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Juvenile Interrogation

In the Matter of D.A.H., 2021-NCCOA-135 (April 20,2021)

Held: Reversed and remanded

- Facts: A student was suspected of possessing marijuana on the school bus. That student told the principal and the school resource officer (SRO) that another student, Deacon, had sold the marijuana to him. Deacon was absent from school the following two days. The day he returned to school he was summoned to the principal's office. The principal and the SRO sat together across from Deacon and the principal questioned Deacon. The SRO testified to three slightly different variations of the conversation between the principal and Deacon, all of which culminated in Deacon stating that he sold the other student marijuana. The principal first reached out to Deacon's guardian after he confessed. She came to the school and Deacon repeated his confession to her. Deacon was never read his *Miranda* rights, told he did not have to answer the questions, nor told that he was free to leave. During adjudication the juvenile argued that his confession was obtained in violation of his *Miranda* rights and the court concluded that Deacon was not entitled to *Miranda* warnings because the meeting with the principal was not a custodial interrogation. Deacon was adjudicated delinquent for the sale and delivery of marijuana.

- Opinion: The schoolhouse setting presents unique considerations regarding the *Miranda* rights of children as *Miranda* only applies to interrogations conducted in concert with or by law enforcement and because children shed some of their freedom of action when they enter the schoolhouse. A child is only under custodial interrogation in a school when that child is "subjected to additional restraints beyond those generally imposed during school." Slip op. at ¶ 21. Increased collaboration between educators and law enforcement cannot lead to a situation where *Miranda* warnings are not required because a student is on school property. Circumstances where the SRO is present for questioning by school officials and the SRO does not participate in the questioning or the SRO participates minimally can qualify as custodial interrogations where *Miranda* warnings are required. The presence of an SRO can create a coercive environment that goes beyond the restrictions normally imposed during school such that a reasonable student would readily believe they are not free to leave.

  While law enforcement presence weighs heavily on the scale of a determination of whether an encounter is a custodial interrogation, it is not dispositive and all the remaining *Miranda* factors related to custody and interrogation must be considered.

  Custody: The court laid out several factors that are most relevant in determining whether a juvenile is in custody on the context of a schoolhouse interview. Those factors include:
  (1) traditional indicia of arrest;
  (2) the location of the interview;
  (3) the length of the interview;
  (4) the student's age;
  (5) what the student is told about the interview;
  (6) the people present during the interview; and,
  (7) the purposes of the questioning. ¶ 43.

Interrogation: the court identified the following factors as most relevant in the determination of whether an encounter constitutes an interrogation in the schoolhouse setting:
(1) the nature of the questions asked (interrogative or mandatory);
(2) the willingness of the juvenile's responses; and,
(3) the extent of the SRO's involvement. ¶ 53.

No single factor is controlling and the inquiry is whether the totality of the circumstances surrounding the questioning constitute custody.

The court then applied these factors to its analysis of the questioning of Deacon and found that the circumstances did amount to a custodial interrogation and the trial court therefore wrongly denied the motion to suppress Deacon's confession. The court found that a reasonable 13-year-old would not have felt free to end the interview and leave, "given the location of the interview, what Deacon could have known about the interview before it began, the people present during the interview, and the investigatory purpose of the interview." ¶59.

The court also noted that the trial court applied the wrong legal standard in its analysis of the issue. The trial court based its decision on assumed familiarity between the student and the SRO—that this was not "some strange officer in uniform." ¶70. The court noted that the *Miranda* test is objective and not subjective in nature. The focus is whether a reasonable 13-year-old would have felt free to end the interrogation under the circumstances. The case was reversed and remanded because the trial court erred in denying the motion to suppress after wrongly concluding that the questioning of Deacon was not a custodial interrogation.

In the Matter of J.D.F., 2021-NCCOA-300 (July 6,2021)

Held: No Error in Part; Remand

- Facts: James, the 13-year-old juvenile, resided with his aunt, her partner, and their child (his cousin), 9-year-old Mason. The aunt told the police that Mason reported that he had been the victim of sexual assault. When interviewed by the police, Mason said that his cousin James asked Mason to perform oral sex on him. Several days later, the aunt's partner drove James to the County Sheriff's Department where he was questioned about the allegation.
  The questioning occurred in an interview room within the Sheriff's Department. The room had an exterior sign to indicate when an interview is taking place, a window to allow for outside observation, and video equipment. The video equipment was used to record the interview.
  James, a detective, and the aunt's partner were present in the room for the interview. James was never given *Miranda* warnings. The detective told James several times that he would go home with the aunt's partner regardless of what he said. James was not restrained at any time. About 30 minutes into the interview, the detective told James that he was giving him his last opportunity to tell the truth and James then admitted to sexual contact with Mason. James then wrote and signed a statement and indicated that the statement was voluntary.
  James filed a motion to suppress the statement and the trial court found that his statement was knowing and voluntary and that he was not in custody at the time. James entered an *Alford* plea solely due to the denial of the motion to suppress.

