stolen property. The Court of Appeals held that "[s]ince an identification card is not a weapon or contraband, . . . [the officer's] removal of the RBC Centura Visa card from the juvenile's pocket exceeded the scope of a *Terry* frisk." A frisk is for protective purposes and is limited to determining whether the person has a weapon. If a proper frisk necessarily reveals evidence of a crime or contraband, the officer may seize it. Here the "stop and frisk" was legal, but discovery of the credit card resulted from an impermissible search. Conducting a warrantless search solely to discover a person's identity is not permitted.

Searches

In the Matter of V.C.R., __ N.C. App. __, 742 S.E.2d 566 (2013). Although an officer had reasonable suspicion to stop a juvenile, the officer's subsequent conduct of ordering the juvenile to empty her pockets constituted a search and this search was illegal because it was without probable cause, was not incident to an arrest, nor was it consensual. The court rejected the trial court's finding that the search was consensual, because the juvenile's production of the

contraband was in response to the officer's command and not a voluntary action. The district court thus erred by denying the juvenile's motion to suppress.

School Searches (Reasonableness Standard)

In the Matter of T.A.S., 366 N.C. 269, 732 S.E.2d 575 (2012), **vacating and remanding**, 213 N.C. App. 273, 713 S.E.2d 211 (2011). The NC Supreme Court vacated the Court of Appeals decision that the trial court erred when it denied the juvenile's motion to suppress evidence of drugs, and remanded for additional findings of fact by the trial court. In July, 2011, the Court of Appeals reversed the delinquency adjudication of a juvenile on whom drugs were found in the course of a school-wide search at an alternative school. [*In re T.A.S.*, 213 N.C. App. 273, 713 S.E.2d 211 (2011).] The court held that requiring all female students to do a "bra-lift" as part of a school-wide search for drugs was constitutionally unreasonable where there was no individualized suspicion and no indication of imminent danger. One judge dissented on the bases that (i) attendance at an alternative school results in a diminished privacy interest; (ii) the search involved minimal intrusion; (iii) the governmental interest was important and immediate; and (iv) the search was an effective means of addressing the government's concern. In its October 5, 2012, decision, the Supreme Court vacated the opinion of the court of appeals and remanded to that court for further remand to the trial court. The court ordered the trial court to make additional findings that include: (1) the names, occupations, genders, and involvement of everyone who was physically present at the "bra lift" search of the juvenile; (2) whether the juvenile was advised before the search of the school's "no penalty" policy; and (3) whether the "bra lift" search of the juvenile qualified as a "more intrusive" search under the school's Safe School Plan.

In the Matter of D.L.D., 203 N.C. App. 434, 694 S.E.2d 395 (2010). The search of a student by an outside LEO was reasonable under *New Jersey v. T.L.O.* where the LEO and the Principal witnessed suspicious activity on a school surveillance camera and investigated the incident together in an effort to maintain a safe and educational environment. With regard to searches by a LEO at school, North Carolina has adopted the *T.L.O.* reasonableness standard, which applies when a school official initiates the search or law enforcement involvement is minimal – i.e., the officer acts in conjunction with a school official, or an SRO conducts the search based on his own investigation or at the direction of a school official, in furtherance of well-established education and safety goals. The traditional probable cause requirement applies when the search is conducted (i) by outside LEO's as part of an independent investigation or (ii) by school officials, at the request or behest of outside LEO's. In this case, the LEO was acting in conjunction with and at the direction of a school administrator to maintain a safe and educational environment at the school, so the reasonableness standard applied. The search was "justified at its inception" because there was reasonable cause to suspect that it would reveal illegal substances. The search was not unnecessarily intrusive in light of the juvenile's age and gender and the nature of the offense.

