

Juvenile Delinquency Update

2017 FALL DISTRICT COURT JUDGES CONFERENCE
ASSISTANT PROFESSOR LATOYA POWELL

Recent Appellate Decisions

State v. Saldierna

- 16 y.o., Spanish-speaking juvenile with 8th Grade education
- He could write in English but struggled to read or understand it as spoken
- Interrogated at police station following arrest
- LEO gave him *Miranda* waivers in English and Spanish
- But, LEO read only the English version
- Juvenile signed & initialed the English version
- He then asked "Um, can I call my mom?"
- LEO gave him a cell phone but he did not reach his mother
- LEO resumed the interrogation, and then he confessed
- Trial court denied juvenile's Motion to Suppress

State v. Saldierna

July 2015

- NC COA reversed
- LEO's failed to clarify juvenile's "ambiguous" invocation of rights

December 2016

- NC SCT reversed COA decision
- Invocation of juvenile rights must be "unambiguous"
- LEO's not required to clarify ambiguous statements

State v. Saldierna (NC SCT 2016)

- ▶ Rights under G.S. 7B-2101 are analogous to *Miranda* rights
 - ▶ Invocation of *Miranda* rights must be "unambiguous" and officers have no duty to clarify a juvenile's ambiguous request. *Davis v. U.S.* (1994)
- ▶ *Miranda* framework applies to juvenile rights under G.S. 7B-2101(a)
- ▶ Reversed and remanded to COA to review juvenile's *waiver of rights*
- ▶ **Dissenting Opinion** - Majority opinion inconsistent with *J.D.B. v. NC* and "greater protection" provided by G.S. 7B-2101

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July 2017

- NC COA reversed (again)
- Juvenile's waiver of rights was involuntary

State v. Saldierna (NC COA 2017)

- ▶ Juvenile's waiver of rights was not **knowingly, willingly, and understandingly** made as required by G.S. 7B-2101(d)
- ▶ Voluntaryness depends on totality of the circumstances
 - No evidence of prior experience with law enforcement
 - Due to his age, intellectual functioning, and language barriers, he likely did not understand his rights
 - Thus, he could not voluntarily waive them
 - And, juvenile's request to call mom after signing a waiver showed his uncertainty
- ▶ "To be valid, a waiver should be voluntary, not just on its face, *i.e.*, the paper it is written on, but in fact."

State v. Watson



- ▶ 16 y.o. juvenile verbally waived rights but initialed box on waiver of rights form indicating that mom was present.
- ▶ **Held:** Affirmed
 - ▶ Clerical error on the waiver of rights form did not constitute an invocation of defendant's juvenile rights.
 - ▶ Evidence supported trial court's finding that this was a clerical mistake.

In re T.K.

- School fight case (juvenile was not the aggressor)
- Adjudicated delinquent for Disorderly Conduct for using "profanity"
- Petition was not signed by a JCC or marked as "Approved for Filing" as required by G.S. 7B-1703(b)
- **Held:** Vacated and Dismissed for lack of subject-matter jurisdiction



Is D.E.P. consistent with V.M.?

- ▶ *In re V.M.* (2011) – “We have previously held that trial court must make findings referencing G.S. 7B-2501(c).”
 1. Seriousness of the offense
 2. Need to hold juvenile accountable
 3. Importance of protecting public
 4. Juvenile’s degree of culpability
 5. Juvenile’s rehabilitative and treatment needs
- ▶ *In re D.E.P.* (2017) – Court said it *clarified* but did not overrule *V.M.*
- ▶ **Note:** If a conflict exists, earlier precedent controls. *In re Appeal from Civil Penalty*

In re S.A.A.

- ▶ 13-year-old adjudicated delinquent for sexual battery based on Halloween night incident involving “glow gloves”
- ▶ Two 11-year-old girls accused juvenile of touching their “boobs”
- ▶ **Held:** Vacated and remanded
 - With children, sexual purpose element may not be inferred from the act itself
 - Requires “evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting”
 - Such evidence did not exist in this case



Juvenile Justice Reinvestment Act

S.L. 2017-57



Juvenile Age Increase

Effective Dec. 1, 2019

- New definition of "delinquent juvenile" includes 16 and 17-year-olds who commit crimes, infractions, or indirect contempt by a juvenile, but **excludes motor vehicle offenses**
- Also excludes juveniles who:
 1. are 18 and older;
 2. have been transferred to and convicted in superior court; and
 3. have been **convicted of a felony or misdemeanor, including motor vehicle offenses, in district or superior court**

Motor Vehicle Exclusion

"Motor vehicle offense" is currently undefined.