- Opinion:
  Custody
  The trial court's determination that James was not in custody was likely proper, given that he was not restrained during the interview, was not searched, the interview lasted approximately 50 minutes, he was not transported in a law enforcement vehicle, and he was told multiple times he would be going home at the end of the interview. Under a standard totality of the circumstances test, when these facts are weighed against the facts that the interview occurred in an interrogation room within a Sheriff's Department, was recorded, and was conducted by an armed detective, a conclusion that James was not in custody would be supported. However, the totality of the circumstances test for a juvenile must include consideration of the juvenile's age. The passing mention of James's age was not sufficient to say that the trial court properly considered James's age when applying the totality of the circumstances test. The trial court erred in concluding that James was not in custody and the case is remanded for a new suppression hearing with instructions to consider James's age.
  Voluntariness
  The court found that James knew and understood the action he was taking despite his inexperience because he indicated on his signed confession that his statement was given voluntarily. Statements that "I just believe you're not telling me the whole truth, and I think you're holding back . . ." and "I'm giving you an opportunity, and it's your last opportunity, and I'm telling you that this is your last opportunity to be truthful" do not rise to the level of coercion and do not render the subsequent confession involuntary. The trial court did not err by finding that the confession was voluntary.

Mandate to Refer to the Area Mental Health Services Director Before Disposition

In the Matter of K.M., 2021-NCCOA-3 (February 2,2021)

Held: Vacated and remanded

- Facts: The juvenile was first placed at a YDC and then at a Level III group home following adjudications for first-degree statutory sex offense and second-degree forcible sex offense. A motion for review "to review community commitment status" was filed seven months later and a review hearing was held. A representative of the Department of Juvenile Justice (DJJ) testified to problems that the juvenile had related to an in-school suspension, an MP3 player with inappropriate sexual content, possession of vaping paraphernalia, and failure to be at a specified meeting spot after school on two occasions. The DJJ report recommended removal from the community placement and return to the YDC. The trial court reviewed a risk and needs assessment, a report from the Level III placement provider which included an addendum from a therapist, and a report from Rehabilitative Support Services (a provider for Alliance Health, the local management entity) regarding an assessment that had been completed six days prior to the hearing. The trial court also heard testimony from the juvenile's social worker, a staff member from the Level III group home, and the juvenile's mother. The court then revoked the juvenile's community commitment and ordered him to return to the YDC.

- Opinion: The trial court erred by entering a new dispositional order without first referring the juvenile to the area mental health services director as required by G.S. 7B-2502(c). The statute

requires the trial court to refer the juvenile to the area mental health services director for appropriate action when faced with any amount of evidence that a juvenile is mentally ill. This is true regardless of whether the juvenile has received mental health services prior to the disposition. In this case, evidence was presented to the court establishing the juvenile's mental health issues. The evidence required the court to refer the juvenile to the area mental health services director rather than revoke the juvenile's community status and return him to the YDC. Failure to make the statutorily required referral was error.

In the Matter of S.M., Jr., 2021-NCCOA-156 (April 20, 2021) (UNPUBLISHED)

Held: Vacated and remanded (this case has been temporarily stayed)

- Facts: The court entered a dispositional order, committing the juvenile to the YDC. Prior to disposition, the court reviewed a predisposition report which indicated that the juvenile needed substance abuse treatment and a mental health assessment. The court was also provided a comprehensive clinical assessment (CCA). The CCA was conducted by the Thompson Juvenile Court Assessment Program. The CCA diagnosed the juvenile with unspecified disruptive, impulse-control, and conduct disorder; other specified trauma-and stressor-related disorder; and mild cannabis use disorder. The court did not refer the juvenile to the area mental health services director pursuant to G.S. 7B-2502(c).
- Opinion: The trial court was presented with sufficient evidence of the juvenile's mental illness to trigger its statutory duty to make a referral to the area mental health service director pursuant to G.S. 7B-2502(c). Although the court had the recommendations from the CCA prior to entering disposition, the purpose of G.S.7B-2502(c) was not fulfilled. Obtaining significant mental health services prior to disposition is not sufficient to satisfy the statutory duty of the trial court to refer the juvenile for an interdisciplinary evaluation. The statute envisions involvement by the area mental health services director in the disposition and responsibility for arranging for an interdisciplinary evaluation and mobilizing of resources for the juvenile. The juvenile in this case did not receive the benefit of the area director's recommendation and involvement in the disposition. The failure of the court to refer the juvenile for an interdisciplinary evaluation was prejudicial to the juvenile because the predisposition report was completed after the CCA was received and eight days before the disposition and commitment order was entered. The predisposition report stated that additional assessment and treatment were necessary. The trial court erred in failing to refer the juvenile to the area mental health services director after it was presented with evidence of the juvenile's mental illness. The disposition is vacated and the case is remanded for a new dispositional hearing.