Secure Custody

Credit for Time Served

In the Matter of D.L.H., 364 N.C. 214, 694 S.E.2d 753 (2010), reversing in part, 198 N.C. App. 286, 679 S.E.2d 449 (2009). The court reversed the decision of the Court of Appeals which held that juveniles are entitled to credit for time spent in secure custody prior to disposition under G.S. 15-196.1. Pursuant to G.S. 7B-1903(c), the juvenile spent 55 days in secure custody awaiting disposition. Then, as part of the disposition, the court ordered that she spend 14 days in detention. The trial court rejected the juvenile's argument that she was entitled to credit for the days she was in secure custody pending the disposition. The Court of Appeals reversed, holding that G.S. 15-196.1 applied and required that she be given credit for the time spent in custody pending disposition. The Supreme Court reversed, concluding that when days of intermittent confinement are ordered at disposition, a juvenile is not entitled to credit for time spent in secure custody pending disposition. G.S. 15-196.1, relating to credit for time served in criminal cases, does not apply to juvenile proceedings. The absence of any similar provision in the Juvenile Code, together with the legislative intent to provide courts a broad range of alternatives in juvenile proceedings, reflects the legislature's intention that this criminal statute not apply to juveniles.

Custody Review Hearings

In the Matter of D.L.H., 198 N.C. App. 286, 679 S.E.2d 449 (2009), rev'd on other grounds, 364 N.C. 214, 694 S.E.2d 753 (2010). The trial court erred in refusing to consider the juvenile's motion for release from secure custody and by failing to entertain the juvenile's motion for a custody review hearing on the ground that the judge did not have the authority to modify the order of another judge. G.S. 7B-1906(b), relating to periodic hearings to determine the need for continued secure custody, applies to secure custody that is ordered pending disposition pursuant to G.S. 7B-1903. While in detention pending disposition, the juvenile was entitled to a hearing at least every 10 calendar days unless she waived the hearing or was released.

Secure Custody Order

In the Matter of Z.T.W., __ N.C. App. __, 767 S.E.2d 660 (2014). The trial court did not err by ordering, under G.S. 7B-1903(c), that the juvenile be held in secure custody pending his transfer to an out of home placement. (1) G.S. 7B-1906(g), which requires a written order with appropriate findings of fact regarding the evidence relied upon and the purposes for continued custody, applies to secure custody following an initial accusation of delinquency, rather than when the trial court orders secure custody pending disposition or pending an out-of-home placement under G.S. 7B-1903(c). (2) There was ample justification for the court's decision to place the juvenile in secure custody pending his out-of-home placement, including the juvenile court counselor's recommendation, which was based on the juvenile's school suspensions, anger-related difficulties, and disobedience at home, as well as the testimony of the juvenile, the juvenile's mother, and a school resource officer.

Secure Custody

Secure Custody Pending Disposition

In the Matter of D.L.H., 198 N.C. App. 286, 679 S.E.2d 449 (2009), rev'd on other grounds, 364 N.C. 214, 694 S.E.2d 753 (2010). After the juvenile admitted the alleged violations of probation, the trial court had authority under G.S. 7B-1903(c) to order the juvenile to be in detention pending the disposition, because the juvenile had been adjudicated delinquent, the juvenile admitted probation violations, and the court had good cause (determination of whether out-of-home placement was appropriate) to continue the dispositional hearing.

Transfer

Appeal of Transfer Order

In the Matter of E.S., 191 N.C. App. 568, 663 S.E.2d 475, disc. rev. denied, 362 N.C. 681 (2008). The superior court erred in its order reversing the district court's transfer decision because it engaged in a *de novo* review of the evidence presented at the transfer hearing when, pursuant to G.S. 7B-2603, it was limited to reviewing whether the district court abused its discretion in transferring the case. Petitions alleged the 15-year-old was delinquent for committing first degree rape, first degree kidnapping, felony breaking and entering, and common law conspiracy to commit first degree rape. After finding probable cause the trial court heard testimony from a Department of Juvenile Justice and Delinquency Prevention supervisor, who recommended transfer, and from a former director of a juvenile sex offender treatment program, who believed resources in the juvenile system were available to treat and sanction the juvenile. The trial court's order stated that transfer was necessary to protect the public, that the court had considered the factors in G.S. 7B-2203(b), and that the case should be transferred because the juvenile would be 16 in three months, a co-defendant was charged as an adult, the juvenile had above average cognitive abilities, the offense was aggressive, violent, and premeditated, and the protection of the public required transfer. The juvenile appealed, and the superior court found that the trial court had abused its discretion in transferring the case, citing evidence that the juvenile had no prior record, that he would benefit from treatment and services in the juvenile system, and that he resided in a stable home with supportive parents. The Court of Appeals held the superior court applied the wrong standard of review, giving some evidence more weight than the district court had and, in effect, substituting its judgment for that of the district court.