

Delinquency Case Update

District Court Judges
May 19, 2020



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Who is notorious for throwing a chair at a college basketball game?

Bobby Hurley

Bobby Knight

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Did the juvenile perpetrate an annoying, disturbing, or alarming act exceeding the bounds of social toleration normal for his high school through a public disturbance by engaging in violent conduct?

In the Matter of T.T.E.,
372 N.C. 413 (2019)

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In the Matter of J.D., 832 S.E.2d 484

First-degree forcible sexual offense

- Did this meet the requirement that Jeremy engaged in a sexual act (by force and against the will of Zane)? G.S. 14-27.26
- A sexual act requires penetration, however slight G.S. 14-27.20(4)

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In the Matter of J.D., 832 S.E.2d 484

Totality of evidence, including substantial evidence of penetration, with ambiguous statement by victim is sufficient to find penetration did occur.
State v. Sprouse, 217 N.C. App. 230, 237 (2011)

Does that describe these facts?

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Do you think the motion to dismiss the charge of first-degree forcible sexual offense should have been granted?

Yes

No

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**In the Matter of J.D.,
832 S.E.2d 484**

Right of confrontation

- Recorded interview with each cousin was offered into evidence by the State without objection
- Prosecutor used these statements in closing
- Both cousins said that they thought the boys were having sex (and that it was consensual)
- Was this additional evidence of penetration prejudicial to Jeremy's defense?

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**In the Matter of J.D.,
832 S.E.2d 484**

Second-degree sexual exploitation of a minor

"[T]he common thread running through the conduct statutorily defined as second-degree sexual offense [is] that *the defendant [took] an active role in the production or distribution of child pornography*

State v. Fletcher, 370 N.C. 313, 321 (2017)

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**In the Matter of J.D.,
832 S.E.2d 484**

Concerted action principle: "[h]e is present at the scene of the crime and the evidence is sufficient to show he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime."

State v. Joyner, 297 N.C. 349 (1979)

Do these facts show a common plan or purpose?

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Do you think the motion to dismiss the charge of second-degree sexual exploitation of a minor should have been granted?

Yes

No

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**In the Matter of J.D.,
832 S.E.2d 484**

Factual basis for admission to attempted larceny

Must have taken affirmative steps, without success, to take another's property with no intent to return it

State v. Weaver, 123 N.C. App. 276, 287 (1996)

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**In the Matter of J.D.,
832 S.E.2d 484**

Facts at trial:

- Bike was stolen by 2 black males
- Jeremy is a black male
- Jeremy was later found biking with two others who also matched the description
- Described by prosecutor as "off on his own" from the other 2
- Only Jeremy stopped when police asked them to stop
- Told officers he didn't steal the bike, that he knew who did, and that he had bolt cutters in his back pack
- Unclear where or from whom the bike was recovered
- Defense counsel and Jeremy's parents all stated that Jeremy was present with the bike was stolen

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Do you think there was a sufficient factual basis for the admission to attempted larceny?

Yes

No

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**In the Matter of J.D.,
832 S.E.2d 484**

Dispositional Order

G.S. 7B-2501(c): the court shall select a disposition ... based upon:

- (1) The seriousness of the offense;
- (2) The need to hold the juvenile accountable;
- (3) The importance of protecting the public safety;
- (4) The degree of culpability indicated by the circumstances of the particular case; and
- (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment

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**In the Matter of J.D.,
832 S.E.2d 484**

- Report based on assessment by the Children’s Hope Alliance found low to moderate risk factors for sexually harmful behaviors
 - Stable home life with close and supportive relationships
 - No DSS history or prior experiences of abuse
- JCC risk assessment was low/moderate
- JCC recommended a level 2 disposition

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**In the Matter of J.D.,
832 S.E.2d 484**

- Court found that
 - Jeremy requires personal accountability and requires more structure;
 - low short-term regulation level;
 - YDC will protect public and provide opportunity to mature regarding opportunistic and impulsive behavior;
 - order notes no sex-specific individual or group therapy at YDC so will complete that treatment during post-release supervision

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**In the Matter of J.D.,
832 S.E.2d 484**

Confinement pending appeal

§ 7B-2605. Disposition pending appeal.

Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.

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**In the Matter of J.D.,
832 S.E.2d 484**

- Compelling reasons release is denied on Appellate Entries form was blank
- Court order with findings of fact and conclusions of law contained statements by prosecutor and defense
- No independent compelling reasons provided

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Do you think there were sufficient findings of compelling reasons to order custody pending appeal?

Yes

No

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Notwithstanding a party's failure to object at trial, the trial court's violation of a statutory mandate is reversible error, reviewed *de novo* on appeal.

In re E.M., ___ N.C. App. ___, ___, 823 S.E.2d 674, 676, *disc. review denied*, ___ N.C. ___, ___ S.E.2d ___ (2019).

In the Matter of E.A., 833 S.E.2d 630

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Does the existence of a report from a psychological evaluation prior to disposition automatically meet the requirements of E.M.?

Yes

No

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In the Matter of E.A., 833 S.E.2d 630

- Motion for review on probation violation
- Predisposition report with clinical assessment completed by Haven House
- Conduct disorder with clinically significant impairment
- Intensive outpatient services
- Substance abuse treatment
- Additional mental health assessment and treatment

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In the Matter of E.A., 833 S.E.2d 630

Prior to disposition the court may order a psychological exam..."[W]hen presented with evidence that the juvenile is mentally ill, the trial court is **required** to take further action"

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In the Matter of E.A., 833 S.E.2d 630

§ 7B-2502 (c)

If the court believes, or if there is evidence presented to the effect that the juvenile has a mental illness or a developmental disability, the court **shall** refer the juvenile **to the area mental health, developmental disabilities, and substance abuse services director** for appropriate action... The area mental health, developmental disabilities, and substance abuse director is responsible for **arranging an interdisciplinary evaluation** of the juvenile **and mobilizing resources** to meet the juvenile's needs.

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In the Matter of E.A., 833 S.E.2d 630

“Pursuant to N.C. Gen. Stat. § 7B-2502, the trial court’s failure to refer Evan to the area mental health services director constitutes reversible error.”

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In the Matter of H.D.H., 839 S.E.2d 65

Findings necessary to support probation extension
 § 7B-2510(c)
 “the court may extend it for an additional period of one year after notice and a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile”

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In the Matter of H.D.H., 839 S.E.2d 65

- Trial court made no findings of fact or conclusions of law in the order
- Reversed and remanded
- Correct form: AOC-J-481 Juvenile Order on Motion for Review (other than violation)

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Does a Class H felony charge transfer without a finding of probable cause if an indictment is returned on a Class D charge arising out the same event or series of events constituting a single scheme or plan?

Yes

No

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Raise the Age Tips

“When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony.”
 G.S. 7B-2203(c)

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Raise the Age Tips

Conditions of pretrial release should be determined after signing transfer order

G.S. §7B-2204

AOC-CR-922

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Does your jurisdiction have a functioning process in place for juveniles housed in detention to post bond following transfer?

Yes

No

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Raise the Age Tips

- Knowing violation of a valid protective order is a Class A1 misdemeanor
- Secure custody orders governed by G.S. 7B-1903
 - Misdemeanors require demonstrated danger to persons and charged with assault or use, threatened use, or display of a firearm or other deadly weapon

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Contact Information

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