Colloquy Required Prior to Accepting an Admission, Adjudication Order, Disposition Order

In the Matter of W.M.C.M., 2021-NCCOA-139 (April 20,2021)

Held: Affirmed

- Facts: The juvenile, Walter, was adjudicated delinquent for felony breaking and entering and breaking and entering a motor vehicle after making admissions to both offenses. During the colloquy prior to making the admission, the judge asked Walter, "[y]ou also understand you have the right to ask witnesses questions during a hearing? Walter replied "yes." The adjudication was entered on an Arraignment Order and Transcript of Admission by Juvenile form. The court wrote "based upon the juvenile's admission and the evidence presented by the DA, the court finds beyond a reasonable doubt that the juvenile is adjudicated delinquent." The court subsequently committed Walter to the YDC and detailed Walter's delinquency, history of criminal acts, and violent and aggressive behavior in the Disposition and Commitment order.
- Opinion:

  Delinquency Admission:

  Walter asserted that the warning required to be provided by the court per G.S. 7B-2407(a)(4), "Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;" was not provided prior to his admission. The court found that the court asked Walter the questions from Form AOC-J-410 nearly verbatim and that the trial court gave a broader explanation of his confrontation rights than the exact language in the statute. The statute does not require that the exact statutory language be used. Instead, it requires that the court "orally and clearly inform the juvenile of his rights." ¶ 24. Walter did not show any error, prejudice, or violation of his confrontation right.

  Walter's rights were protected by the court and his admission was knowing and voluntary. The court addressed all six prongs required by G.S. 7B-2407(a), broke down the language so Walter could better understand and respond affirmatively to each question, and fully informed him of his rights. Walter then expressly agreed to take the plea offer and admit responsibility and he signed the Form AOC-J-410.

  Reliance on non-persuasive authority:

  Walter relied on an unpublished opinion to assert that the adjudication order was insufficient. The nonbinding conclusion in an unpublished opinion does not impose a requirement for factual findings in adjudication orders.

  Adjudication Order:

  The court is not required to use the AOC form Adjudication Order. The court's order met all of the requirements of G.S. 7B-2411. It "was written, indicated the date of the offenses, the felony classification of the offenses, and the date of adjudication. The trial court's order contained factual findings including the juvenile's affirmative admission of responsibility to the charges of felony breaking and entering and felony breaking and entering of a motor vehicle." ¶ 35.

Disposition Order:

The trial court made findings of fact as required by G.S. 7B-2501(c), including naming the offenses that Walter admitted to and noting an escalation in ongoing criminal activity, checking box nine of the disposition order, referencing Walter's increasingly aggressive and assaultive behaviors towards himself and others, finding that the court made several attempts to work with Walter, noting an increase in violent behavior and flight despite effective interventions and placements, discussing additional time afforded to the juvenile prior to disposition to give him time to comply, listing Walter's admissions and AWOLs and placement and court dates, and referencing some progress as after recent service provision. The trial court also relied on 12 reports from organizations that has worked with Walter in the past. There was no abuse of discretion at disposition.

Dissent

The dissent disagreed with the conclusions that (1) the colloquy with the juvenile was adequate and (2) the adjudication order was sufficient. The dissent argued that the majority wrongly relied on *In re C.L.*, 217, N.C. App. 109 (2011), to accept a totality of the circumstances approach because the decision in that case was not based on the colloquy required by G.S. 7B-2407(a). The court should have imposed a strict compliance standard regarding G.S. 7B-2407(a), as required by *In re T.E.F.,* 359 N.C. 570 (2005) and *In re A.W.*, 182 N.C.App. 159 (2007). The language of G.S. 7B-2407(a)(4) requires the court to tell the juvenile that they have a right to be confronted by the witnesses against them. In this case, the court only told the juvenile that he had a right to ask the witnesses questions. The right of confrontation has two parts—the right to confront the witness face-to-face and the right to question them. Therefore, the court did not adequately fulfill the requirements of G.S. 7B-2407(a).