- ▶ Likely applies only to prior Motor Vehicle Act (G.S. Ch. 20) offenses
 - i.e., DWI, DWLR, Cell phone use by minor, reckless driving, speeding
- ▶ Unclear whether it applies to other motor vehicle offenses
 - Unauthorized use of a MV (G.S. 14-72.2)
 - Breaking and entering of a MV (G.S. 14-56)
 - Maintaining a vehicle for use or sale of CS (G.S. 90-108(a)(7))

Maximum Age of Jurisdiction

Effective Dec. 1, 2019

- For 16-year-olds, until age 19
- For 17-year-olds, until age 20

Beyond maximum age of jurisdiction,

- Court has **indefinite jurisdiction** over felonies and related misdemeanors to either transfer the case to superior court or dismiss the petition

Expedited Transfer for 16 & 17 y.o.

Effective Dec. 1, 2019

- For Class A-G felonies, transfer is mandatory upon:
 - notice of an indictment, or
 - a finding of probable cause after notice and a hearing
- For Class H or I felonies, transfer requires a transfer hearing

Indictment by Prosecutor

Potential Questions

- ▶ Does 15-day deadline in G.S. 7B-2202 apply?
 - Note that a PC hearing may be continued for "good cause"
- ▶ Does indictment process impact juvenile court counselor's role?
 - JCC's must still complete intake
 - Can still divert felonies (unless non-divertible under G.S. 7B-1701)
- ▶ What about confinement?
 - 16 & 17 y.o. must be detained in juvenile facilities pending conviction
 - G.S. 7B-2204

Juvenile Gang Suppression

Effective Dec. 1, 2019

- JCC's must begin conducting gang assessments during intake
 - G.S. 7B-1702
- Results of the gang assessment become part of JCC's record
 - G.S. 7B-3001(a)
- New G.S. 7B-2508.1 defines "*criminal gang*," "*criminal gang activity*," & "*criminal gang member*"
- **Gang Crime Disposition Enhancement** (New G.S. 7B-2508(g1))
 - **Requires** enhancement of juvenile's disposition level, if court finds offense was committed as part of criminal gang activity

Gang Enhancement

Potential Questions

- ▶ New G.S. 7B-2508(g1) does not set forth:
 - Method of proof?
 - Burden of proof?
- ▶ Compare to G.S. 7B-2507(f) ("proof of prior adjudications")
 - Requires proof by a "preponderance of the evidence"
 - Specifies acceptable methods of proof:
 - Stipulation of the parties
 - Original or copy of court records
 - Copy of DPS or DJJ records
 - Any other method deemed reliable by court

Greater Protections for Victims

Effective Oct. 1, 2017

Victims

- Must be notified of petition filing decision, reasons for the decision, and whether matter was closed, diverted, or retained;
- Must be notified of right to have prosecutor review filing decision under amended G.S. 7B-1704 and G.S. 7B-1705; and
- Under new G.S. 143B-806(b)(14a), DJJ must develop system for informing victims about status of pending complaints and right to review the filing decision.

Greater LEO Access to Information

Effective Oct. 1, 2017

- DJJ must begin tracking "**consultations with law enforcement**" that do not result in the filing of a petition per amended 7B-3001(a)
- Court Counselors must share info. with LEO's related to:
 - Juvenile's delinquency record & consultations with LEO's;
 - When requested for the purpose of assisting LEO's during the investigation of an incident that could lead to the filing of a complaint
- **Certain Limitations Apply:**
 - LEO's may not obtain records from JCC's
 - LEO's must maintain confidentiality of any information shared

Jwise Access

Effective July 1, 2017

- By July 1, 2018, AOC must expand access to Jwise to include prosecutors and juvenile defense attorneys
- Access is limited to records related to juvenile delinquency proceedings
- AOC must also develop statewide inquiry access for Jwise users

School-Justice Partnerships

Effective July 1, 2017

- New G.S. 7A-343(9g) authorizes statewide implementation of school-justice partnerships by AOC Director
- To be established by chief district court judges in collaboration with local law enforcement agencies and school officials
- Purpose is to reduce in-school arrests, out-of-school suspensions, and expulsions

Training for Law Enforcement

Effective July 1, 2017

- New juvenile justice training is required for both entry-level LEO's and veterans
- To be developed by NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs' Education and Training Standards Commission in conjunction with DACJJ

Juvenile Jurisdiction Advisory Committee

Effective July 1, 2017

- 21-member committee within DACJJ will study and plan for the implementation
- Appointments were due by October 1, 2017
- Interim report due to the General Assembly by March 1, 2018
- Final report due by January 15, 2023

"New" Juvenile Justice Section

Effective December 1, 2017

- ▶ New G.S. 143B-630 establishes the Division of Adult Correction and Juvenile Justice (DACJJ) within the Department of Public Safety
- ▶ New G.S. 143B-800 establishes the Juvenile Justice Section within DACJJ to exercise the powers and duties previously performed by the Division of Juvenile Justice
- ▶ Conforming changes throughout the General Statutes were made to reflect the official name change

Questions?

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