The dissent also argued that the adjudication order was insufficient in that it did not include that the allegation was proved beyond a reasonable doubt, as required by G.S. 7B-2411. The order stated only that the court found beyond a reasonable doubt that the juvenile is adjudicated delinquent. The case should have been remanded for the trial court to make the statutorily mandated findings.

In the Matter of N.L.G.., 2021-NCCOA-247 (June 1,2021) (UNPUBLISHED)

Held: Reversed and remanded

- Facts: The court accepted the juvenile's admission to disorderly conduct without making any of the inquiries required by G.S. 7B-2407.
- Opinion: The court's acceptance of the juvenile's admission without making any of the inquiries and statements required by G.S. 7B-2407 is reversible error.

Court's obligation to Protect Juvenile's Privilege Against Self-Incrimination

In the Matter of A.L.P., 2021-NCCOA-244 (June 1,2021) (UNPUBLISHED)

Held: Reversed and remanded

- Facts: The juvenile was charged with simple assault for pushing another juvenile onto a bench at a roller skating rink. The juvenile testified on his own behalf and the court did not provide any oral or written warnings to him before he testified. He was subsequently adjudicated delinquent.

- Opinion: G.S. 7B-2405(4) mandates that the court protect the right of the juvenile to assure the privilege against self-incrimination through use of the word "shall." The court's failure to engage in a colloquy with the juvenile to ensure that the juvenile understands this constitutional right is error. This error was prejudicial to the juvenile, as the prosecution relied on only one witness (the alleged victim), the juvenile admitted to pushing the other juvenile, and did not assert a defense related to the push. His testimony formed the basis of and corroborated the assault charge. The error was not harmless error beyond a reasonable doubt.

Sufficiency of Petition and Elements of Controlled Substance Offense

In the Matter of J.S.G., 2021-NCCOA-40 (March 2,2021)

Held: Vacated

- Facts: A student reported that the juvenile had given him Adderall. The juvenile stated that he had given the student an ibuprofen. A petition charging the juvenile with possession of a controlled substance with intent to deliver (G.S. 90-95(a)(1)) was filed. The petition stated that the juvenile delivered "1 orange pill believed/told to be Adderall[.]" Juvenile was adjudicated delinquent for possession with intent to manufacture, sell, or deliver a controlled substance and placed on probation under a level 1 disposition.

Opinion: Juvenile petitions serve essentially the same function as criminal indictments and are subject to the same requirement that they aver every element of a criminal offense, with sufficient specificity that clearly apprises the juvenile of the charged conduct. A fatally deficient petition fails to evoke the jurisdiction of the court. The offense of possession of a controlled substance with intent to manufacture, sell, or deliver has three elements: (1) possession of a substance; (2) the substance must be a controlled substance; and (3) there must be intent to sell or distribute the controlled substance. The petition cannot be based on a guess about whether the substance was a controlled substance or not. This petition only stated that the juvenile delivered something that was believed to be, and the State was told, was a controlled substance. The identification of the controlled substance is a crucial element of the offense. It is unclear whether a controlled substance was involved at all in this matter. The adjudication and disposition orders are vacated because the petition failed to properly allege the offense. The court also noted that, while additional issues raised on appeal do not need to be addressed, the lay testimony of the SRO regarding identification of the pill would not be competent evidence to identify the controlled substance. Expert witness testimony, based on a scientifically valid chemical analysis, is required to establish that a pill is a controlled substance.

Second-Degree Sexual Exploitation of a Minor, First-Degree Forcible Sexual Offense, Attempted Larceny

In the Matter of J.D., 376 N.C. 148 (2020)

Held: Affirmed in Part, Reversed in Part

- Facts: Zane, a guest at J.D.'s house for a sleepover, awoke to find his pants pulled down and J.D. behind him. J.D. also had his pants down and was engaged in a thrusting motion behind Zane. Zane testified that he believed someone was holding his legs and that he felt J.D.'s privates on his butt, although he did not feel penetration. Two other boys, Dan and Carl, were also present for the sleepover. Dan videotaped some of the incident on his phone. J.D. can be heard on the video telling Dan not to record the incident. At the end of the video, J.D. gives what may have been a thumbs up. The video was distributed by Dan to two others. J.D. was adjudicated delinquent for committing first-degree forcible sexual offense and second-degree sexual exploitation of a minor. Prior to disposition, J.D. admitted to attempted larceny of a bicycle in a separate incident. The trial court entered a Level 3 disposition, committing J.D. to a YDC.
- Second-degree sexual exploitation of a minor: The trial court erred as a matter of law by denying J.D.'s motion to dismiss the charge of second-degree sexual exploitation of a minor. There is agreement that the recording was made by Dan and not J.D. The state relied on the theory of acting in concert as to J.D.'s culpability. There was insufficient evidence as to a common plan or purpose between J.D. and Dan. The evidence tended to show that J.D. did not want to be recorded, as he told Dan he didn't want it recorded. If the hand gesture at the end of the video was a thumbs up, evidence of acting in concert requires more than mere approval. Adjudication for this charge is vacated.
- First-degree forcible sexual offense: This offense requires that the juvenile engaged in a sexual act with another person by force and against the will of the other person. A sexual act requires penetration, however slight. The victim unambiguously testified that penetration did not occur. The statements of the other children who were present and the video footage only suggest that penetration could have occurred. That is not enough to overcome the victim's testimony regarding lack of penetration. Following J.D.'s motion to dismiss, the state conceded that there was not evidence of penetration. The trial court erred in denying J.D.'s motion to dismiss this charge and the adjudication is vacated.
- Attempted larceny: Presence at the crime scene coupled with the juvenile's possession of tools used to commit the crime was sufficient evidence for the trial court to accept his transcript of admission. There was no error in accepting the admission to attempted larceny. The initial disposition was based on the adjudications that are now vacated. The matter cannot be remanded for a new disposition based on adjudication of this offenses because the juvenile turned 18 and there is therefore no longer juvenile jurisdiction in the matter.

Dissent

- Justice Newby agreed with the majority that acceptance of the respondent's admission was acceptable and that the evidence was insufficient to support the adjudications for second-degree sexual exploitation of a minor and first-degree forcible sexual offense. However, the evidence was sufficient to support the lesser included offense of attempted first-degree forcible sexual offense

and the case should therefore have been remanded for entry of an amended adjudication against the respondent for attempted first-degree sexual offense.

Written Conditions of Probation and Statement of Duration of Disposition

In the Matter of K.N.H., 2021-NCCOA-267

Held: Affirmed

- Facts: K.N.H. was on Level 2 probation and, after making an admission to possession of a handgun and entering an *Alford* plea for attempted common law robbery, the court issued a supplemental order for conditions of probation which included that K.N.H. "submit to [e]lectronic [m]onitoring for 90 days and comply with all conditions set forth by the [c]ourt [c]ounselor." The juvenile court counselor told K.N.H. and his parent that K.N.H. would have to be with his parent at any time he was allowed to have time outside his home while on electronic monitoring. This condition was never provided to K.N.H. in writing. The court subsequently found that K.N.H. willfully violated his probation conditions by failing to remain with a parent the entire time he was on approved time out of his house. The court then committed K.N.H. to the YDC for an indefinite period of time, without stating the maximum potential term of commitment.

- Opinion:

  Written condition of probation: The court complied with the statutory requirements for imposing electronic monitoring (G.S. 7B-2510(b)(4)) by specifically ordering the juvenile to be placed on electronic monitoring. The statute does not require the inclusion of the precise terms and conditions or rules of electronic monitoring imposed by the court counselor in the dispositional order. Criminal law that requires written statements of probation conditions does not apply in delinquency cases because it is not included in the Juvenile Code. Requiring the court to define the specific terms and conditions of each dispositional alternative or condition of probation when not mandated by statute conflicts with the goals of the Juvenile Code to provide a broad range of alternatives and would interfere with the court's power to delegate certain tasks to third parties involved in the juvenile's dispositional plan. The court "properly ordered electronic monitoring and appropriately delegated the task of supervision of the electronic monitoring to K.N.H.'s court counselor." ¶ 34. The order on motion for review is affirmed.

  Failure to state potential maximum term of commitment at disposition: This issue is not moot despite the fact that K.N.H. already completed his term of commitment at the YDC. K.N.H. was released to post-release supervision and it is not clear to the court if he remains in that status. Because K.N.H could potentially experience adverse consequences while on post-release supervision or face other potential adverse consequences, the issue is not moot. The court erred in its failure to state the precise duration of the disposition as required by G.S. 7B-2512(a). However, K.N.H. failed to show any prejudice to him as a result of that error. The disposition and commitment order is therefore affirmed.